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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-116
District Docket No. XIV-99-269E

IN THE MATTER OF
ANTONIO DE LA CARRERA
AN ATTORNEY AT LAW

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Decision
Default [R.1:20-4(f)]

Decided: June 7, 2004

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics
("OAE") certified the record in this matter directly to us for
the imposition of discipline following respondent's failure to
file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1974. At
the relevant time, he maintained a law office in Paterson, New
Jersey. Respondent has no history of discipline.

On October 31, 2003, the OAE mailed a copy of the complaint
to respondent's attorney, Clark L. Cornwell, III, by regular and

certified mail, return receipt requested. By letter dated December 9, 2003, Cornwell acknowledged receipt of the complaint. Cornwell did not file an answer on respondent's behalf.

On January 27, 2004, the OAE forwarded a second letter to Cornwell by regular and certified mail, return receipt requested. The letter warned Cornwell that his failure to file an answer to the complaint within five days could result in the matter being certified directly to us for the imposition of sanction. The certified mail was delivered on January 30, 2004. The signature of the recipient is illegible. Cornwell did not file an answer on respondent's behalf.

According to the certification of the record, on February 4, 13, and 19, 2004, the OAE contacted Cornwell regarding, among other things, filing an answer to the complaint. On February 19, 2004, Cornwell informed the OAE that he would contact it within a day or two, which he failed to do. Neither Cornwell, nor respondent filed an answer to the complaint.

The three-count complaint charged respondent with violations of RPC 1.15(a), (negligent misappropriation of client trust funds), RPC 4.1(a)(1) and (2) (making a false statement of material fact to a third person, and failure to disclose a material fact to a third person when disclosure is necessary to

avoid assisting a criminal or fraudulent act by a client), RPC 8.4(a) (violating the Rules of Professional Conduct), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and R.1:21-6 and RPC 1.15(d) (recordkeeping deficiencies).

Respondent maintained his attorney trust and business accounts at the First Union Bank ("First Union"). On June 28, 1999, First Union notified the OAE that there was an overdraft in respondent's trust account. As a result, the OAE asked respondent to submit a written, documented explanation for the overdraft. Respondent's August 9, 1999 reply attributed the overdraft to a one-day delay in depositing mortgage funds in a real estate closing.

The OAE determined that respondent's explanation was inadequate. The OAE, therefore, conducted an audit of respondent's books and records for the period covering September 3, 1997 through October 31, 2000. The audit disclosed the following improprieties:

1. In two real estate transactions respondent disbursed funds without first determining whether corresponding mortgage proceeds had been credited to the account.
2. Respondent falsely certified that the information set forth in a HUD-1 Settlement Statement ("RESPA") was a true and accurate account of the transaction.

3. Respondent's books and records were not in compliance with R.1:21-6, despite having been previously audited.

The De Jesus/Castro Closing

The complaint alleged that Olga De Jesus and Jose Castro retained respondent to represent them in the purchase of property in Patterson, New Jersey, from Bay Realty, Inc. PNC Bank funded the loan and, on June 30, 1999, wire-transferred \$189,271.63 to respondent's trust account. The closing, however, had taken place on June 18, 1999. In connection with the closing, from June 22, 1999 through June 28, 1999, respondent disbursed five checks totaling \$137,089.07. The checks cleared prior to respondent's receipt of the wire-transfer from PNC Bank. As a result, the disbursements from the closing invaded other client funds. In addition, when trust account check number 17805 for \$30,507.13 was presented for payment, it was returned for insufficient funds. Respondent issued a new check on July 7, 1999 to replace the returned check.

The Sacco Closing

Giovanna Sacco retained respondent to represent her in the purchase of property in Paterson, New Jersey. Although the closing occurred on October 18, 2000, Green Point Mortgage ("Green Point") did not wire-transfer funds (\$168,122.95) to

respondent's trust account until October 24, 2000. In connection with the closing, respondent disbursed six checks that were posted from October 19, 2000 to October 23, 2000, totaling 139,387.29. The checks cleared prior to respondent's receipt of the wire-transfer, resulting in the invasion of other clients' trust funds.

In connection with the purchase, Sacco obtained a \$27,712.22 second mortgage from the sellers. Respondent prepared the mortgage note for the sellers and took the jurat for Sacco.¹ Respondent also prepared the RESPA, but did not disclose the second mortgage to Green Point. The August 23, 2000 mortgage commitment from Green Point specifically prohibited secondary financing, without the borrower's first obtaining the written consent of Green Point.

The complaint alleged that respondent was aware of this prohibition. The complaint further alleged that, despite respondent's knowledge of the prohibition, he went forward with the transaction and falsely certified that the RESPA reflected a true and accurate account of the transaction.

¹ The complaint does not address whether respondent represented both Sacco and the sellers in the transaction, either in connection with the sale, or with the second mortgage. The complaint did not charge respondent with a conflict of interest and the facts alleged are insufficient to conclude that such a violation occurred.

Recordkeeping Deficiencies

In 1985 and 1986, respondent's law firm was the subject of a random audit, which uncovered deficiencies with respondent's recordkeeping practices. The complaint stated that "at that time" respondent certified that all of the deficiencies had been corrected. Notwithstanding respondent's prior certification, the recent audit revealed the following deficiencies:

- (a) No trust receipts journal.
- (b) Trust disbursements journal not fully descriptive.
- (c) Client ledger sheets not fully descriptive.
- (d) Client ledger sheets with debit balances.
- (e) No ledger card identifying attorney funds for bank charges.
- (f) Inactive balances left in trust account.
- (g) No individual ledger card for each client.
- (h) No quarterly reconciliation with journals and checkbook.
- (i) No running checkbook balance.
- (j) Old outstanding checks needed to be resolved.
- (k) Business account bank statement designation is improper.
- (l) No business receipts journal.
- (m) No signed retainer agreement for contingent fee agreements.
- (n) No signed settlement statement for contingent fee matters.

[C5; C6]²

² C denotes the OAE complaint dated October 28, 2003.

Service of process was properly made in this matter.³ The complaint contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R.1:20-4(f).

In two real estate matters, respondent disbursed funds prior to receiving wire-transfers from the corresponding lenders. His actions resulted in the negligent invasion of other client trust funds and, in one instance, an overdraft. Respondent's conduct in this regard, violated RPC 1.15(a).

Also, respondent failed to disclose the secondary financing in the Sacco closing, by omitting that information from the RESPA statement. In fact, the lender prohibited secondary financing unless prior written consent was obtained. Nevertheless, respondent falsely certified that the information contained in the document was a true and accurate account of the transaction, thereby violating RPC 4.1(a)(1) and (2), and RPC 8.4(c).

Moreover, respondent's recordkeeping deficiencies violated R.1:21-6 and RPC 1.15(d). Finally, respondent's misconduct in the aggregate constituted a violation of the Rules of

³ In addition to the OAE's service of the complaint, Office of Board Counsel served notice of the default proceedings on respondent and on his attorney.

Professional Conduct, sustaining the allegation that he violated RPC 8.4(a).

Had respondent's misconduct been limited to negligent misappropriation, either an admonition or a reprimand would have been sufficient discipline. See In the Matter of Cassandra Corbett, Docket No. DRB 00-261 (January 12, 2001) (admonition where the attorney's deficient recordkeeping resulted in a \$7,011.02 trust account shortage; in mitigation, it was considered that the attorney had reimbursed all missing funds, admitted her wrongdoing, cooperated with the OAE, and hired an accountant to reconstruct her records); In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition where attorney's deficient recordkeeping practices, including her failure to prepare quarterly reconciliations of client ledger accounts, resulted in the negligent misappropriation of \$6,590.69 in client trust funds in eleven instances); In re Forsman, 174 N.J. 337 (2002) (reprimand in a default matter where the attorney negligently misappropriated \$2,500 in client funds as a result of improper recordkeeping in his trust account).

Respondent's conduct, however, also included a failure to disclose secondary financing. Attorneys who have been found guilty of this infraction have received discipline ranging from

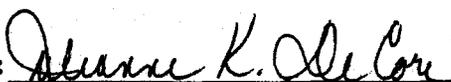
a reprimand to a term of suspensibn. See In re Spector, 157 N.J. 530 (1999) (reprimand where attorney concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (reprimand for concealing secondary financing from primary lender and preparing two different RESPAs, in violation of RPC 8.4(c)); In re Blanch, 140 N.J. 519 (1995) (reprimand where attorney failed to disclose secondary financing to a mortgage company contrary to the company's written instructions); In re Nowak, 159 N.J. 520 (1999) (three-month suspension where attorney, engaged in a conflict of interest situation by representing both the second mortgage holders and the buyers in a real estate transaction, prepared two settlement statements that failed to disclose secondary financing, and misrepresented the sale price and other information); and In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for attorney who participated in five real estate transactions involving "silent seconds" and "fictitious credits"; 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).

After consideration of the relevant circumstances, including, in aggravation, that this matter proceeded on a default basis and, in mitigation, that respondent's omission of secondary financing was confined to one matter, as opposed to the five matters encompassed by Alum, and that this is the only stain in respondent's career of thirty years, we determine that a three-month suspension sufficiently addresses the nature of his overall conduct. One member did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

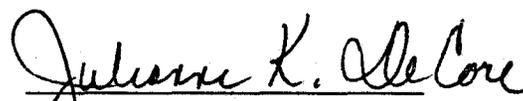
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Antonio M. De La Carrera
Docket No. DRB 04-116

Decided: June 7, 2004

Disposition: Three-month suspension

| <i>Members</i> | <i>Disbar</i> | <i>Three-month Suspension</i> | <i>Reprimand</i> | <i>Admonition</i> | <i>Dismiss</i> | <i>Disqualified</i> | <i>Did not participate</i> |
|----------------------|---------------|-----------------------------------|------------------|-------------------|----------------|---------------------|--------------------------------|
| <i>Maudsley</i> | | X | | | | | |
| <i>O'Shaughnessy</i> | | X | | | | | |
| <i>Boylan</i> | | | | | | | X |
| <i>Holmes</i> | | X | | | | | |
| <i>Lolla</i> | | X | | | | | |
| <i>Pashman</i> | | X | | | | | |
| <i>Schwartz</i> | | X | | | | | |
| <i>Stanton</i> | | X | | | | | |
| <i>Wissinger</i> | | X | | | | | |
| <i>Total:</i> | | 8 | | | | | 1 |


Julianne K. DeCore
Chief Counsel