SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-181

IN THE MATTER OF

PAUL A. LEFF

AN ATTORNEY AT LAW

Decision

Argued: June 20, 2002

Decided: October 17, 2002

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's disbarment in the State of New York.

Respondent was admitted to the New Jersey bar in 1983. He has no disciplinary history in New Jersey. He was suspended for two years in New York, effective September 18, 1995, and disbarred in New York on March 20, 2000. Respondent failed to notify the OAE of either disciplinary proceeding. The OAE's motion for reciprocal discipline, thus, was based on respondent's 1995 suspension and subsequent disbarment in New York.

In December 1986 respondent represented Ralph and Jacqueline Grosso in the purchase of a condominium at Surfside Development ("Surfside") in Staten Island. A real estate broker associated with Surfside, Adinolfi, had referred the Grossos to respondent. In June and July 1987, respondent represented Ralph Grosso's parents, Ralph and Ida Grosso, in the purchase of another condominium at Surfside and in the refinance of the mortgage securing their residence in Brooklyn. Both condominium units were purchased as investments.

After the real estate market declined and the investment proved unprofitable, the Grossos asked Adinolfi to help them sell the units as soon as possible. In 1988 respondent formed a corporation, Fairmont Development Corporation ("Fairmont"), of which he and Adinolfi were the principals. Fairmont sought the purchase of condominium units at Surfside.

In March 1988 respondent, representing Fairmont, signed an agreement with the Grossos by which Fairmont would arrange the sale of the two units and retain the proceeds above the guaranteed minimum purchase price of $146,000. The agreement required Fairmont to pay the units' real estate taxes and common charges, in addition to the mortgage

payments on the Grossos' Brooklyn home and an equity line of credit. Fairmont failed to make all of the payments required by the agreement.

In August 1988 respondent represented Ralph and Jacqueline in the sale of the condominium, while at the same time, appearing at the closing as a principal of Fairmont. In June 1989 respondent attended a real estate closing in which Ralph and Ida sold their condominium. The opinion of the Supreme Court of New York, Appellate Division, Second Judicial Department recited the following factual findings:

> 10. On or about June 19, 1989, pursuant to a written agreement prepared by the respondent, a real estate transaction was entered into between 'Maria Vono and Frank Vono, Ralph Grosso and Ida Grosso' wherein:
>
> a) the deed to 374 Sprague Avenue was conveyed to Frank and Maria Vono;
>
> b) the Grossos took back an unrecorded $146,000 mortgage which was to run for six months;
>
> c) the $146,000 unrecorded mortgage was to be subordinate to a $40,000 recorded mortgage;
>
> d) in the event that Frank Vono failed to pay off the $146,000 mortgage in six months, the Grossos would have the right to record the mortgage as a lien against the property and charge Frank Vono for the mortgage recording tax;
>
> e) Frank Vono was to be responsible, during the six-month period, to make the mortgage payments to the Dime [Savings Bank] on the Grossos' Brooklyn home; and
>
> f) the Grossos released Fairmont from its obligation to make any further payments and from all liability.

11. On or about June 19, 1989, a second agreement, prepared by the respondent, was entered into between 'Ralph Grosso, Ida Grosso, and Frank Vono and Marie Vono' which stated that:

a) the parties had negotiated the agreement and did not need to be represented by independent counsel;

b) the respondent had been requested by the parties to prepare the documents and had not been retained by any of the parties;

c) the parties had reviewed the documents prepared by the respondent and had determined that they were in conformity with their understanding;

d) the respondent was to be held harmless from all liability to any of the parties; and

e) the respondent was acting solely as a translator who was translating the agreement from the verbal wishes of the parties to the paper format.

12. At the June 19, 1989 closing, the lenders, Santoro and Volpe, were represented by Joseph Carmine, Esq.

13. The respondent prepared the mortgage and note, the deed, and other documents necessary to record the deed, including the transfer tax forms and non-multiple dwelling affidavit for the June 19, 1989 closing. At the closing, the respondent explained to the Grossos and Vonos the forms being signed and collected reimbursement for the stamps on the deed. The respondent recorded the deed.

14. The deed was signed by Ralph Grosso, Jr., and notarized by the respondent.

15. The respondent appeared at the closing on behalf of Flagg Abstract, of which he is the sole principal, and put together the documents received from the title examiner.

16. The respondent appeared at the June 19, 1989 closing as a principal of Fairmont Development Corporation.

17. The respondent failed to instruct the Grossos on the necessity for recording the mortgage and failed to advise them that their unrecorded $146,000 mortgage would be subordinate to subsequent recorded mortgages on 374 Sprague Avenue. The $146,000 mortgage was not recorded.

18. On or about June 19, 1989, a $40,000 mortgage was obtained from the Vonos, by Frank Santoro and Nicholas Volpe, on 374 Sprague Avenue. The mortgage was recorded with the Richmond County Clerk.

19. On or about August 15, 1989, a $30,000 mortgage was obtained from the Vonos, by Frank Santoro and Nicholas Volpe, on 374 Sprague Avenue. The mortgage was recorded with the Richmond County Clerk.

20. On or about September 27, 1989, a $108,000 mortgage was obtained from the Vonos, by Citibank, on 374 Sprague Avenue. The mortgage was recorded with the Richmond County Clerk. The proceeds of the mortgage were used to satisfy the mortgages obtained by Santoro and Volpe on June 19, 1989, and August 15, 1989.

21. The respondent represented the Vonos at the closing on the September 27, 1989 mortgage.

22. At the September 27, 1989 mortgage closing, Flagg Abstract, of which the respondent was the sole principal, put together the documents received from the title examiner.

The New York Appellate Division found that respondent engaged in a business transaction with a client, represented a client when respondent had a contrary interest and failed to withdraw from the representation, in violation of the New York equivalents to our *RPC* 1.8(a), *RPC* 1.7(b) and *RPC* 1.16(a)(1). Respondent was suspended for two years, effective September 18, 1995.

On March 20, 2000 the Appellate Division disbarred respondent, finding that, while suspended, he deposited and maintained checks in his trust account, drew checks from that

account, signed checks and other documents identifying himself as an attorney, accepted checks identifying him as an attorney, commingled personal and client funds in his trust account, failed to maintain proper trust account records and issued a check from his trust account payable to "cash." In addition, the court determined that respondent filed a false and misleading affidavit of compliance certifying that he had fully complied with the order of suspension.

The OAE urged us to impose a six-month suspension, retroactive to August 28, 2000, the date that respondent was listed as "retired" by the New Jersey Lawyers' Fund for Client Protection.

* * *

Following a review of the full record, we determined to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by *R.* 1:20-14(a)(4), which provides as follows:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), although respondent was disbarred in New York, a disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment, pursuant to 22 *N.Y.C.R.* 603.14. In effect, thus, disbarment in New York is equivalent to a seven-year suspension. In New Jersey, however, respondent's misconduct would lead to less stern discipline.

It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the appropriate discipline in conflict-of-interest situations. *In re Berkowitz*, 136 *N.J.* 134, 148 (1994). Where an attorney's conflict of interest has caused serious economic injury or the circumstances are more egregious, the Court has not hesitated to impose a period of suspension. *See, e.g., In re Pena*, 162 *N.J.* 15 (1999) (attorney suspended for six months for engaging in a conflict of interest situation involving the sale of a client's real estate for the attorney's own pecuniary benefit); *In re Guidone*, 139 *N.J.* 272 (1994) (three-month suspension where the attorney deliberately concealed his involvement in a partnership that was purchasing property from the Lion's Club, when he was already representing the Lion's Club in the transaction); *In re Hurd*, 69 *N.J.* 316 (1976) (three-month suspension where the attorney advised his client to transfer title to property to the attorney's sister for twenty percent of the property's value).

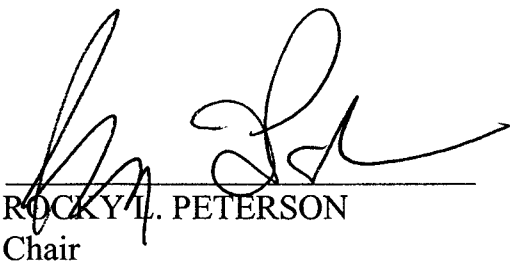
Similarly, when the conflict of interest, although not as serious, is accompanied by other ethics violations, a short suspension is imposed. *See, e.g., In re Weintraub*, 171 *N.J.* 78 (2002) (attorney suspended for six months when he engaged in a conflict of interest situation by arranging for a loan from one client to another client and by borrowing funds from a client without advising the client to seek independent counsel, failed to provide in writing the basis or rate of his fee, failed to promptly deliver funds to a client or third person and misrepresented to clients that he had settled their personal injury claim); *In re Wildstein*, 169 *N.J.* 220 (2001) (attorney suspended for three months for engaging in a conflict of interest situation by representing two estates, one of which was a debtor of the other and by acquiring a pecuniary interest adverse to one of the estates; he also grossly neglected one of the estates, failed to explain a matter to permit his client to make an informed decision and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation); *In re Shelley*, 140 *N.J.* 501 (1995) (attorney suspended for six months for borrowing funds from a client without following the safeguards contained in *RPC* 1.8(a) and for failing to maintain time records or to provide the client with a written statement documenting the amount of the fee).

Here, respondent's conflict of interest not only caused his clients economic injury, but was also coupled with a failure to comply with the court order of suspension. *See, e.g., In re Jackson*, 158 *N.J.* 154 (1999) (attorney suspended for three months for violating order placing conditions on his bar admission that he practice only with appropriate supervision;

attorney also retained fees from two clients while employed by another law firm and misrepresented the status of those cases to the law firm).

In view of the above, we unanimously voted to suspend respondent for six months, retroactively to August 28, 2000, the date that he was listed as "retired" by the New Jersey Lawyers' Fund for Client Protection. Two members did not participate.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Docket No. DRB 02-181

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Disposition: Six-month suspension.

Members	*Disbar*	*Six-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson		X					
Maudsley		X					
Boylan		X					
Brody		X					
Lolla		X					
O'Shaughnessy		X					
Pashman							X
Schwartz							X
Wissinger		X					
Total:		7					2

Robyn M. Hill 10/21/02

Robyn M. Hill
Chief Counsel