SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-365

IN THE MATTER OF	
RICHARD H. KRESS	
AN ATTORNEY AT LAW	

Decision

Argued: February 6, 2003

Decided: June 3, 2003

Stephen F. Hehl appeared on behalf of the District XII Ethics Committee.

John P. McDonald 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 based on a recommendation for discipline filed by the District XII Ethics Committee ("DEC"). The complaint charged respondent with violations of *RPC* 1.7 and *RPC* 1.8 (conflict of interest), *RPC* 3.4 (fairness to opposing party and counsel), *RPC* 4.1 (truthfulness in statements to others), and *RPC* 8.4, presumably (c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and (d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1979. In 1992 he was suspended for three months when, as municipal court prosecutor, he failed to disclose to the municipal court judge the circumstances surrounding the dismissal of a drunk-driving case. *In re Kress*, 128 *N.J.* 520 (1992). In 1996 he was reprimanded by consent for failure to timely file a reply to a motion for *pendente lite* support and to timely file a motion for reconsideration, in violation of *RPC* 1.3, and failure to keep his client informed of the status of the matter, in violation of *RPC* 1.4. *In re Kress*, 143 *N.J.* 334 (1996).

* * *

In 1989 or 1990 respondent began to represent Luparella, Florio & Ridilla ("the firm"), an accounting partnership. He also represented two individual partners of the firm, Joseph Luparella and Linda Ridilla, in the collection of fees, real estate transactions,

lease review and estate planning. The firm's major client was First Interregional Equity Corporation ("FIEC"), a securities broker-dealer.

On March 5, 1997 the Federal Bureau of Investigation raided FIEC's office. The next day, the Securities and Exchange Commission filed a securities fraud complaint against FIEC and others. On March 10, 1997 a trustee was appointed to liquidate FIEC's business pursuant to the Securities Investor Protection Act. The matter was then referred to bankruptcy court. On July 10, 1998 the trustee filed in bankruptcy court an amended complaint against the firm, its individual partners and the partners' spouses, alleging malpractice by the firm, particularly in connection with the firm's audits of FIEC, and fraudulent conveyances by Luparella and Ridilla. On March 5, 1997, the day of the FBI raid, Luparella had transferred his interest in his residence to his wife for one dollar. One week later, on March 12, 1997, Ridilla transferred her interest in her residence to her husband for one dollar. Respondent prepared both deeds. On December 11, 1998 the trustee filed a notice of *lis pendens* against Ridilla's and Luparella's properties.

In addition to the above litigation, the firm's malpractice insurance carrier filed a declaratory judgment action seeking to void the insurance coverage, based on alleged misrepresentations in the firm's insurance application. The trustee also filed an action to set aside as a preference $146,000 in accounting fees that FIEC had paid the firm within the past year.

Respondent represented the firm in all of the above litigation. After the United States Attorney's Office notified Luparella and Ridilla that they were both targets of a criminal investigation, respondent advised them that, although he could not represent both of them, he could represent one of them until the United States Attorney's Office objected. Ridilla then retained other counsel.

During this time, Ridilla retained respondent to represent her in the purchase of real property. Because Ridilla was confident that she would sell her residence before the closing date for her purchase, she did not add to her contract a contingency clause permitting her to withdraw from the transaction if her property remained unsold. As the closing date approached and Ridilla's house had not been sold, the Luparellas agreed to lend the Ridillas $75,000 as a bridge loan. On October 1, 1998 respondent prepared a note and two mortgage documents between the Luparellas as lenders and the Ridillas as borrowers, secured by the properties that the Ridillas were buying and selling. Respondent also represented the Luparellas in refinancing their mortgage, which they needed to do to fund the loan to the Ridillas.

In July 1999, after friction developed between Luparella and Ridilla over financial matters, Ridilla retained another attorney, Stephanie Murray-Przekop, to represent her in the sale of the property, scheduled for September 23, 1999. When the title search revealed the *lis pendens*, Ridilla told Murray-Przekop that, because respondent was

involved in the FIEC litigation that had prompted its filing, respondent would handle the removal of the *lis pendens* and would obtain a payoff statement for the *Luparella* mortgage. Ridilla instructed Murray-Przekop not to contact Lisa Bonsall, the trustee's attorney, concerning the *lis pendens* and the mortgage.

As the closing date drew near, Murray-Przekop tried to contact respondent to get a payoff figure for the buyer's attorney and information on the discharge of the *lis pendens*. Finally, on September 21, 1999, two days before the closing, respondent "faxed" to Murray-Przekop a payoff letter indicating that Ridge Funding Group was the payee. Because the title search revealed that the Luparellas, not Ridge Funding Group, were the mortgagees, the payoff letter created confusion. The payoff statement, dated September 15, 1999, listed a principal balance of $75,000, a five percent commitment fee of $3,750, interest of $6,619.42 — calculated to September 24, 1999 — and a payoff fee of $60, for a total of $85,429.42. Respondent also "faxed" an unexecuted assignment of mortgage purporting to assign the *Ridilla* mortgage from the Luparellas to Ridge Funding Group. The date on the mortgage assignment was November 20, 1998, about ten months before the September 23, 1999 closing date.

As of the morning of the closing, Murray-Przekop still did not have any information about the discharge of the *lis pendens*. After she tried without success to contact respondent, Murray-Przekop reached Bonsall, the attorney for the bankruptcy

trustee. Bonsall told her that, according to respondent, there was a valid mortgage assignment, of which respondent would provide verification. Without the verification of the mortgage assignment, Bonsall would not discharge the *lis pendens*.

Murray-Przekop became concerned about her clients' ability to convey good title at the closing later that day. She again tried to reach respondent and learned that he was in court. Finally, Murray-Przekop, Bonsall and Patricia Mullon Zohn, Bonsall's associate, had a telephone conference with respondent, at which time he made the following representations:

- he represented Ridge Funding Group;
- as he had indicated to either Bonsall or Zohn earlier in the day, he would provide verification that the assignment of the mortgage from Luparella to Ridge Funding Group was *bona fide* and supported by adequate consideration;
- the funds required for the mortgage payoff would be escrowed by the trustee's attorney; and
- he would immediately prepare and record discharges of the mortgage encumbering the property.

Based on respondent's representations, the closing proceeded. Bonsall retained in escrow the net proceeds, in excess of $96,000.

On September 30, 1999 Bonsall discharged the notice of *lis pendens*. On September 24, 1999, the day after the closing, Murray-Przekop requested respondent to provide mortgage discharges. Respondent failed to reply to that request. He also failed to

reply to Murray-Przekop's subsequent written requests of October 4, October 12, October 26, and November 8, 1999, as well as her attempts to reach him by telephone. In addition, respondent did not provide Bonsall with the verification of the mortgage assignment to Ridge Funding Group, as promised. On December 20, 1999 Murray-Przekop again requested the mortgage discharges from respondent, advising him that, if he did not provide them within fifteen days, she would begin procedures provided by statute for the cancellation of the mortgages. Fourteen days later, on January 3, 2000, respondent "faxed" a letter to Murray-Przekop, objecting to the cancellation of the mortgages, because his clients had not been paid for the mortgage loan. He further asserted that the trustee had no authority to escrow the proceeds.

On February 3, 2000 Murray-Przekop filed a complaint and order to show cause on the Ridillas' behalf against the Luparellas and Ridge Funding Group, seeking to have the county clerk cancel and discharge the mortgages. After the complaint sent to Ridge Funding Group was returned with the notation "addressee unknown," Murray-Przekop served the complaint by publication. When she telephoned the number appearing on the mortgage payoff statement, she reached an individual who did not speak English. Murray-Przekop contacted various agencies in Florida and learned that there was no listing for Ridge Funding Group in that state.

On March 1, 2000, the day before the return date of the order to show cause, the Luparellas, appearing *pro se*, filed an answer, counterclaim and third-party complaint. Although Murray-Przekop did not represent the Luparellas, they charged her with malpractice by permitting the closing to proceed without the necessary documents. They did not file a lawsuit against respondent, who had represented them in the transaction. The Luparellas alleged in their pleadings that there had never been a mortgage assignment to Ridge Funding Group and that they had not authorized respondent to permit the closing proceeds to be placed in escrow or to issue mortgage cancellations. On March 2, 2000 Judge Miriam Span entered an order directing the county clerk to discharge the mortgage encumbering the property that the Ridillas had sold. The mortgage against the property that the Ridillas had bought was discharged by a subsequent court order.

In connection with the litigation before Judge Span, both Bonsall and Zohn filed certifications confirming that, before the real estate closing, respondent had suggested the escrow arrangement, in exchange for his promise to deliver the following documents: (1) verification of the mortgage assignment from the Luparellas to Ridge Funding Group; (2) verification of the *bona fide* consideration that had been paid for that assignment; and (3) discharges of the mortgages. In addition, Zohn's certification stated as follows:

- On the morning of the closing, respondent represented to her that, although the *Ridge Funding Group* assignment had been executed on the same day as the *Luparella* mortgage, it was funded at a later date.

- Respondent further indicated that Ridge Funding Group did not want to identify its members.

- Later that day, respondent told Zohn that, after reviewing his file, he realized that Ridge Funding Group had not directly paid Luparella for the mortgage assignment. Instead, the funds had been paid via respondent's trust account. Respondent assured Zohn that he would supply copies of the trust account checks and trust account statements to demonstrate that Ridge Funding Group had given adequate consideration for the mortgage.

- Respondent called Zohn almost immediately after the above conversation to inform her that some of the money paid by Ridge Funding Group had been applied toward his legal fees. Respondent then suggested that the payoff amount be escrowed by the trustee's attorney.

On July 14, 2000 Murray-Przekop, on behalf of the Ridillas, filed an amended complaint adding respondent as a direct defendant and adding a fourth-party complaint against respondent by Murray-Przekop as fourth-party plaintiff. The allegations against respondent included negligent and intentional misrepresentation and breach of fiduciary duty.

According to Murray-Przekop, the litigation between the Ridillas and the Luparellas was intertwined with the securities litigation and, as of the date of the ethics hearing, had not been resolved. The Luparellas' malpractice lawsuit against Murray-Przekop was dismissed upon their failure to produce an affidavit of merit. The Ridillas obtained a default judgment against respondent for $30,000 for their legal fees in

obtaining the mortgage discharges. Murray-Przekop also obtained a default judgment of $8,000 against respondent for legal fees. Respondent filed a bankruptcy action in which both judgments were discharged.

At a November 3, 2000 hearing before Judge Span concerning the mortgage discharge, the following exchange took place:

> Murray-Przekop: [B]ut we have to remember that the mortgagee's counsel, Richard Kress, represented that the Luparella's [sic], the defendants, were not the proper payees, that Ridge Funding was the proper payee.
>
> The Court: Well he committed fraud, right?
>
> Murray-Przekop: Yes, that is our assertion. In the plaintiffs [sic] complaint against Richard Kress, which for the record he has defaulted and we've entered default, - -
>
> The Court: Have you filed an ethics complaint against him?
>
> Murray-Przekop: Not in this matter, Your Honor, not yet. There were inquiries into the ethics complaints. For the record, I called [the secretary of] the Ethics Committee and he advised me that until this litigation is over I cannot file a formal complaint.
>
> The Court: Really?
>
> Murray-Przekop: That's what I was told, and the same thing was told to the plaintiffs, the Ridilla's [sic], when they had called and filed an ethics complaint.
>
> The Court: I think you should just go ahead and do it with the facts that you have frankly.

For his part, respondent did not deny most of the above facts. In his answer to the formal complaint, he stated as follows:

- He represented both Ridilla and Luparella in connection with the bridge loan, preparing the note and mortgages, as instructed by his clients. He also represented Luparella in the refinance of his mortgage, enabling him to obtain the funds to lend to Ridilla. Before the loan closing, he gave each client a letter confirming that (1) he had advised them of the apparent conflict and of their right to retain separate counsel; (2) they had waived their right to separate counsel; and (3) he was not instrumental in procuring the loan.

- After Ridilla retained Murray-Przekop, respondent, Ridilla and Luparella agreed that Murray-Przekop should not become involved with the *lis pendens* and that the trustee might not release the funds if he knew that Luparella held the mortgage. Respondent expressed the opinion that the funds could be released if an unrelated third party purchased the *Luparella* mortgage. He secured a commitment from a Florida investor, who was willing to wire the funds when needed.

- Several days before the closing, he was at the firm's offices with the documents needed for the assignment of mortgage, when Murray-Przekop called Ridilla, telling her that she had contacted the trustee's attorney to obtain a discharge of the *lis pendens*. At that point, it was agreed that the trustee's attorney had to be aware of the *Luparella* mortgage and that the closing could not occur until that issue was resolved. On the day before the closing, respondent told Murray-Przekop not to close title until the assignment of the mortgage was resolved.

- He was in court on the day of the closing, when Murray-Przekop called to advise that she was proceeding with the closing. When he arrived at his office, he told Zohn about the assignment of mortgage to try to "salvage" the payoff of the *Luparella* mortgage. The trustee would not release the *lis pendens* unless they retained the funds in escrow. Respondent acknowledged that the closing could occur only if the trustee held the proceeds. He did not think that Murray-Przekop would proceed with the closing until all the issues had been resolved.

- The Ridillas informed him several hours later that the closing had taken place and asked him to proceed with the assignment. He told them that, because the trustee

would not release the funds until all litigation was resolved, he could not recommend that Ridge Funding Group complete the transaction.

- He never misrepresented that the assignment had been completed. It was his decision to abort the assignment.

In addition, respondent testified as follows about the assignment of the mortgage:

> As it was getting closer to the time of closing, we were discussing the fact that the trustee was looking for the return of $146,000 in accounting fees, besides the money in the malpractice action, and the various other actions that were going on. And I assured [Ridilla and Luparella] that if the trustee knew about the second mortgage going to Luparella that they would not release the lis pendens.
>
> And that's when all the discussions started to take place between Ridilla, Luparella, and I as to how we were going to best handle the situation in order to have the money released. Now, part of the idea of getting this money released was that part of this money was going to be to reimburse me for my legal fees up to that point, because Ridilla didn't have the money to pay me at that point. Luparella was balking at paying, because he was getting mad that he was allegedly shouldering the lion's share of the expenses that were going on at that point, and we discussed that the only way that I could see that we could obtain the permission of the trustee to do this is if we assigned the mortgage and sold the mortgage to a third party and had it accomplished prior to the closing on the property so that when it came time to close that there would be a valid, bona fide transfer of this mortgage to a third individual who was not related to Luparella or Ridilla so that they could get paid this money.

According to respondent, Ridge Funding Group was the trade name used by Ryan Klesko, a major league baseball player. Respondent claimed that, after he contacted Klesko about the mortgage assignment, Klesko agreed to participate in the transaction. Respondent contended that the name Ridge Funding Group was filed as a certificate of

trade name in the state of Georgia where Klesko resided. Respondent also stated that the telephone number appearing on Ridge Funding Group's letterhead was that of his own residential condominium in Florida. On cross-examination about the mortgage payoff statement sent to Murray-Przekop from Ridge Funding Group, the following exchange took place between respondent and the presenter:

> Q. Who prepared this pay off letter?
>
> A. I did. At the direction of Linda Ridilla.
>
> Q. Who came up with the figures on that?
>
> A. Linda Ridilla and I came up with the figures, because . . . . Ryan Klesko was getting paid five points up front on the assignment, which was the [$3,750]. The interest was the interest that she owed – that Ridilla owed on that mortgage from the date that she took it to the date that it [was] presumed the closing was going to be, which was September 24th of 99. So I mean the figures are legitimate figures. This is not something that was just picked out of the air. . . .

Respondent denied any knowledge that the closing was scheduled to take place on September 23, 1999. Respondent stated that he had agreed with Bonsall that the closing would proceed in escrow and that, when he provided her with documentation on the assignment of the mortgage, she would give him a release of the *lis pendens*. According to respondent, he assumed that the closing would not take place on September 23, 1999, because he had not heard from the purchaser's attorney and never thought that Murray-Przekop would permit the closing to occur without having received mortgage

cancellations. Respondent testified as follows about what occurred after Ridilla informed him that the closing had taken place:

> I told [the Ridillas] right then and there that I think we're going to have a problem, because we don't have Luparellas on line with this whole thing yet, and that's when I contacted – I knew that this was the money then [sic] was not going to get released, because at this point, Lisa Bonsall was aware that that mortgage was to Joseph Luparella, and they wanted that 146,000 preferential payment back, and there's no way they were going to release that money.
>
> So I made the decision at that point that I didn't want to get Ryan Klesko tied into this situation, because that money was not going to get released, and if I got the money from Ryan Klesko, what was going to happen was I was going to end up getting the bulk of that money to pay my fee up to that point, and the rest of the money was going to go back to Ridilla for the money to pay her father back, and I knew that I would be putting myself in a much more precarious situation by doing that than by calling off the part of the deal with Ryan Klesko and not getting paid and knowing that the money was going to be held in escrow. . . . I advised Ryan Klesko's business manager that the deal was off, and that was the end of the deal with him.
>
> Subsequent to that, that afternoon, I called up Joe Luparella after the closing. I told Joe Luparella what had taken place. He knew that his money was – was destined to be turned over to the trustee at some point or another, and I told him that I needed the mortgages endorsed for cancellation at that point. . . . And then a couple days later he called me back and he says his wife won't let him endorse the mortgages for cancellation because they didn't get paid, even though the money was being held by the trustee, that's their mortgage, not the trustee's mortgage, and that the trustee didn't have a right to it. And I think legally speaking they had a rather valid position there, because there was no court order directing that money to be held by the trustee. There was no agreement in writing. There was nothing whatsoever that entitled the trustee to hold that money and demand Luparella to produce the pay offs, the discharge of the mortgages, because Luparella never got his money back.

> So here's Luparella having lent $75,000 to Linda Ridilla so that she doesn't go in default of it, was getting demanded to give pay off discharges of mortgages when the money wasn't paid to him and is being held by the trustee. He just steadfastly refused to do it and wouldn't do it. And at that time is when I started telling him that he was putting me in a very bad position, and that we would be better off in providing the documents at that time and clear up the litigation at some later date as to who was going to get credit for what. But he knew that the only one with any assets was him, that Ridilla really didn't have the assets, and that any settlement that came potentially from Luparella, Florio, Ridilla was going to come out of his pocket, which eventually became the case.

Respondent attached to his answer an unsigned certification purporting to be from Klesko. The certification claimed that, after Klesko discussed the matter with respondent, he instructed his business manager to wire the funds needed for the assignment of the mortgage. He was not informed until later that the transaction had not been completed. Both this certification and respondent's testimony contradict respondent's reply to the ethics grievance, in which he stated that it was Klesko's decision to withdraw from the transaction, in part because, as a public figure, he did not wish to participate in it.

With respect to the conference call in which all other parties claimed that respondent represented that he would discharge the *Luparella* mortgage, respondent stated the following in his reply to the grievance:

> While I know they want to believe I said I would give discharges for the Luparella mortgages, that simply is not so. Why would Lisa Bonsall, as attorney for the Trustee, be concerned with Joseph Luparella giving a discharge to Linda Ridilla? There was nothing more than an assumption made on their part. When I discussed it with Joseph Luparella, he was

> considering his options and after speaking to his wife, advised me that they would not execute the discharge until they were paid the money due them. This occurred prior to the closing. Given all of the lien issues, it was my opinion that no attorney would ever close title without assuring clear title. . . . On April 10, 2000, I assisted in settling all Federal actions and on Mr. Luparella's behalf, agreed to his contribution of $100,000 towards a multi-million dollar settlement.[1] . . . The animosity between Linda Ridilla and Joseph Luparella has spilled over to me. Ms. Ridilla's choice of an inexperienced attorney to handle her closing is the cause of most of her financial loss. . . . There is no confirming fax or letter to support the allegation that I agreed to the execution of the discharge of mortgage.

Respondent could not deny that, during the conference call, he may have misrepresented that the mortgage assignment had been completed. When asked if it was not reasonable for the other attorneys to rely on his payoff statement, respondent replied that he never thought anyone would close title without resolving, in writing, the issues of the mortgage assignment and the removal of the *lis pendens*.

Respondent explained that the November 20, 1998 date on the mortgage assignment was an error, speculating that his secretary had simply failed to change the date on a prior mortgage assignment left in the word processor. He claimed that, during the conference call, when he said that he would provide a verification of the mortgage assignment, he meant that he would do so once the mortgage had been assigned.

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[1] Most of the settlement monies paid by Luparella were funded by the payoff proceeds held in escrow by the trustee's attorney.

With respect to the conveyances in which Luparella and Ridilla transferred their interests in their homes to their respective spouses, respondent claimed that the *Luparella* transfer had been contemplated well in advance of the FBI raid of FIEC, as part of an estate plan that he had developed for them. He conceded, however, that the *Ridilla* property had been transferred in response to the raid.

As to his failure to reply to Murray-Przekop's letters about the mortgage cancellations, respondent claimed that he continually advised Luparella to send the mortgage discharges to her. Although Luparella notified respondent, in advance, of his legal malpractice lawsuit against Murray-Przekop, respondent did not try to dissuade Luparella from suing her. Respondent claimed that, although he did not file an answer to the amended complaint, in which he was named as both a defendant and a fourth-party defendant, Judge Spann denied his motion to vacate the default. At that time, respondent did not have malpractice insurance.

According to respondent, a global settlement of the federal and state court actions was reached in December 2000 and all of the litigation was concluded by August 200l. The settlement included a payment by Luparella to the Ridillas and presumably to the bankruptcy trustee, funded in part by the escrow funds. Respondent asserted that, during the fall of 2001, he entered into discussions with the United States Attorney's Office in connection with a potential plea agreement for Luparella. At that point, respondent

advised the Assistant United States Attorney that he had a conflict and that he could not represent either Luparella or Ridilla.

On cross-examination, the following exchange took place between respondent and the presenter:

> Q. [Y]ou represented the Luparellas on the refinance of their house to get the money to give to Ridilla?
>
> A. Correct.
>
> Q. You represented both Luparella and Ridilla, both husband and wife, on the deed transfers that led to the fraudulent transfer allegations in the complaints?
>
> A. Correct.
>
> Q. Okay. You represented both Luparella and Ridilla on the bridge loan, the $75,000 bridge loan and the mortgages that were recorded there?
>
> A. Yes. I prepared the documents for them as the scrivener. They're the ones who told me to do it.
>
> Q. You also represented Ridge Funding as ever it may exist in connection with the assignment of mortgage?
> A. No question.
>
> Q. You also represented Ryan Klesko, who somehow is related to Ridge Funding, the payments [sic]?
>
> A. He was providing the funding for the moneys for the Ridge Funding.
>
> Q. So you represented the mortgagor, the mortgagee, the assignor, the assignee, all in connection with this transaction?
>
> A. No doubt.

> Q. Okay. This, and the whole purpose of the assignment to Ridge Funding was to get around the lis pendens and get the money paid to the benefit of Ridilla and Luparella?
>
> A. Correct.
>
> Q. And ultimately at least a substantial portion to you?
>
> A. Hopefully, yes.

At the DEC hearing, respondent expressed no remorse for his actions. With respect to his role in this matter, he testified as follows:

> I think if you look at this thing, factually, there really is no dispute as to what happened here, and I think it comes down to what the real intent here was, whether I intended to defraud the trustee or I really looked at this as something that was from a legal standpoint really rather novel and clever that I would be able to accomplish a third party assignment of this money to an individual on an arm's length transaction to another person, where they would then get the proceeds from the sale and we could have the lis pendens removed. . . .

Although respondent contested the ethics violations at the DEC hearing, he changed his position and conceded in his brief and oral argument before us that his conduct had been unethical. The presenter urged a suspension, while respondent suggested that he receive probation, perform community service and practice under the supervision of a proctor.

* * *

The DEC found that respondent violated *RPC* 1.7(c)(1), *RPC* 4.1(a)(1) and *RPC* 8.4(c) and (d). With respect to the conflict of interest charge, the DEC determined that respondent's representation of both Luparella and Ridilla in the loan transaction was permissible because he had obtained waivers from both clients. The DEC further found that respondent's additional representation of Ridge Funding Group was "one client too many" and that this conflict could not be waived. In addition, the DEC found that respondent's continued representation of all three clients "was a clear conflict of interest, and he should have taken appropriate steps at that point to resolve the conflict."

The DEC concluded that respondent's misrepresentations to the bankruptcy trustee's attorney and to opposing counsel with respect to the assignment of the mortgage and the ultimate recipient of the funds violated *RPC* 4.1(a)(1) and *RPC* 8.4(c). The DEC further found that respondent engaged in conduct prejudicial to the administration of justice by (1) requiring opposing counsel to file suit to obtain mortgage cancellations; (2) allowing the suit to continue, when he could have resolved the matter quickly; (3) failing to answer the complaint in a timely manner, once he was made a party to the suit; (4) failing to prevent his client from filing a frivolous malpractice claim against Murray-Przekop; and (5) attempting to conceal from the bankruptcy trustee that Luparella and Ridilla would benefit from the illusory mortgage assignment and that he would also benefit by receiving his legal fees from that transaction.

The DEC recommended an admonition for the conflict of interest violation and a suspension of unspecified duration for the remaining violations. The DEC found the following aggravating factors: respondent's lack of remorse or contrition, the intentional nature of his conduct and misrepresentations and the financial and personal effect of his conduct on Murray-Przekop.

* * *

Following a *de novo* review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. Respondent engaged in conflict of interest situations and displayed a pattern of deceitful conduct in this matter.

Respondent's representation of the Luparella, Florio & Ridilla accounting firm was longstanding, dating back to 1989 or 1990. His representation of the firm, as well as of the individual partners, was neither unusual nor unethical, so long as there was no conflict between the parties' interests. *RPC* 1.13(e). Once the conflicts developed, however, respondent's continued representation of multiple parties became unethical.

Specifically, after Ridilla was not able to sell her home, Luparella agreed to extend a bridge loan. Respondent agreed to prepare the loan and mortgage documents for that

transaction. He sent a letter to the parties confirming that he had explained the conflict and that they had waived their right to separate counsel. Up to this point, respondent's actions might not have amounted to a conflict of interest, although he probably should have declined the representation due to an appearance of impropriety. Once actual problems developed, however, respondent should have withdrawn from the representation of both parties. Ridilla retained Murray-Przekop after the relationship between Ridilla and Luparella became strained. Yet, respondent agreed to handle the removal of the *lis pendens* for Ridilla. As it turned out, a conflict arose when, after the funds had been escrowed by the bankruptcy trustee, Ridilla wanted the *lis pendens* removed and the mortgage discharged without paying off the loan, while Luparella would not agree to discharge the mortgage unless the loan was paid. Clearly, their interests at this point were adverse. In addition, respondent's own interest in receiving his legal fees conflicted with his clients' interests. Although respondent ostensibly continued to represent both parties, he urged Luparella to sign the mortgage cancellation without receiving the mortgage payoff. As respondent testified, "I started telling him that he was putting me in a very bad position, and that we would be better off in providing the documents at that time and clear up the litigation at some later date as to who was going to get credit for what." Yet, as respondent conceded, Luparella was under no compulsion to issue the mortgage cancellation until he either received the funds or was directed by a court order.

Respondent's recommendation that Luparella issue a mortgage cancellation was contrary to Luparella's interests and beneficial to Ridilla.

The conflict of interest deepened when respondent involved Ridge Funding Group in the transaction. Apart from the impropriety of the transaction itself, as discussed below, respondent's representation of both the assignor and assignee of the mortgage was fraught with peril. At this point, respondent represented (1) the Luparellas in the refinance of their mortgage; (2) the Luparellas and the Ridillas in the bridge loan; and (3) the Luparellas and the Ridge Funding Group in the assignment of the mortgage. A conflict then developed between the interests of the Luparellas and the Ridge Funding Group, once respondent discovered that the trustee had learned about the *Ridilla* mortgage and would not release the funds. At that point, the Luparellas wanted the assignment to proceed so that the trustee would release the funds and their loan to the Ridillas would be satisfied, while respondent did not want to put Ridge Funding Group at risk of wiring the funds for the mortgage assignment, only to be denied payment by the trustee. Once again, respondent involved himself in a situation where two of his clients had opposing interests. At the same time, his own interests were adverse to those of his clients. His decision to abandon the mortgage assignment benefited the Ridge Funding Group to the detriment of his other clients, the Luparellas.

Respondent, thus, violated *RPC* 1.7(a) (representation of clients with adverse interests). Although the DEC found that respondent violated *RPC* 1.7(c)(1) (representation of clients in certain conflict cases in which consent is immaterial), it is not clear that respondent's multiple representation could not be waived. Rather, it was respondent's continued representation of multiple parties after the actual conflicts developed that constituted unethical conduct, in violation of *RPC* 1.7(a).

With respect to the mortgage assignment, respondent's actions showed a combination of deceit, lack of remorse, failure to accept responsibility for wrongdoing and attribution of blame toward others. After the Luparellas extended the bridge loan to the Ridillas, the bankruptcy trustee filed notices of *lis pendens* against their properties. Respondent wanted to conceal from the trustee the fact that Luparella would receive a benefit from the sale of the *Ridilla* property. Because respondent knew that the title search ordered by the buyers of the Ridillas' property would reveal the *lis pendens*, he contrived to keep Murray-Przekop from becoming involved in that portion of the transaction. On respondent's advice, Ridilla instructed Murray-Przekop not to contact Bonsall, the trustee's attorney. Respondent then sought to create a third-party mortgage assignment so that it would appear to the trustee that neither Ridilla nor Luparella would benefit from the sale of the *Ridilla* property.

Respondent then ostensibly arranged for the Luparellas to assign the *Ridilla* mortgage to Ridge Funding Group. The certification purportedly submitted by Ryan Klesko, the principal of Ridge Funding Group, was not signed. According to Murray-Przekop, there was no listing for Ridge Funding Group in Florida, the mail sent to the address on the Ridge Funding Group's letterhead was returned and a telephone call placed to the phone number on the letterhead was answered by someone who did not speak English. Respondent conceded that the address and telephone number appearing on Ridge Funding Group's letterhead were for respondent's residential condominium in Florida. Although respondent claimed that Klesko had filed a trade name certification for Ridge Funding Group in Georgia, he produced no evidence to support that contention. In short, although we did not make a finding in this regard, there is no credible evidence in the record that Ridge Funding Group ever existed.

Examining respondent's actions in the light most favorable to him, we concluded that, at best, he attempted to create a sham transaction to deceive the trustee's attorney that the *Ridilla* mortgage had been assigned for *bona fide* consideration, so that she would agree to release the *lis pendens*. If respondent's plan had been executed, the Luparellas would have received their mortgage payoff, the Ridillas would have received credit for the payment of their bridge loan, Ridge Funding Group would have earned a substantial profit for a very short-term investment and respondent would have received

his legal fees, all to the detriment of FIEC's creditors and in circumvention of the bankruptcy laws.

Murray-Przekop, Bonsall and Bonsall's associate, Zohn, asserted that, during their conference call, respondent stated that (1) he would provide verification that the mortgage assignment was valid and supported by adequate consideration; (2) Bonsall would escrow the funds needed for the mortgage payoff; and (3) he would immediately prepare and record mortgage discharges. Moreover, Zohn's certification filed with Judge Spann in the litigation to obtain mortgage cancellations stated that respondent had represented to her that (1) the mortgage assignment had been funded after its execution; (2) the payment for the mortgage assignment had been processed through his trust account; (3) he would provide copies of trust account checks and statements to prove that adequate consideration had been paid; and (4) some of the funds had been applied toward his legal fees. In addition, according to Zohn, it was respondent who had suggested that the trustee escrow the mortgage funds. Respondent, in turn, claimed that all three attorneys were mistaken and that he had never represented that he would discharge the mortgages or that the mortgage assignment had been completed. He testified that his statement that he would provide proof of adequate consideration meant that he would do so once the mortgage was assigned. He also claimed that the trustee had no authority to escrow the funds. This testimony is at odds with all three attorneys' statements that

respondent gave them assurances that he would discharge the mortgages immediately after the closing. It is also contradictory to Zohn's certification that respondent had suggested the escrow arrangement and had stated to her that the assignment had been funded. The details provided by Zohn (that respondent had stated that the mortgage assignment had been paid through his trust account and that he had received legal fees) lends credence to her version of the events.

In addition, respondent's denial of any knowledge that the closing was scheduled to take place on September 23, 1999 is contradicted by the mortgage payoff statement, which, he claimed, he prepared on September 15, 1999. The statement calculated interest to September 24, 1999, indicating that respondent probably anticipated that the closing would take place on or about September 24, 1999.

We concluded, thus, that respondent's misrepresentations to Murray-Przekop, Bonsall and Zohn violated *RPC* 4.1 and *RPC* 8.4(c) and that his attempt to circumvent the bankruptcy laws violated *RPC* 8.4(c) and (d).

As noted above, the DEC found that respondent also engaged in conduct prejudicial to the administration of justice with respect to the litigation filed to obtain statutory cancellation of the mortgages. It is unquestionable that respondent failed to reply to Murray-Przekop's letters and telephone calls about the mortgage cancellations. Respondent claimed that he had advised Luparella to issue the mortgage cancellations.

While it was discourteous for respondent to ignore Murray-Przekop's attempts to contact him, it was not unethical. Neither was respondent's failure to prevent Luparella from filing the malpractice lawsuit against Murray-Przekop. It is doubtful that respondent could have dissuaded Luparella from suing Murray-Przekop. Also, respondent's failure to reply to the litigation once he had been made a party to the mortgage cancellation lawsuit did not violate *RPC* 8.4(d). Attorneys do not necessarily engage in conduct prejudicial to the administration of justice simply by failing to answer complaints against them. Therefore, while respondent may have acted unprofessionally with respect to the mortgage cancellation litigation, he did not act unethically.

In sum, respondent engaged in a pattern of conflict of interest situations; made false statements to third parties; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaged in conduct prejudicial to the administration of justice.

In cases involving a similar combination of ethics infractions, suspensions of varying lengths have been imposed. In *In re Welaj*, 170 *N.J.* 408 (2002), the attorney, a former assistant prosecutor in Somerset County, was suspended for three months after he represented criminal defendants in Somerset County, and, at the same time, was involved in several business ventures with the Somerset County prosecutor, in violation of *RPC* 1.7(b) and (c) and *RPC* 8.4(a) and (d).

A three-month suspension was also imposed in *In re Nowak*, 159 *N.J.* 520 (1999). In that case, the attorney engaged in a conflict of interest situation by simultaneously representing the buyers of real property and the mortgagees who were seeking to foreclose a mortgage against that same property; after the buyers had insufficient funds to close, he represented both the buyers and the mortgagees in arranging for the mortgagees to loan funds to allow the buyers to acquire the property; the attorney also failed to disclose the secondary financing on the closing documents in order to mislead the first mortgagee about the terms of the transaction; the attorney violated *RPC* 1.7(a), *RPC* 4.1(a)(1) and *RPC* 8.4(c).

In *In re DeLaurentis*, 174 *N.J.* 299 (2002), a one-year suspension was imposed after the attorney engaged in multiple conflict of interest situations. In one matter, he represented multiple plaintiffs when there were insufficient funds to satisfy all of their claims; for various reasons, their interests were adverse. In another matter, he represented both the driver and passenger involved in an automobile accident, without disclosing the conflict or obtaining their consent. In three matters, the attorney also engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, when he twice concealed from a welfare agency two clients' interests in personal injury settlements, in violation of a statute requiring welfare recipients to repay benefits upon the receipt of settlement funds. In the third misrepresentation matter, he concealed from an insurance company his

client's death, in an attempt to pursue a personal injury action on behalf of the client's widow; the attorney also counseled a client in conduct that he knew was illegal, criminal or fraudulent, exhibited lack of diligence, failed to prepare a fee agreement, provided financial assistance to three clients, failed to promptly deliver funds to a third party and violated the recordkeeping rules. The attorney had received a prior reprimand.

Finally, in *In re Susser*, 175 *N.J.* 56 (2002), the attorney was suspended for two years when, in one matter, after filing a substitution of attorney withdrawing from litigation due to a conflict of interest, he remained actively involved in the case and tried to conceal his role in the matter, in violation of *RPC* 1.7(a) and (b) and *RPC* 8.4(c) and (d); in another matter, he represented a small corporation and its individual shareholders, sometimes against each other, at the same time that he owned an interest in the corporation, in violation of *RPC* 1.7 and *RPC* 1.8(a); the attorney also filed an untrue certification in his own bankruptcy matter, falsely claiming that he had sufficient funds in his bank account to satisfy his mortgage obligation, in violation of *RPC* 3.3(a)(1) (false statement of material fact to a tribunal) and *RPC* 8.4(c) and (d).

Here, respondent's actions are most similar to those of *DeLaurentis*. Both attorneys engaged in conflict of interest situations and tried to commit fraud by concealing funds – DeLaurentis from a welfare agency and respondent from a bankruptcy trustee.

Respondent offered mitigating factors. Without filing a motion to supplement the record, he submitted a report from a psychotherapist who had begun treating him in May 2002, years after his unethical conduct had taken place. The report discussed his "longstanding emotional difficulties," including "depression and need for self-punishment." Respondent also pointed to his civic contributions, including service on the Linden and Mountainside Boards of Education, fund-raising activities and other community involvement. On the other hand, there are aggravating factors to consider. Respondent received a prior three-month suspension and a reprimand. The suspension was imposed for respondent's misconduct as a municipal court prosecutor, when he failed to disclose to the municipal court judge that a drunk-driving case was being dismissed for improper reasons.

Respondent has shown that his moral radar is deficient. Despite his eleventh hour change of position, he testified at the ethics hearing that he saw nothing wrong with his attempt to defraud the bankruptcy trustee, even referring to the scheme as "novel and clever." He engaged in deceit for personal gain: if the *Ridilla* mortgage had been concealed from the bankruptcy trustee, the Luparellas would have received the proceeds and respondent's legal fees would have been paid. He prepared deeds by which Luparella and Ridilla conveyed their interests in their respective properties to their spouses. Although he claimed that the *Luparella* transfer was in conjunction with an estate plan,

respondent did not even attempt to conceal the fact that he had prepared the deed conveying Ridilla's interest in her home to her husband in order to defraud creditors. That deed transfer was the subject of a fraudulent conveyance lawsuit. In yet another indication that respondent's ethics compass needs to be redirected, he testified that, after it became apparent that both Ridilla and Luparella were the targets of a federal investigation and that they could both be indicted, he advised them that, although it was a conflict of interest for him to represent both of them, he would represent one of them until the Assistant United States Attorney objected. Moreover, he tried to blame Murray-Przekop's alleged lack of experience for the damages that Ridilla sustained.

Based on the foregoing, we voted to impose a one-year suspension. One member did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard H. Kress
Docket No. DRB 02-365

Argued: February 6, 2003

Decided: June 3, 2003

Disposition: One-year suspension

Members	*Disbar*	*One-year 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:		8					1

Robyn M. Hill 6/5/03
Robyn M. Hill
Chief Counsel