SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-121
District Docket No. XIV-03-666E

IN THE MATTER OF :
:
EDGAR E. JORDAN, III :
:
AN ATTORNEY AT LAW :

Decision

Argued: May 20, 2004

Decided: June 21, 2004

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

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14(a), following respondent's disbarment in New York for engaging in a pattern of conflicts of interest, and for acting as a witness to a document falsely stating that there was no other financing involved in a real estate transaction. In New York, a disbarred attorney may seek reinstatement after

> . . . .
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> The program attempts to help people who have never owned homes before to own homes.
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> How do they do that? By relaxing the credit restrictions that typically don't allow people to buy homes.
>
> . . . .
>
> Then they also increase or decrease the necessary equity percentages to allow them to purchase homes.
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> [T189-T190.][1]

According to the New York disciplinary petition, when respondent represented clients introduced or referred by FHB, he allowed his independent professional judgment to be adversely affected by his relationship with FHB and FHP. The petition contained a single charge of a pattern of conflicts of interest.

One other instance of misconduct by respondent surfaced in the course of the New York disciplinary proceeding. One of respondent's clients, Diane Stone, testified that she had to obtain a $13,000 second mortgage in order to purchase her house. According to Stone, although her mortgage loan application was based on a $171,000 purchase price, the house was appraised at $130,000 only. Because FHP would not sell the house to her for less than $145,000, FHP gave her a $13,000 mortgage loan in

[1] T refers to the transcript of the New York disciplinary hearings on October 17 and October 18, 2001.

order to complete the transaction. At the closing, Stone and her husband executed the second-mortgage document. Respondent witnessed their signatures. The Stones also signed an Addendum to HUD 1 Settlement Statement certifying that they had no knowledge of any loans made to them or assumed by them for purpose of financing the transaction, other than the loan described in the contract. That certification was false. According to Stone, respondent knew that she and her husband had signed that document.

At the conclusion of the New York disciplinary hearings, the Special Referee found that

> [a]s a matter of fact, the evidence shows that in the preceding 3 years, First Home Mortgage [sic] "introduced 380 clients to [respondent]." I find them to be referrals. Respondent's fee in each of these matters, which was never discussed with the clients, was $850.[sic] and was paid from the mortgage proceeds through a concession in the mortgage to pay expenses of the closing including counsel fees. Respondent would not receive a fee if the transaction failed to close. In each of the transactions respondent failed to disclose an obvious conflict of interest.
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> The contracts all called for repairs to be made prior to closing. When this was not done, a list was prepared by the respondent for repairs to be made after closing. These repairs were never made. Respondent never suggested money be held in escrow pending repairs.

> Mrs. Martinez had to retain an attorney to sue First Home Mortgage [sic]. Mr. Mack had to take a loan to pay for the repairs. Repair to the home of Mrs. Hicks were [sic] never made.
>
> The case of the Stone purchase was most interesting. The FHA appraisal was $40,000. less than the contract price of $171,000. but the representative of First Home Mortgage [sic] stated they could not sell the house for less than $145,000. On May 14, [1998], the Stones represented by respondent paid the purchase price as follows: FHA loan, $130,000, a second mortgage to First Home Properties, $12,598 and the balance from personal assets. At the closing, the sellers signed other documents, among which a form entitled Addendum to HUD 1 settlement statement. The respondent knew that the sellers executed a false certification notwithstanding that the forms states clearly that it is a crime to make false statements to the United States on this or any other similar form (PX7). The respondent acted as a witness to the second mortgage executed by the sellers (PX 5).
>
> The only conclusion to be drawn is that First Home Mortgage [sic] referred the sales [to] respondent to insure that there would be no impediments to the closing of each transaction all to the detriment of his clients.
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> [OAEaEx.C.][2]

Respondent testified that he did not participate in or know about the Stones and FHP's agreement on secondary financing. He

[2] OAEa refers to the appendix to the OAE's brief.

stated that his involvement in that arrangement was limited to witnessing "some signatures."

On September 16, 2002, the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, issued an opinion finding that

> [respondent's] contentions to the contrary notwithstanding, [he] is guilty of serious professional misconduct. His testimony and submissions to this court reveal that he has little, if any, understanding of his fiduciary duty to his clients, who are poor people attempting to buy their first homes through a Federally-funded program for first-time home buyers. He failed to adequately protect their interests and placed his own financial interests above theirs. Under the totality of the circumstances, his disbarment is warranted.
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> [OAEaEx.E3.]

The Appellate Division found that respondent violated New York DR 5-101(a) (a lawyer shall not accept employment if the exercise of his or her professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own interest); DR 5-105(a) (a lawyer shall decline proffered employment if the exercise of independent professional judgment in behalf of the client will be or is likely to be adversely affected by the acceptance of the proffered employment); DR 5-107(a)(1) (a lawyer shall not accept compensation from legal services from one other than the client); DR 5-107(b) (unless

authorized by law, a lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal service for another to direct or regulate his or her professional judgment in rendering such legal services); DR 1-102(a)(7) (a lawyer shall not engage in conduct that adversely reflects on his or her fitness as a lawyer).

The OAE contended that respondent violated New Jersey RPC 1.3 (lack of diligence), RPC 1.5(b) (when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation), RPC 1.7(a)(1) and (2) (a lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless the lawyer reasonably believes that the representation will not adversely affect the relationship with the other client, and each client consents after a full disclosure of the circumstances and consultation with the client), RPC 1.8(f) (a lawyer shall not accept compensation for representing a client from one other than the client unless the client consents after consultation and there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE acknowledged that, in New Jersey, respondent's conduct would not lead to disbarment. The OAE recommended a two-year suspension, citing, as an aggravating factor, respondent's failure to report his New York disbarment to the OAE, as required by R. 1:20-14(a)(1).

At oral argument before us, respondent explained that he understood, from discussions with the New York disciplinary authorities, that he would be immediately disciplined in New Jersey as well; he, therefore, thought that it was unnecessary for him to notify the OAE of his disbarment in New York. Respondent agreed with the level of discipline recommended by the OAE - - a two-year suspension – but urged us to impose it retroactively to the date of his New York disbarment, September 16, 2002.

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

Essentially, the New York Special Referee's findings of fact established violations of three New Jersey disciplinary rules: RPC 1.7(b) (a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to a third person, or by the lawyer's own interest, unless the lawyer reasonably believes the representation will not be adversely affected and there is full

disclosure to and consent by the client), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 1.5(b) (failure to set forth, in writing, the basis or rate of the fee).

As noted above, the Special Referee found that (1) FHB referred 380 clients to respondent "to insure that there would be no impediments to the closing of each transaction all to the detriment of his clients;" (2) respondent knew that the Stones had executed a false certification in connection with their real estate purchase; and (3) respondent never discussed his $850 fee with the clients. As to the latter, although the petition did not charge respondent with this impropriety and respondent testified that he had discussed his fee with the clients, under R.1:20-14(a)(5) we are bound by the Special Referee's finding. That rule states that

> . . . a final adjudication in another court, agency or tribunal, that an attorney . . . is guilty of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this State.

We, therefore, find that respondent's conduct also violated RPC 1.5(b).

Since these are the only findings of fact contained in the Special Referee's report, we presume that he dismissed the charges that respondent accepted compensation for legal services

from one other than his clients and that he permitted either FHP or FHB to direct or regulate his professional judgment in rendering legal services to the buyers. Indeed, although the petition alleges that FHP or one of the affiliates paid respondent's legal fees, the evidence is to the contrary. Respondent testified that his fee was paid directly from the mortgage loans obtained by the buyers. The Special Referee agreed ("respondent's fee in each of these matters . . . was paid from the mortgage proceeds through a concession in the mortgage to pay expenses of the closing including counsel fees"). We are unable to find support for the OAE's position that respondent violated RPC 1.8(f) (accepting compensation from one other than the client).

Similarly, the evidence does not support a finding of a violation of RPC 1.3 (lack of diligence), as urged by the OAE. The petition did not charge respondent with this impropriety; the Special Referee's report contains no finding in this context. Accordingly, the record cannot sustain a finding of a violation of RCP 1.3.

In sum, the evidence supports violations of RPC 1.5(b), RPC 1.7(b), and RPC 8.4(c).

Respondent was disbarred in New York for the above violations. As acknowledged by the OAE, however, respondent's conduct would merit lesser discipline in New Jersey.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which states that

> [t]he 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:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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; or
>
> (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, his conduct would not lead to disbarment in New Jersey.

A reprimand is the appropriate level of discipline for conflict of interest, absent egregious circumstances or serious

economic injury to the clients. In re Guidone, 139 N.J. 272, 277 (1994), and In re Berkowitz, 136 N.J. 134, 148 (1994). Here, five clients suffered some level of economic harm, respondent's conflict of interest encompassed the representation of 380 clients, and his conduct was aimed at self-benefit. These circumstances remove this matter from the reprimand range.

Furthermore, respondent witnessed the Stones' signatures on a document that he knew contained false information. Discipline for analogous conduct generally leads to a reprimand. See, e.g., In re Agrait, 171 N.J. 1 (2001) (reprimand for attorney guilty of a violation of RPC 8.4(c) for failing to disclose to the lending institution that he had not received a $16,000 down payment deposit on a real estate transaction and for allowing the RESPA statement to list the deposit; the attorney also failed to communicate to his client, in writing, the basis of his fee) and In re Silverberg, 142 N.J. 428 (1995) (reprimand for attorney who, despite knowing that certain payments were not correctly reflected on the RESPA statement, forwarded it to the lender and other recipients, without correcting the discrepancies; violations of RPC 8.4(c) found).

If the attorney is involved in a scheme to defraud a party, then sterner discipline is warranted. See, e.g., In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for attorney

who participated in a series of real estate transactions involving "silent seconds" and "fictitious credits"; in five matters, the attorney either failed to disclose to the primary lender the existence of secondary financing or prepared and signed false RESPA statements showing repair credits allegedly due to the buyers; in this fashion, the clients were able to obtain one hundred percent financing from the lender; because the attorney's transgressions had occurred eleven years before and, in the intervening years, his record had remained unblemished, the imposition of the one-year suspension was suspended and he was placed on probation).

Here, respondent was not a participant to an illegal or evil scheme, but a spectator. When his actions are considered in the aggregate, however – pattern of conflict of interest, failure to communicate to five clients, in writing, the basis of his fee, and knowledge that his clients had signed a RESPA statement deliberately omitting secondary financing – a term of suspension is warranted. We, therefore, determine that a two-year suspension, retroactive to the date of respondent's disbarment in New York, September 16, 2002, is the appropriate measure of discipline for his ethics offenses. Our decision to impose a retroactive term of suspension is predicated on the lack of evidence that respondent acted with knowledge and

deliberation when he did not communicate his New York discipline to the OAE. Albeit respondent was mistaken, he believed that the discipline in New York would be reciprocally imposed in New Jersey immediately.

We also determine to require respondent to submit, prior to reinstatement, proof of completion of six hours of Professional Responsibility courses, to be monitored by the OAE.

One member did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edgar E. Jordan, III
Docket No. DRB 04-121

Argued: May 20, 2004

Decided: June 21, 2004

Disposition: Two-year suspension

Members	*Disbar*	*Two-year Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan							X
Holmes		X					
Lolla		X					
Pashman		X					
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		8					1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel