

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-380

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IN THE MATTER OF  
RAJANIKANT C. MODY  
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2001

Decided: July 18, 2001

Wanda Molina appeared on behalf of the District VI Ethics Committee.

James F. Ryan appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). The complaint charged respondent with violations of *RPC* 1.4 (failure to communicate with a client), *RPC* 1.7 (conflict of interest), *RPC* 1.8 (prohibited transaction with a client), *RPC* 8.4, presumably (c) (conduct involving dishonesty, fraud,

transaction with a client), *RPC* 8.4, presumably (c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and *R.1:20* and *R.1:21-6* (failure to cooperate with ethics authorities), more appropriately a violation of *RPC* 8.1(b).

Respondent was admitted to the New Jersey bar in 1975. In 1988 he was privately reprimanded for representing both the buyer and seller of a business, thereby creating a conflict of interest situation. *In the Matter of Rajanikant C. Mody*, DRB No. 85-193 (May 5, 1988). In 1989 respondent was again privately reprimanded for violating *RPC* 3.3(1) and (5) and *RPC* 3.2. *In the Matter of Rajanikant C. Mody*, DRB No. 89-247 (December 4, 1989). In that matter, respondent requested an adjournment of a telephone conference with an administrative law judge, alleging that he would be in court in New Brunswick. When the judge tried to reach respondent at the telephone number that respondent had provided, he discovered that the telephone number was answered by a malfunctioning answering machine in Newark. Respondent also failed to telephone the judge, as he had requested, and failed to reply to the judge's subsequent letter. As a result, his client's application was dismissed.

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This matter stemmed from respondent's purchase of real property from a client, who took back a second mortgage from respondent. Respondent later defaulted on the mortgage, causing financial harm to the client. The client alleged that respondent did not advise him to

seek independent counsel. Respondent, in turn, claimed that he did, albeit not in writing, as required by *RPC* 1.8.

In 1986 Rajendra Patel ("Patel"), the grievant, and his wife, Ila Patel, bought a house in Jersey City. Respondent represented them in that purchase. The following year, the Patels bought a house in Bloomfield. Respondent represented them in that transaction as well.

At one point, respondent told the Patels that he would buy their Jersey City property if they could "give him the deal." Although the property had been listed for \$159,000, the Patels agreed to sell it to respondent for \$141,000 and to take back a \$15,000 mortgage. According to Patel, respondent never advised him of a conflict of interest and never suggested that he obtain independent counsel.

Initially, the buyers of the Jersey City property were respondent's wife, Anila R. Mody, and her business partner, Pushpa K. Modi.

On August 10, 1987 the Patels and the buyers signed a real estate contract. According to the contract, the buyers had paid an initial deposit of \$1,000 and were to pay a \$14,000 additional deposit.<sup>1</sup> The contract provided that "[a]ll deposit moneys will be held in trust by Attorney for Sellers Rajanikant Mody, Esq., until closing of title." Patel stated that, without notice to him, the buyers were replaced by respondent and an individual named Shaila D. Shah. On January 28, 1988 respondent and Shah signed a mortgage and a mortgage note for

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<sup>1</sup> Although the contract listed a purchase price of \$141,000, the \$15,000 deposit, the \$106,000 mortgage and the \$26,000 to be paid at closing add up to \$147,000.

\$15,000. The mortgage was witnessed by a R.N. Patel and the mortgage note was witnessed by a Chatti Bhima Rao. Patel testified that he did not know either of the witnesses.

According to Patel, he never received the closing documents for either the purchase or the sale of the Jersey City property, despite his numerous requests to respondent.

Patel testified that respondent made three payments on the mortgage and then defaulted.<sup>2</sup> He also testified that, when he sold the Jersey City property to respondent, he received less than \$1,000 from the transaction, after paying off his existing mortgage and taking back a mortgage from respondent. Although Patel sued respondent for the balance due on the mortgage, he did not obtain a judgment because, he claimed, the expense was too high.

The formal ethics complaint alleges that, in addition to the above conduct,

[r]espondent failed to properly execute the Contract of Sale, Mortgage, and Mortgage Notes in that said documents were not notarized nor sealed. Respondents [sic] failure to properly execute the aforementioned legal documents constitutes a violation of *RPC* 8.4

At the ethics hearing, the presenter contended that respondent also violated *RPC* 8.4(c) by changing the buyers without notice to the Patels.

The complaint also charged that respondent failed to cooperate with ethics authorities and displayed a lack of candor to the DEC investigator. According to the documents admitted

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<sup>2</sup> The monthly payments were to be \$161.19. The Patels, thus, received less than \$500 on the \$15,000 mortgage.

into evidence, on December 28, 1998 respondent sent the following letter to the Office of Attorney Ethics ("OAE"), in reply to the grievance:

I am in receipt of your letter dated December 1, 1998 and also another letter in this matter. I apologize for not being able to answer to [sic] your letter in time as this file is very old and I had to search for the file in order to give you proper response.

More than three months later, on April 8, 1999, the DEC sent respondent a copy of the grievance, directing him to reply within ten days. The DEC also left two or three messages with respondent's staff, seeking a reply to the grievance. Respondent did not submit a reply. On November 2, 1999 the ethics investigator notified respondent that she had concluded her investigation and was considering adding a charge of failure to cooperate with the DEC. On November 8, 1999 respondent informed the investigator that he had not received a copy of the grievance and represented that he would arrange to pick up a copy from the investigator's office within two days. On that same date, November 8, 1999, the investigator sent respondent another copy of the grievance, warning him that she would file a formal complaint unless respondent communicated with her, in writing, by November 15, 1999. By letter dated November 12, 1999, respondent stated that "I have not been able to look into the file and prepare responsive answers to the grievances." He indicated that he would file a reply by November 23, 1999. He never did so.

For his part, respondent claimed that, although he advised Patel to obtain an attorney for the sale of the Jersey City property, Patel replied that he did not want to spend money for

another lawyer. Respondent denied that he represented the Patels in the transaction, presumably implying that the Patels were acting *pro se*. He asserted that he did not obtain Patel's written consent to the business transaction, as required by *RPC* 1.8, because he and Patel were on good terms and he did not believe that the consent was necessary.

As to the change in buyers, respondent contended that, after his wife and Modi signed the contract, they could not obtain a mortgage commitment due to Modi's poor credit rating. Respondent stated that he then agreed to buy the property, along with a friend, Deepak Shah. As it turned out, respondent bought the Jersey City property along with Shah's wife, Shaila D. Shah.

According to respondent, at the beginning of the negotiations on the sale of the property, he had proposed obtaining a \$15,000 mortgage loan from Patel. Respondent claimed that, although he had advised Patel to retain another attorney for the mortgage transaction, Patel did not want to spend money on attorneys' fees.

Respondent asserted that Patel received \$25,000 to \$26,000 from the Jersey City transaction and that he gave Patel all the closing documents, including closing statements, at the closings for both the Jersey City and the Bloomfield properties. Respondent contended that he was represented by another attorney at the closing.

Respondent acknowledged that he made three payments to the Patels and then defaulted on the mortgage. He claimed that tenants had damaged the property, that \$10,000

was needed for repairs and that, although he was willing to pay one-half of the repairs, his partner was not; as a result, the first mortgage was foreclosed in 1989.

Contrary to Patel's testimony about the \$15,000 second mortgage, respondent testified that Patel had obtained a default judgment against him for \$42,000.

As to the charge of failure to cooperate with disciplinary authorities, respondent conceded that he had not replied to the grievance. According to respondent, in January 2000 his Jersey City office was destroyed by a fire. He also testified that, in January 1994, he began dialysis treatments and, in March 1996, received a kidney transplant, adding that he still requires periodic hospitalizations. Respondent contended that these hospitalizations were "a factor" in his failure to reply to the investigator's inquiries. Respondent acknowledged that, although his Jersey City office was "around the corner" from the investigator's office, he never notified her of his health problems. He further admitted that, as early as November 1999 (before the January 2000 fire), he had an office in Metuchen, of which he never notified the investigator.

Respondent's testimony about his exchange of correspondence with the DEC investigator was off target. For example, although he had represented to the investigator that he would arrange to have a copy of the grievance picked up from her office by November 10, 1989, he stated that he did not do so because he was hospitalized on November 13, 1989. That, however, was three days after the deadline he set for picking up the grievance. Similarly, despite the fact that a letter was "faxed" to him on November 8, 1999, respondent

claimed that it must have been received by his office during his hospitalization (November 13 through November 17).

Although the complaint did not charge respondent with failure to disclose the second mortgage to the first mortgagee, at the ethics hearing he admitted that his conduct in this regard was unethical:

Q. Why didn't [your attorney] notarize or witness or attest to the mortgage, the \$15,000 mortgage?

A. Because this was a second mortgage on the property and that second mortgage was without the permission of the mortgage company so this mortgage document was to be notarized at a later date.

Q. Without the permission of the mortgage company?

A. We didn't obtain the permission of the mortgage company to have the second mortgage on the property.

Q. And you realize that's a violation?

A. Right.

[T99-100]<sup>3</sup>

\* \* \*

Finding that respondent represented the Patels in the Jersey City property transaction, the DEC concluded that he violated *RPC* 1.8(a) when he failed to comply with the

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<sup>3</sup> T refers to the transcript of the September 19, 2000 hearing before the DEC.



requirements of that rule. The DEC found that respondent's representation created both an actual conflict of interest and an appearance of impropriety. The DEC also determined that respondent failed to reveal to the Patels the identity of the buyers, the essential terms of the transaction and the need for separate counsel. The DEC further determined that respondent failed to cooperate with ethics authorities, specifically noting that he provided no records to the investigator.

Although the DEC also found violations of *RPC* 1.1 and *RPC* 1.3, the hearing panel report does not contain any discussion of those infractions, which were not charged in the complaint. It is, therefore, assumed that those *RPCs* were mistakenly mentioned.

The DEC found no violations of *RPC* 8.4(c), concluding that respondent's interest in the transaction had been disclosed from the beginning.

The DEC recommended a reprimand.

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Following a *de novo* review, we are satisfied that the DEC's finding that respondent committed ethics violations is supported by clear and convincing evidence.

Respondent represented the Patels in the purchase of property in Jersey City and in the later purchase of their Bloomfield home. Although he denied representing the Patels in the sale of the Jersey City property to him, the real estate contract provided that the deposit

moneys would be held in trust "by Attorney for Sellers Rajanikant Mody, Esq., until closing of title." Clearly, thus, respondent violated *RPC* 1.7(b).

He also violated *RPC* 1.8(a) by engaging in a business transaction with a client without following the required safeguards of disclosure and consent. Time and time again, attorneys have been cautioned about the dangers of engaging in business transactions with their clients. See *In re Dato*, 130 *N.J.* 400 (1992); *In re Silverman*, 113 *N.J.* 193 (1988); *In re Reiss*, 101 *N.J.* 475 (1986); *In re Wolk*, 82 *N.J.* 326 (1980). Here, respondent bought property from his clients and borrowed money from them as well. He was required to advise his clients to seek independent counsel and to obtain their written consent to both the sale of the property and the loan. According to Patel, respondent never advised him to seek the advice of independent counsel. Although respondent claimed that he had so advised Patel, he conceded that he had prepared the mortgage and that he had not obtained the Patels' written consent to the transaction, as required by *RPC* 1.8(a). Moreover, respondent's conduct caused financial harm to his clients. Because respondent's first mortgage was foreclosed, the Patels had no security for their debt. It is likely that an independent attorney would have advised against taking back a second mortgage because of the lack of equity.

The DEC properly dismissed the charge that respondent violated *RPC* 8.4. The complaint charged that, because respondent did not have the real estate contract, the mortgage and the mortgage note notarized or sealed, the documents had not been properly executed. The failure to notarize or seal documents does not necessarily constitute

dishonesty, fraud, deceit or misrepresentation. Here there is no evidence that would support a finding of a violation of *RPC 8.4(c)* in that context.

At the hearing, the presenter argued that the change of identity of the parties to the real estate transaction without notice violated *RPC 8.4(c)*. Respondent's counsel objected to the presenter's argument because the complaint did not provide notice of a potential finding of that violation. For that reason — and because of our conclusion that the record, in any event, does not contain clear and convincing evidence that respondent's conduct constituted dishonesty, fraud, deceit or misrepresentation — we found no violation of *RPC 8.4(c)* in this regard.

Undeniably, however, respondent violated *RPC 8.4(c)*, in another respect. He received a second mortgage loan without notice to or consent from the first mortgagee. Respondent testified that his attorney did not notarize or witness the second mortgage because it was given without the permission of the mortgage company. He acknowledged that obtaining secondary financing without notice to the first mortgagee was a violation of the *Rules of Professional Conduct*. These so-called "silent seconds" constitute a fraud on the first mortgage holder because, typically, the lender prohibits additional financing. Here, respondent orchestrated the second mortgage transaction with full awareness that he did not have the primary lender's consent thereto. Although respondent was not specifically charged with a violation of *RPC 8.4(c)* for this conduct, the record developed below contains clear and convincing evidence of that violation. Not only did respondent not object to the

admission of such evidence in the record – indeed, it was his testimony that brought the matter to light – but he admitted that his conduct was improper. We, therefore, deemed the complaint amended to conform to the proofs. *R. 4:9-2; In re Logan*, 70 N.J. 222, 232 (1976).

We also find that respondent violated *RPC* 1.4(b) by failing to inform Patel of the identity of the new buyers, thereby precluding Patel from making an informed decision about the transaction.

There is also no doubt that respondent failed to cooperate with ethics authorities, in violation of *RPC* 8.1(b). Although he sent one letter to the OAE, he never replied to the numerous inquiries from the ethics investigator, who sent him correspondence on April 8, November 2 and November 8, 1999. The investigator also left several telephone messages for respondent, none of which were returned. Respondent's failure to cooperate with disciplinary authorities inhibited the investigation of the grievance and resulted in a lack of documentary evidence in this matter. Moreover, respondent did not follow through on his representations that he would reply to the grievance. On November 8, 1999 he stated that, by November 10, 1999, he would have a copy of the grievance picked up from the investigator's office, which was very close to his office. He never did so. On November 12, 1999 respondent represented that he would reply to the grievance by November 23, 1999. Again, he did not do so. Although respondent eventually filed an answer to the ethics complaint, his failure to reply to the grievance impeded the investigation of the charges against him, in violation of *RPC* 8.1(b).

In summary, respondent violated *RPC* 1.4(b), *RPC* 1.7(b), *RPC* 1.8(a), *RPC* 8.1(b) and *RPC* 8.4(c). Discipline for failure to disclose secondary financing in a real estate transaction has ranged from a reprimand to a term of suspension. *See, e.g., In re Alum*, 162 *N.J.* 313 (2000) (suspended one-year suspension for participating in a series of real estate transactions in which secondary financing was not disclosed to the primary lender; the Court stated that, although ordinarily, acts of dishonesty, such as falsifying lending documents, warrant a period of suspension, the passage of time in that case — eleven years, the attorney’s unblemished record and his exemplary community service militated in favor of suspending the suspension); *In re Spector*, 157 *N.J.* 530 (1999) (reprimand for violating *RPC* 8.4(c) by failure to disclose secondary financing from the primary lender in three real estate transactions and by the use of dual closing statements); *In re Sarsano*, 153 *N.J.* 364 (1998) (reprimand for concealing secondary financing from primary lender in one real estate transaction and for preparing two different closing statements, in violation of *RPC* 8.4(c)).

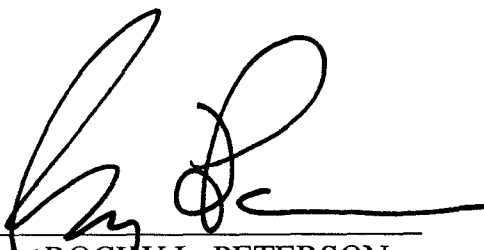
Cases involving a conflict of interest, absent egregious circumstances or serious economic injury to clients, generally result in a reprimand. *In re Berkowitz* 136 *N.J.* 134, 148 (1994). *In re Guidone*, 139 *N.J.* 272 (1994). Here, respondent’s clients suffered economic harm when he borrowed \$15,000 from them and then defaulted after paying less than \$500. It is possible — indeed likely — that, had the Patels been represented by independent counsel, they would have been advised against giving respondent a \$15,000 mortgage loan.

In mitigation, we considered that the wrongdoing in this matter occurred thirteen years ago. In aggravation, we considered the two private reprimands respondent has received. Although the transgressions in the instant matter were committed before respondent was disciplined, his disciplinary history demonstrates a pattern of disregarding the *Rules of Professional Conduct*. Moreover, the fact that respondent had a personal interest in the real estate transaction is an aggravating circumstance.

Based on the foregoing, a seven-member majority voted to impose a three-month suspension. Two members voted to impose a suspended three-month suspension and 400 hours of community service, believing that the passage of time since respondent's ethics infractions strongly mitigated against an active suspension.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: July 18 2001

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Rajanikant Mody  
Docket No. DRB 00-380**

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**Argued: March 15, 2001**

**Decided: July 18, 2001**

**Disposition: Three-month suspension**

Members	Disbar	Three-month Suspension	Reprimand	Three-month Suspended Suspension	Dismiss	Disqualified	Did not Participate
Hyerling				X			
Peterson		X					
Boylan				X			
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
<b>Total:</b>		7		2			

*Robyn M. Hill*

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Robyn M. Hill  
Chief Counsel