SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-006

IN THE MATTER OF

GARY S. FRIEDMANN

AN ATTORNEY AT LAW

Decision

Argued: April 18, 2002

Decided: June 24, 2002

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Carl Poplar 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 (disbarment) filed by special master John F. Kearney, III.

Respondent was admitted to the New Jersey bar in 1987. He maintains an office for the practice of law in Moorestown, New Jersey. He has no disciplinary history.

I. The Strom Matter

Count one of the ethics complaint charged that respondent violated RPC 1.8(a) (improper business transaction with a client), by entering into an improper loan transaction with his client, Dr. Carey Strom, and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), by failing to satisfy a November 1998 amended judgment in favor of Dr. Strom and to deliver the mortgage required by the judgment. Count two charged that respondent violated RPC 3.1 (asserting a frivolous claim), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal) and RPC 8.4(c), by asserting a false counterclaim in the litigation filed by Dr. Strom for repayment of the loan, namely that Dr. Strom owed $240,000 to Friedman Management Corporation ("FMC"), respondent's company. Count two also charged violations of RPC 8.1(a) (false statement of material fact to disciplinary authorities) and RPC 8.4(c), in that respondent continued to assert to the OAE the legitimacy of the fraudulent debt. Count three charged that respondent violated RPC 1.5 (fee overreaching), by charging Dr. Strom excessive fees and RPC 8.4(c) by his misleading communications to Dr. Strom concerning his fees and services.

Between July 1986 and January 1995, respondent provided financial and other services to Dr. Strom, a California resident. Respondent, who is not admitted to the California bar, disputes that he was Dr. Strom's attorney, contending that he acted only as his accountant and financial advisor. As set forth above, respondent was admitted to the New Jersey bar in 1987; he was admitted in Pennsylvania in 1985. In addition, he was

licensed as a certified public accountant ("CPA") in New York in 1979, but has been on the inactive list since 1987 for failure to pay the required registration fee. Respondent was never licensed as a financial or investment advisor.

In his initial correspondence to Dr. Strom, dated July 15, 1986, respondent used letterhead identifying him as an attorney and a CPA, with addresses in Cherry Hill, New Jersey and Briarcliff, New York. At that time, respondent was only admitted in Pennsylvania.[1] The letter stated that respondent would be in California again in mid-September, at which time he would meet with Dr. Strom to finalize "a tax/investment strategy that will provide large tax savings in 1986 as well as a tremendous investment return in the future." Although respondent apparently began providing services to Dr. Strom shortly after the July 15 letter, a retainer agreement was not executed at that time.

In a handwritten note dated September 12, 1987, respondent stated that he was enclosing Dr. Strom's tax returns (apparently for 1986) and requested that Dr. Strom pay him $14,195. The note did not contain an explanation for the charge.

By letter dated December 4, 1987, respondent summarized his "service agreement" with Dr. Strom for November 1, 1987 through October 31, 1998. The service agreement provided that for an annual fee of $8,500, payable beginning October 31, 1998, respondent would perform the following services for Dr. Strom:

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[1] Respondent's letterhead was misleading, in that it identified him as an attorney, as well as a CPA, with addresses in New Jersey and New York. However, the complaint did not contain any charges regarding that letterhead. Nor did the complaint charge that respondent engaged in the unauthorized practice of law in California in Strom.

Supervision – Review of your office staff
Internal Financial Reports
Corporate Tax Planning & Tax Preparation
Personal " " " "
Pension " " " "
Investment consultation and acting as a liaison with your bank and broker(s)
General financial consulting services.

In his December 4 letter, respondent also stated that his "bill for services through October 31, 1987" was $5,500, but that he was giving Dr. Strom a "credit" of $1,985, leaving "a net bill of $3,515." Finally, respondent indicated that he was enclosing a promissory note "that was signed which delayed the payment of $14,195 for services to your corporation until December 15, 1987." Respondent's letterhead identified him only as an attorney, not as a CPA, and showed a Moorestown, New Jersey address. At some point, respondent also gave Dr. Strom business cards identifying him as an attorney-at-law, with addresses in New Jersey and California.

Respondent did not provide regular billing statements to Dr. Strom. However, in correspondence to Dr. Strom, he claimed that he was owed various sums:

- Undated handwritten note [apparently sent prior to April 1988]: $17,109 for "Gary F."
- September 20, 1988: $17,109 for "Tax Work"; $5,000 for "Professional Services to October 1987"; $8,500 for "Professional Services to October 1988" and "approximately $4,000" for taxes paid on Dr. Strom's behalf.
- February 1, 1989: "fee for 1986 was $14,195"; "1987 fee was $17,109."

- April 11, 1991 handwritten note: "Due Gary $41,160 plus due GF $8,500 paid for taxes 3/31/91."

- June 25, 1991: "You currently owe me the following funds" $10,000 for "Corporate Tax Paid by Gary @ March 31, 1991"; $41,160 for "Taxes 1990" and $55,200 for "Taxes 1989." Respondent also stated that he knew that Dr. Strom had not yet received his "1989 refund," but requested that he "remit the balance of $51,160.00 immediately."

- July 2, 1993: "Due @ June 25, 1991, $106,360.00 – See Letter Dated 6/25/91"; "9/30/91 – $5,500.00"; "9/30/92 – $5,500.00"; "1991 Taxes – $51,200.00."

With the July 2, 1993 letter, respondent sent copies of Dr. Strom's 1992 tax returns, showing "refunds" of $16,898 "federal" and $20,760 "state." Respondent stated that $14,165 of the state refund "is due to the refund of the wrong lien that I paid for 1989. You will be billed for this when I you [sic] get the refund."

Between 1987 and 1991, Dr. Strom paid respondent $222,601, as follows: December 14, 1987, $14,195 for "accounting services"; December 18, 1988, $29,560; May 10, 1990, $94,986; December 19, 1990, $26,700 for "fee"; and July 31, 1991, $57,160. As set forth below, the purpose of these payments is in dispute; respondent claimed that Dr. Strom had failed to pay an additional $245,200 owed to him.[2]

A. <u>The $150,000 Loan</u>

In February 1992, respondent borrowed $150,000 from Dr. Strom. By letter dated

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[2] There are additional checks from Dr. Strom to respondent. Apparently, there is no dispute concerning those checks.

March 13, 1992, respondent "acknowledged" the loan at nine percent interest, "compounded annually," and stated that the loan terms would be "incorporated into a promissory note and first mortgage" on his Moorestown property.[3] Respondent's letter also stated that the loan maturity date was March 31, 1994, that Dr. Strom's "co-holder of a first mortgage will be Gary Chang, MD, APC Pension Trust – for $100,000" and that Dr. Lynne Stein, respondent's wife, "will be the owner of the forementioned property after the sale."

On April 2, 1992, respondent signed a promissory note for $150,000, payable on September 30, 1994, with interest accrued from the date of the note, rather than the date of the loan. The note also provided that the debt was secured by a mortgage, "dated even date herewith." Dr. Stein did not sign the note, even though she and respondent owned the property jointly. Neither respondent nor Dr. Stein executed a mortgage to Dr. Strom.

B. The Litigation between Dr. Strom and Respondent

Respondent did not repay the $150,000 to Dr. Strom. He made only one interest payment of $10,125, in February 1994.[4] In 1995, Dr. Strom filed suit against respondent

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[3] There was a question in the record as to whether the loan was made by Dr. Strom, individually, or his pension trust. However, both respondent and Dr. Strom agreed that the loan was funded by Dr. Strom's personal monies. A resolution of the question is not critical to this proceeding.

[4] The memo on the check stated that it was a "reissue" of a December 1992 check. In the litigation, respondent claimed that a check issued in 1992 had not been negotiated and that the 1992 check memorialized an agreement to modify the loan terms to provide for no further interest after December 1992. The trial court rejected the argument.

and Dr. Stein.[5] Respondent filed an answer and counterclaim, pro se.[6] The answer admitted that respondent was Dr. Strom's attorney and tax advisor. The counterclaim alleged that respondent had "contracted" with Dr. Strom to "perform professional legal services" for him and his medical corporation, that he had performed the services and that he had not been paid for them. The counterclaim also alleged that, in December 1986, Dr. Strom entered into an oral agreement with FMC to pay $240,000 to FMC, in exchange for real estate consulting work (the "FMC agreement"). Throughout the litigation, respondent continued to assert the validity of the oral FMC contract, but never produced any evidence of the contract at trial. The trial court dismissed that count of the counterclaim.

In his answers to interrogatories about his fee for legal services, respondent stated that his "initial fee was $6,500 annually. Later, Strom agreed to pay the lower fees, plus a percentage of stock profits and payments for other legal work." The answer to the interrogatory also stated that respondent was admitted in New Jersey in 1985 and in Pennsylvania in 1984.[7]

At trial, respondent testified that he was Dr. Strom's "tax attorney," that he did "legal

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[5] Dr. Strom had also filed a complaint in federal court in 1996, charging respondent with legal malpractice. Respondent appeared pro se. The complaint was dismissed for lack of subject matter jurisdiction, based on the entire controversy doctrine, because there was a pending state court action. Respondent's brief in support of his motion to dismiss the complaint identified him as "the attorney who represented Dr. Strom."

[6] Apparently, the answer was also filed on behalf of Dr. Stein.

[7] As stated above, the initial annual fee was $8,500, not $6,500 and respondent was admitted in New Jersey in 1987 and in Pennsylvania in 1985.

research into certain issues, investment performances, outside issues, legal work pertaining to investigation of partnerships, limited partnerships and other investments, other opportunities."[8]

On June 26, 1996, the trial court found that respondent owed $206,447 on the note, which included interest, plus $7,500 for plaintiff's attorney's fees. Of the seven counts of respondent's counterclaim, the trial court dismissed all but two. The court awarded respondent $600 for funds advanced to Dr. Strom for travel expenses and an additional $49,200 plus interest.[9] The court entered a $162,183 judgment for Dr. Strom and ordered that respondent and Dr. Stein tender a first mortgage in that amount by July 1, 1996. Dr. Strom appealed the trial court's determination.[10]

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[8] In his tax court litigation concerning his 1988 tax return, respondent claimed that he used his home office to meet clients and to "render business and legal advice." He asserted the attorney-client privilege in answer to interrogatories concerning his discussions with clients, including Dr. Strom. Respondent stated that FMC was a company he set up "to perform work for an individual Cary Strom" and that documents pertaining to FMC's work were protected by the attorney-client privilege.

[9] The trial court decision indicated that this award was for unpaid legal fees. However, the Appellate Division stated that it was for tax payments that respondent advanced for Dr. Strom. Both courts accepted respondent's testimony that he had provided legal services to Dr. Strom. Also, both courts stated that respondent's loan from Dr. Strom violated RPC 1.8.

[10] In December 1997, respondent sent a letter to Dr. Strom's counsel stating that: (1) he intended to bring in witnesses to "show that Dr. Strom has committed perjury"; (2) he had "not reported Dr. Strom to the IRS yet for transgressions that are not part of this legal case"; (3) the fact that Dr. Strom could no longer pursue a malpractice claim against him would "allow" him "to delve into many areas in the new trial that will be damaging to Dr. Strom, both at the trial and if the trial transcript is read by the IRS"; (4) there were "other matters" that he "may wish to mention privately to Dr. Strom"; (5) he had documents that would assist Dr. Strom to "eliminate IRS and State penalties and get refunds and abatements of penalties paid already"; and (6) Dr. Strom would not be

On January 16, 1998, the Appellate Division affirmed the trial's court's decision on the affirmative claims and counterclaims, but determined that the judgment was "mathematically incorrect." The Appellate Division also found that the trial court erred when it reduced plaintiff's counsel fee from $35,000 to $7,500. The Appellate Division, therefore, remanded the case to the trial court to recalculate the amount of the judgment and to increase the counsel fee award.

On November 9, 1998, the trial court entered an amended judgment in the amount of $177,055. The judgment required respondent and Dr. Stein to tender a first mortgage on their Moorestown residence by November 20, 1998. There was a further dispute as to the amount of the judgment and another appeal.

In 2000, Dr. Strom filed a foreclosure action. Respondent paid the judgment in January 2001.

C. Respondent's Testimony at the Ethics Hearing

At the ethics hearing, respondent denied that he was Dr. Strom's attorney and insisted that he had acted only as his accountant and financial advisor. As to the letterhead identifying him as an attorney, respondent stated that he used that letterhead for all of his correspondence, even though he was not practicing law at that time. At one time, respondent stated, he had stationary identifying him as a CPA, but ceased using it in 1987,

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able to collect his judgment because the IRS had a $250,000 lien against respondent's assets. The complaint did not contain any ethics charges regarding that letter.

when he was placed on the inactive list in New York.

Respondent admitted that he performed three services for Dr. Strom that could be considered legal services, but contended that he was not paid for them. According to respondent, those services consisted of the following: he obtained a standard incorporation form from the California secretary of state, which Dr. Strom completed to incorporate his medical practice; he drafted "documents" to transfer Dr. Strom's father's house to Dr. Strom, which were never executed; and he drafted a will for Dr. Strom.

As to his admission, in his answer to Dr. Strom's civil complaint, that he was Dr. Strom's attorney, respondent stated that he had represented himself in the litigation and had prepared the answer "quickly." With regard to his counterclaim for unpaid fees for legal services, respondent testified that it was "a misstatement of fact," in that he intended to write accounting and financial services. He also claimed that his statement, in answers to interrogatories, that he performed "other legal work" for Dr. Strom was a mistake and that he intended to say "other accounting work." As to his statement, in answers to interrogatories, that Dr. Strom had not "paid his fees for legal advice that was not standard work," respondent contended that the "legal advice" was "actually accounting advice about tax issues pertaining to investments." In his pre-trial memorandum, respondent had stated that he had provided "legal and financial services" to Dr. Strom. Respondent also labeled that a misstatement.

Respondent testified that he and Dr. Strom entered into two separate agreements: (1)

the "annual fee" agreement, referenced in his December 1987 letter, for accounting services for Dr. Strom and his medical practice and (2) the FMC agreement of November or December 1986, whereby Dr. Strom agreed to pay $240,000 to FMC, in exchange for "private investment consulting work" for two years, beginning in December 1986. According to respondent, the $240,000 was to be paid to FMC at the end of the two-year period.

As to the annual fee agreement, respondent testified that Dr. Strom had orally agreed to pay him $14,195 for his services from July 15 through December 31, 1986 and that the services consisted of the following:

> Generally speaking we were just getting underway. Dr. Strom was unincorporated at this time, sole proprietor, and he was very disorganized, and it took a lot of time to get his records together, help him assess his investments, where he was, and basically absorbing his files and his history, actually had one or two existing tax problems that had to be dealt with, minor tax problems for him personally. A lot of time was invested developing a relationship and figuring out where we would go in the future.

Respondent further testified that he and Dr. Strom orally agreed, at the end of 1986, "to continue our business relationship . . . we'll see how it evolves, we'll see what's a fair fee, we'll see what the scope of the work is at the time" and did not reach an agreement on the $8,500 annual fee until October 1987. Thereafter, the $8,500 fee was reduced to $6,500, and then to $5,500. Respondent could not recall when the reductions went into effect. According to respondent, he frequently advanced tax payments on behalf of Dr. Strom and

provided additional services not covered by the annual fee.[11]

Respondent stated that he provided the following additional services: (1) reviewed a prospectus and title insurance information concerning a California office building that was to be converted to medical offices; (2) reviewed a proposal for a group of doctors to purchase medical equipment and lease the equipment to hospitals; and (3) "assessed the benefit" of a proposal for a group of doctors to open a facility to perform endoscopies. "Other deals we looked at many other equipment leasing deals, computer company start-up, movie deals, public storage deals...various real estate projects and investment projects to open."

Respondent also testified that, after Dr. Strom's agreement with FMC ended in December 1988, "the scope of my work for Dr. Strom increased and I was given authority to initiate stock transactions on his behalf in his account without his consent heretofore. During the early period I had only been given permission to buy certificates of deposits and other interest bearing instruments for him."

With respect to the FMC agreement, respondent stated that there was a written contract, which had been lost. According to respondent, he provided all of the services under the FMC agreement. He asserted that in 1988 he drafted, and Dr. Strom signed, a $240,000 note, collateralized by unspecified "securities" owned by Dr. Strom. Respondent

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[11] In his answers to interrogatories in the litigation, respondent maintained that Dr. Strom also agreed to pay him "a percentage of stock profits." Some of respondent's "billings" to Dr. Strom indicate that his fees were based upon the amount of income tax savings. Here, respondent did not claim that he was entitled to stock profits or income tax savings.

added that the note had also been lost.[12]

As to why he had asserted, throughout the litigation, that the FMC agreement was an oral contract, respondent stated that he had forgotten that there was a written agreement and a note because he had not "focused" on the issue.[13] Respondent stated that, because he had believed Dr. Strom's defense that FMC's claim was barred by the statute of limitations, he had not pursued the claim. However, in his appellate brief, respondent argued that he had not been "given an opportunity at trial . . . to demonstrate that the claims of...Friedmann Management Corporation had been assigned to Friedmann or to address the merits of those claims." According to respondent, he did not recall that there were written documents evidencing the indebtedness until sometime after the litigation, but could not point to any document or occurrence that had prompted him to recollect the writings.

Respondent asserted that Dr. Strom did not express concern, in 1986, about his ability to pay the $240,000 to FMC within two years, even though his 1986 adjusted gross income was only $30,852. Dr. Strom's adjusted gross income in 1987 was $149,598.

As evidence of the legitimacy of the debt, respondent asserted that Dr. Strom had deducted the $240,000 as professional fees on his personal tax return for 1988 and issued a 1099 form to FMC for that amount. According to respondent, Dr. Strom was able to take

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[12] Respondent stated that interest was to be paid on the note, but did not recall the interest rate. He explained that he never actually charged Dr. Strom interest on the $240,000 note.

[13] In his response to Dr. Strom's request for contracts and documents reflecting the FMC agreement, respondent replied that "[t]here are no written contracts."

the deduction in 1988 – even though the agreement was purportedly entered in 1986 and even though Dr. Strom did not actually pay respondent in 1988 – because Dr. Strom signed a note evidencing the $240,000 debt. On Schedule C of the tax return, there is a $240,000 deduction for "legal and professional services," but no further explanation.[14]

Respondent had written a letter to Dr. Strom in February 1989, setting forth the "tax savings provided [to Dr. Strom] by Friedmann Financial Co. for 1986 and 1987" and advised Dr. Strom that his 1988 federal tax liability would be approximately $135,000.[15] At the ethics hearing, respondent admitted that Dr. Strom would have paid approximately $135,000 in federal income tax for 1988, but for the $240,000 deduction. He denied, however, that the $240,000 deduction was fabricated sometime after February 1989.[16]

Respondent also testified that the $240,000 was shown as income on FMC's 1987 tax return.[17] That return shows gross receipts of $371,000, but zero taxable income. The source of the gross receipts is not identified. Respondent also reported that FMC paid him

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[14] Respondent signed Dr. Strom's 1988 tax return as the preparer and used a stamp for his firm's name and address that identified him as an "attorney at law." In 1988, Dr. Strom's wages, salary etc. amounted to $546,060 and his total and his adjusted gross income (after the Schedule C and other deductions) was $261,454.

[15] In his letter, respondent explained that Friedmann Financial Co. ("FFC") "invests in low income, rent-controlled property in Cambridge, Massachusetts. The tax law used to offer big incentives, which were grandfathered into current law, for investing in such properties...The benefits of such investments will be completely phased out by 1992."

[16] Primarily because of the $240,000 deduction, Dr. Strom's tax liability was $52,000, instead of the $135,000 estimated by respondent.

[17] FMC's 1987 fiscal year ran from December 1, 1987 to November 30, 1988.

for services. Respondent's personal tax return was audited. His explanation of the outcome of the audit was that, since he had

> mistakenly put his social security number on the Strom tax form, he reported the $240,000.00 of [sic] his personal return as well as his business return. He attempted to offset the double counting by deducting $240,000.00 from his personal return and paying Friedmann Management Corporation $240,000.00 with a 1099. When audited, the IRS accepted the $240,000.00 income declared on the personal taxes but disallowed the deduction.[18]

Respondent stated that he and Dr. Strom agreed, in 1989, that the $240,000 debt would be reduced to $190,000. Respondent added that Dr. Strom's 1989 tax return reflected the $50,000 debt reduction as income on Schedule C, which shows unidentified gross receipts of $50,000.[19] Respondent did not explain the reason for the reduction.

Respondent also testified that the $50,000 debt reduction was shown as a refund on FMC's 1988 tax return. The only $50,000 figure shown on that return was on line 25, titled "employee benefit programs," with a handwritten notation "refund." The return shows gross receipts of $187,000, but no taxable income.

During the OAE's investigation, respondent provided a handwritten memo that he allegedly wrote in December 1990 concerning the FMC agreement. Although the memo is not addressed to or signed by Dr. Strom, respondent testified that he gave it to Dr. Strom

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[18] The record shows that the IRS disallowed the $240,000 deduction, as well as other expenses that respondent had deducted on his personal tax return. After respondent filed a petition in the tax court, the case was settled. Respondent conceded the disallowance of the $240,000 deduction.

[19] Respondent signed Dr. Strom's 1989 return as attorney-in-fact for Dr. Strom and as the preparer. Again, his firm stamp identified him as an "attorney at law."

in December 1990. As explained by respondent, the memo memorialized an agreement

> that all future payments [from Dr. Strom] would first go against this debt [the $190,000 remaining on the FMC agreement] . . . Actually this memo, as I say, memorializes that the earlier payment of 96,000 – whatever – it says approximately 96,000, would be applied that way. However, the payment that he was going to give me currently would not be applied that way, it would be treated – well, inconsistent with our earlier oral agreement, would be treated as a tax deductible thing – will be treated as a payment for professional services, enhance tax deductible, and the agreement essentially goes on to say but except for this one payment which we are not allowing you to treat a tax deductible treatment to [respondent] personally all other payments consistent with our earlier agreements will first be used to diminish this hundred and ninety thousand dollar debt – well, the debt at one point was 190,000.

Respondent's "explanation" of the memo was typical of his testimony: vague, convoluted and shifting.

As to why he had not produced the December 1990 memo in the litigation, respondent contended, incorrectly, that Dr. Strom's document requests did not encompass that memo.

According to respondent, he provided the following services under the FMC agreement for the payment of $240,000: (1) "looked into commercial real estate investments in the Los Angeles area"; (2) reviewed "prospectuses and offers" that Dr. Strom received from "salesman [sic] and solicitors"; (3) met with a Russian physicist in Laguna, California regarding a "potential land development venture"; (4) "reviewed land development partnership ventures in Wyoming"; (5) "reviewed a potential movie deal with Greg Luganis"; (6) "looked into" investing in "super" cows; (7) "looked into" a factory that "made food products"; (8) reviewed "prospectuses, business plans, and financial

investments" sent to Dr. Strom by his broker; (9) made approximately twelve trips to "Tahoe, Palm Springs, Salt Lake City, Oregon and Las Vegas areas" to "explore and go to auctions" for "potential real estate ventures"; (10) prepared the "paperwork" to transfer Dr. Strom's father's house to Dr. Strom;[20] (11) "investigated" real estate in Cape Cod, Philadelphia and Baja, Mexico; (12) "investigated" a New York chicken farm "that was possibly going to be converted into a golf course and was looking for investors"; (13) "investigated" business plans of another California doctor, who wanted investors for businesses in Mexico; and (14) "investigated" the possibility of Dr. Strom's investing in the Inn of the Dove hotel chain. Although respondent testified that the $240,000 included his time, travel expenses and expertise, he did not produce any time or expense records.

As to why he had not included the $190,000 debt in his billing letters to Dr. Strom, respondent stated that those letters only pertained to the services provided pursuant to the annual fee agreement. When questioned about specific billings, respondent gave vague, sometimes inconsistent answers. He also testified that there were errors on some of the bills. As to the July 2, 1993 bill, respondent stated that he and Dr. Strom had "decided that the beginning balance of $106,360 was erroneous, and nothing was paid on this bill." Respondent also asserted that the references to "tax work" and "taxes"on the bills were mistakes, since tax work was included in the annual fee, and that the billings reflected work not encompassed by the annual fee agreement. Specifically, with respect to the $17,109 for

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[20] As set forth above, respondent also testified that he had not been paid for the paperwork for the property transfer, which was never signed.

"tax work" billed in September 1988, respondent stated "I can't tell you every detail of the extra work I did, but most of the work involves being at his business establishments and looking after his accounting matters, that's my recollection."

According to respondent's calculations, Dr. Strom did not owe him any monies as of December 1988, having paid $14,195 in December 1987 and $29,560 in December 1988. On May 10, 1990, Dr. Strom paid respondent an additional $94,986. Respondent wrote the check, except for Dr. Strom's signature.[21] Respondent made the check payable to "Gary Friedmann, Esq." In the memo section, respondent wrote that the check was for either "prof" or "Gary" services.[22]

As to the "extra" services he rendered to Dr. Strom for $94,986, respondent stated that, after the FMC agreement ended in 1988, he had "increased work" in Dr. Strom's office and became his investment consultant "authorized to trade stocks on his behalf," although Dr. Strom's stockbroker continued to receive the commissions on the trades. Respondent also claimed that, although the $94,986 was for his, not FMC's, services, he and Dr. Strom agreed to apply that check to the FMC debt; therefore, the $94,986 was not reported as income on his tax return or as an expense on Dr. Strom's return.

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[21] Prior to that check, which was negotiated, there were four earlier checks that had been voided and left in Dr. Strom's checkbook. Respondent had torn off the signature portions of those checks. He explained that it was his practice to tear off the signature portions of voided checks to assure that they were not negotiated.

[22] It is not clear whether the date of the check is "10/1/87" or "10/1/89." At the ethics hearing, respondent testified that he wrote "10/1/89." However, at the civil trial, respondent testified that it was "10/1/87."

As to the $150,000 loan, respondent admitted that he did not advise Dr. Strom, in writing, that he should obtain independent counsel, but contended that he did so orally.[23] Respondent stated that he arranged for the funds to be wired from Dr. Strom's personal accounts to respondent's account in New Jersey in February 1992, prior to his March 13, 1992 letter, memorializing the loan terms. With respect to the delay before interest was to run, respondent testified "that's what we negotiated."

As to why he borrowed $150,00 from Dr. Strom in 1992 if, as he contended, Dr. Strom owed him in excess of $240,000, respondent went into a long, confusing, mostly irrelevant, explanation. (See March 7, 2001 transcript, pp. 127-131). In essence, respondent's explanation was that he needed the funds quickly and did not have the time to discuss with Dr. Strom his outstanding balance. Yet, he also contended that Dr. Strom did not agree to the loan until one month after he requested it. Furthermore, in his reply to the grievance, respondent stated that, sometime after 1992, he and Dr. Strom agreed that Dr. Strom would stop paying fees owed to him "until the loan balance equaled the fee balance," which would indicate that the loan amount was greater than the outstanding fees.

As to why he never gave Dr. Strom a mortgage on his house, respondent testified that he prepared a mortgage document, but did not record it because it would not have been a first mortgage, as required by the note. According to respondent, he had paid off the

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[23] At the civil trial, respondent initially testified that he had orally advised Dr. Strom to obtain independent counsel. After Dr. Chang testified that no such advice had been given to him, respondent changed his testimony, claiming no recollection as to whether he had orally advised Dr. Strom to consult with separate counsel.

original purchase money mortgage in 1991, but the mortgage discharge had not been recorded. Respondent acknowledged that a secured debt is better than an unsecured debt and that, once the first mortgagee recorded the discharge, the mortgage to Dr. Strom would have become a first mortgage on his house. Respondent also maintained that he did not record the promised mortgage because "it's not what I agreed to do." He stated that he did nothing to remove the first mortgage at that time because his wife had obtained counsel to draft a post-nuptial agreement to protect her from the $250,000 loan [$150,000 from Dr. Strom and $100,000 from Dr. Chang]. Respondent testified that he discussed those issues with Dr. Strom, who agreed that the mortgage could be recorded after the problems had been resolved. Respondent testified that it took one year to negotiate the post-nuptial agreement. As part of that agreement, respondent stated, he was to transfer his interest in the house to his wife, who would then agree to be responsible for the $250,000 debt. However, according to respondent, the agreement was not signed and the transfer did not take place because the discharge of the original mortgage still had not been recorded.[24] Respondent contended that, when he advised Dr. Strom of the problem, his "attitude was, again, don't worry about it. I know there's plenty of equity in your home. I trust [sic] and I also know that I owe you monies."

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[24] In his answers to interrogatories in the civil litigation, respondent stated that the house was not transferred to his wife because "a substantial transfer tax" would have been due.

D. Dr. Strom's Testimony at the Ethics Hearing

Dr. Strom testified that he retained respondent because respondent was a "tax lawyer, a CPA and financial planner" and he "liked the fact that he was three in one, as I thought, and he told me what he could do for me and I hired him." Dr. Strom explained that he had no business or financial knowledge and that he "started making a living for the first time" in 1985, when he began his medical practice. It was Dr. Strom's understanding that respondent was living in New Jersey, but also had a residence and was practicing law in California at that time.

According to Dr. Strom, respondent's annual fee for the services described in his December 12, 1987 letter was reduced from $8,500 to $6,500, then to $5,500 in subsequent years. He denied that he had agreed to pay any other fees to respondent or to FMC. It was Dr. Strom's understanding that the $222,601 that he paid to respondent was (1) to compensate respondent for his services; (2) to repay respondent for monies advanced to pay Dr. Strom's taxes; and (3) to purchase low income housing tax credits "that [respondent] was selling to his clients at the time." Dr. Strom testified that it was his "understanding that all these moneys were going for one of those three items; mostly the tax credits that would benefit my tax burden." According to Dr. Strom, when respondent was in California, respondent would make out Dr. Strom's checks for the monies allegedly owed to respondent and then have Dr. Strom sign the checks. Dr. Strom asserted that he never received any explanation from respondent as to what the checks covered. He testified that

he signed checks in accordance with respondent's instructions, because he trusted him. As to respondent's claim that he had advanced tax payments, Dr. Strom testified that, because respondent never provided him with the requested accounting, he did not know if respondent had made such payments or whether respondent had only paid interest and penalties resulting from late filings. According to Dr. Strom, respondent had agreed to pay interest and penalties assessed on late tax payments because respondent was responsible for the late filings. Dr. Strom complained that respondent had created numerous tax problems for him.[25]

Dr. Strom denied that he had agreed to pay $240,000 to FMC in December 1986. He testified that, in December 1986, he had been in practice for one year, had made between $50,000 and $60,000 during that year and only had "small brokerage accounts" and a checking account.[26]

Dr. Strom testified that he and respondent were in a restaurant in the fall of 1994, when respondent requested that he write out on a napkin a $240,000 IOU to respondent. Dr. Strom refused to do so. At that time, according to Dr. Strom, respondent did not explain why he needed the IOU. Dr. Strom further testified that, in January 1995, respondent requested that Dr. Strom state to the IRS that he owed $240,000 to respondent and that "it's past the statute [of limitations], there's nothing they can do to you, all I need is for you to

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[25] Some of these statements are taken from Dr. Strom's trial testimony. He was questioned in more detail at the trial than at the ethics hearing. Unlike respondent's, Dr. Strom's testimony at the ethics hearing was generally consistent with his trial testimony.

[26] As set forth above, Dr. Strom's tax returns for 1986 and 1987, prepared by respondent, showed adjusted gross income of $30,852 and $149,598, respectively.

come out and say you owe me this money." Apparently, Dr. Strom never provided that testimony to the IRS.

With respect to the $240,000 deduction on his tax return, Dr. Strom stated that respondent told him "it was travel and entertainment on the corporation and [respondent] took care of it, I never really knew what happened there." Dr. Strom testified that he did not know if the IRS audit concerning the $240,000 deduction on his tax return had been successful, because he had to pay "multiple penalties" to the IRS, as well as levies against Medicare payments owed to him, and he did not know if those penalties and levies related to the $240,000 deduction.

Dr. Strom testified that he discussed some potential investments with respondent, but denied having requested respondent to investigate many of the ventures cited by respondent. According to Dr. Strom, other than the low income housing tax credits, he discussed only one potential real estate investment with respondent: the purchase of a single condominium unit from one of Dr. Strom's patients. Dr. Strom estimated that approximately four times a year he would meet with respondent in California to discuss business. He also met socially with respondent.

With respect to the $150,000 loan, Dr. Strom testified that respondent had told him that he needed the money immediately because the IRS was about to take his house; respondent had agreed to repay the loan in two years, pay nine percent interest and secure the loan with a mortgage on his house. According to Dr. Strom, he did not learn that

respondent had also borrowed funds from Dr. Chang until he received respondent's March 13, 1992 letter. Dr. Strom stated that respondent never consulted him about the delay in the accrual of interest from February to April 1992. He denied that respondent advised him to consult with counsel, prior to agreeing to the loan transaction.

II. The Van Roy Matter

Count four of the ethics complaint charged that respondent violated RPC 5.5(a) (unauthorized practice of law), by entering into a fee agreement with and providing services to Gene and Margaret Van Roy in California, when he was not admitted to the California bar, and RPC 8.4(c), by providing a misleading fee agreement to the Van Roys, in that it implied that he was admitted in California.

In September 1996, respondent entered into an agreement with the Van Roys, California residents, to provide "legal representation for personal estate planning and Internal Revenue Service representation." The agreement was on letterhead identifying respondent as an attorney-at-law with a Moorestown, New Jersey address. There was no representation as to which state bar respondent was admitted. The agreement stated that it "is required by the California Business and Professions Code section 6148 and is intended to fulfill the requirements of that section." The agreement also stated that his "office may withdraw at any time under the Rules of Professional Conduct of the State Bar of California."

Respondent collected a $2,500 retainer from the Van Roys.

Respondent testified that Gene Van Roy was the office manager of a small company, whose owner was frequently out of the office. Gene became an officer of the company so that he could sign routine company documents and checks, in the owner's absence. A secretary of the company diverted checks payable to the IRS for employee withholding taxes. Although the secretary was prosecuted, the IRS notified Gene that he, as well as the owner, was personally responsible for the unpaid taxes. According to respondent, between $400,000 and $500,000 was owed to the IRS.

Respondent stated that he spoke with both Gene and the owner of the company, researched the law on "collection, having to do with third-party liability as trustees and tax research," then met with the Van Roys and their son in California to discuss the problem and the action to be taken. According to respondent, he asked the Van Roys for a $2,500 retainer and told them "I'm in California. I'm providing legal service to you by the hour. This is going to be a one shot deal." Respondent then backtracked and stated that he was not sure that the services that he provided to the Van Roys "overlapped into legal services because basically this is something accountants do all the time and it was accounting research." Respondent later stated that Van Roy "was the only client that I purely worked for [] as a lawyer -- excuse me, either as a lawyer or a specific -- or an accountant doing what -- excuse me, a lawyer doing what accountants typically do, and was charging him by the hour."

As to the legal services agreement, respondent stated that he copied the form from a book in a California law library. Respondent denied having done any estate planning for the Van Roys. He testified that, although estate planning was considered as a "potential solution" to the Van Roys' problem, he never provided such services because "the IRS matter was resolving itself." Respondent also asserted that he referred the Van Roys to a California attorney.

With regard to the $2,500 retainer, respondent stated that he deposited it in his New Jersey trust account and later refunded approximately $200 to $400 to the Van Roys.

The Van Roys did not testify at the ethics hearing.

* * *

In a footnote in its proposed conclusions of law submitted after the hearing, the OAE requested that the special master deem the complaint amended to charge violations of RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(d) (conduct prejudicial to the administration of justice). Although the footnote does not explain what evidence supports the charges, it is appended to the following sentence: "In the instant case, respondent engaged in a continuous course of deception with regard to this alleged $240,000 service agreement as well as to other material matters making misrepresentations to the OAE, the IRS, his clients Strom, Epstein and Lattin, Judge Gottlieb, and Dr. Strom's attorneys in the

civil trial."

Epstein and Lattin were respondent's tax planning clients. Respondent represented them before the United States tax court, but had to withdraw from Lattin because he was to be a witness in the case. In the Epstein case, the tax court disallowed losses of $11,878 claimed by the Epsteins with respect to their dealings with Friedmann Financial Company #2 ("FFC"), another of respondent's companies. The tax court found that the Epsteins had failed to prove that the IRS's adjustment disallowing the losses was barred by the statute of limitations. The court concluded that they had "failed to carry their burden of proof that [FFC] is a partnership, that [FFC] filed a return for 1988, or that [FFC] is a partnership within the meaning of section 6231(a)(1)."

In the Lattin case, also, the tax court found that the Lattins had failed to prove that FFC was a partnership and upheld the IRS's disallowance of alleged losses related to FFC.[27] The tax court also disallowed expenses related to a sale leaseback transaction entered in 1986 when, as found by the court, respondent "was substantially involved with arranging the affairs of [the Lattins] and [Mrs. Lattins'] parents to reduce their taxes." The court found that the sale leaseback transaction was a "sham."

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[27] At the ethics hearing, respondent claimed that, except for the Van Roy matter, he never practiced law. However, the Lattins deducted legal fees paid to respondent on their tax returns for 1987 and 1988. Although the IRS argued that the Lattins' payments to respondent were loan repayments, the tax courts allowed part of those deductions as legal fees.

The special master found Dr. Strom to be a generally credible witness. As to respondent, the special master found him "credible in some respects," but with a tendency "to be evasive, confusing, and, to put it charitably, less than candid." The special master remarked that the inconsistencies between respondent's testimony at the ethics hearing and his testimony during the litigation "appeared, in many instances, to be an attempt to evade the attorney misconduct implications of his actions."

The special master rejected respondent's contention that he was not Dr. Strom's attorney, observing that Dr. Strom considered respondent to be his attorney and that respondent represented himself as Dr. Strom's attorney until it became "inconvenient for him to do so."

As to the loan transaction, the special master found that it violated all of the requirements of RPC 1.8(a), in that the transaction was not fair and reasonable to the client, the terms were not fully disclosed and transmitted to the client in writing, the client was not advised to seek independent counsel and the client did not consent, in writing, to the transaction. The special master found that respondent also violated RPC 8.4(c) in the loan transaction by unilaterally changing the terms of the loan to his benefit and failing to give Dr. Strom a mortgage. As to respondent's testimony that he did not record the mortgage because it would not have been a first mortgage, the special master rejected it as "not worthy of belief."

With respect to the purported $240,000 FMC agreement, the special master could not

"conclude that there was not some arrangement" between respondent and Dr. Strom. However, he determined that there was no written agreement or note, that the agreement was not made in 1986 and that the debt was not created in 1988. He found, instead, that the arrangement was part of a tax avoidance scheme to create a tax deduction for Dr. Strom without the "actual contemporaneous expenditure of cash." It was "clear" to the special master that Dr. Strom did not understand the $240,000 transaction, but that he knew he had received the benefit of a $240,000 deduction on his tax return. In light of that conclusion, the special master found that respondent did not file a frivolous counterclaim and that respondent's statements, in reply to discovery requests, that no writing evidenced the FMC agreement were "probably true." The special master, therefore, recommended the dismissal of the RPC 3.1 and RPC 3.3 charges.

The special master found that respondent's statements to the OAE that there had been a written contract evidencing the FMC agreement, as well as a note, were "completely and blatantly false."

With respect to the charges that respondent's fees were excessive, the special master stated that, because the fees were not entirely for legal work, it was impossible for him to conclude that they were excessive. However, the special master did find that respondent's billing practices were deceitful and that the "the conclusion is inescapable that Respondent simply made it up as he went along, justifying the fees as the subject of 'negotiation' between he [sic] and Strom in the manner of a merchant in a third-world rug bazaar rather

than a professional of any nature, much less a lawyer. The fees bear little to no discernable [sic] relation to either the time expended nor [sic] to the degree of skill and knowledge brought to the tasks."

As to the charge that respondent engaged in the unauthorized practice of law in California in the Van Roy matter, the special master found that respondent practiced as "a tax attorney" in California. However, the special master concluded that such practice did not violate RPC 5.5(a) because respondent was qualified to practice before the IRS. The special master cited Sperry v. Florida ex rel Florida Bar, 373 U.S. 379 (1963), where the United States Supreme Court held that, even though Florida had the power to regulate the practice of law within the state, Florida's regulations had to give way to those of the federal government as to the admission and eligibility to practice before the United States patent office. Because there was no evidence that respondent did any estate planning for the Van Roys or any work other than on the IRS problem, the special master recommended that the RPC 5.5(a) charge be dismissed.

Finally, the special master recommended the dismissal of the charge that the fee agreement was misleading. The special master noted that the Van Roys did not testify and that there was no evidence that they were misled into believing that respondent was licensed in California.

The special master denied the OAE's request to amend the complaint, finding that disposition of the request was governed by In re Ruffalo, 390 U.S. 544 (1968) (it is a

violation of the attorney's right to procedural due process to disbar him for having hired an employee of a railroad to investigate claims against the railroad, where the ethics complaint did not contain any charges concerning such hiring and the complaint was amended to add the charge after the attorney and the railroad worker had testified at length at the ethics proceeding, even though the attorney was given a continuance of several months to prepare to meet the charges), not In re Logan, 70 N.J. 222 (1976).

With respect to the sanction to be imposed, the special master found a "plethora" of aggravating circumstances and no mitigating factors. He noted that respondent's actions demonstrated "a deep-rooted and abiding dishonesty." He also observed that to respondent truth is "an amazingly flexible concept defined by him as what will suit his purposes and advance his interests at any particular moment" and laws or rules of professional conduct "are games to be beaten, rather than guides to behavior." The special master found that respondent displayed no remorse, took no responsibility for his actions and demonstrated "no capacity for rehabilitation."

The special master recommended that respondent be disbarred.

* * *

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

With respect to the Strom matter, we find that the special master correctly concluded that respondent acted as attorney for Dr. Strom and that his conduct was unethical.

Dr. Strom testified that he retained respondent because respondent was an attorney, as well as a CPA and a financial planner. Almost all of respondent's correspondence to Dr. Strom was written on attorney letterhead, including the December 1987 engagement letter. Respondent's business cards identified him as an attorney. In fact, respondent admitted that, as of 1987, he no longer identified himself as a CPA because he had been placed on the inactive list in New York. Respondent has never been licensed as a financial planner or an investment advisor.

Respondent's services to Dr. Strom included corporate, personal and pension tax planning, all services provided by lawyers. That accountants and other professionals provide similar services does not necessarily negate the fact that respondent was providing legal services to Dr. Strom. Furthermore, respondent admitted that, in three instances, he performed legal services for Dr. Strom, although he was not paid for them. However, he also stated that one of the services – the drafting of documents to transfer Dr. Strom's father's house to Dr. Strom – was part of FMC's services.

In the Strom litigation, respondent filed a counterclaim for unpaid legal fees and asserted that counterclaim throughout the litigation and the appeal. In his own tax court case, respondent contended that information that he had obtained from Dr. Strom was protected by the attorney-client privilege.

We found no merit to respondent's argument that he was not Dr. Strom's attorney and that his activities did not constitute the practice of law. We also rejected respondent's contention that his continued representations that he was Dr. Strom's attorney was simply a "loose use of language." Having repeatedly held himself out as an attorney, having sought legal fees from Dr. Strom and having admitted to being Dr. Strom's attorney in court proceedings, it is disingenuous for him to now argue the opposite.[28]

With respect to respondent's credibility, the special master found that, while he was "credible in some respects," he "tended to be evasive, confusing, and, to put it charitably, less than candid." We also had problems with respondent's credibility. What was most striking about respondent's testimony was his inability – indeed, unwillingness or refusal – to make a clear statement or to give a straightforward answer to a simple question. His testimony was rife with obfuscation, inconsistencies, modifications and lengthy, irrelevant explanations. For example, to a simple question of whether he had previously told the OAE that the written contract and note reflecting the FMC agreement had been lost, respondent replied as follows:

> Well, they are not in my possession. I don't know if they were lost or given to Dr. Strom. I think I provided evidence to the OAE that at a certain point in the early '90s when I was leaving my apartment in California I shipped back a lot of documents by UPS box service, not overnight service, and that several of the boxes were lost, including boxes of documents, so I'm not

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[28] As stated above, the complaint did not charge respondent with the unauthorized practice of law in California. Moreover, there were no statements made at the ethics hearing that would have put him on notice that he had to defend himself against that charge. Therefore, we did not deem the complaint amended to add a violation of RPC 5.5(a).

certain, and I think this is what I told OAE to be clear, the document perhaps was given to Strom, which I – or was lost by UPS or lost, misplaced some other way, but the essence of the answer is I don't have the document in my possession.

Our independent review of the record compelled us to conclude that respondent was not a credible witness.

The special master correctly found that respondent violated RPC 1.8(a) and RPC 8.4(c) in his loan transaction with Dr. Strom. Respondent did not transmit the loan terms, in writing, to Dr. Strom until after he received the funds. He thereafter unilaterally and without Dr. Strom's knowledge, changed the terms of the note, to Dr. Strom's detriment. Instead of interest accruing from the date of the loan, it did not start accruing until the date of the note, two months later. Respondent also changed the maturity date from March to September 1994. Although respondent's wife, Dr. Stein, was a joint owner of the property that was to secure the loan, respondent did not have her sign the note. Moreover, respondent never gave Dr. Strom a mortgage on the property, as required by the note. Like the special master, we rejected as incredible respondent's explanation that he did not record the promised mortgage because the discharge of the original mortgage had not been filed.

Therefore, we found clear and convincing evidence that respondent violated RPC 1.8(a) and RPC 8.4(c) in connection with the loan transaction.

As to the FMC agreement, there is no evidence, other than respondent's testimony, of a 1986 agreement between FMC and Dr. Strom for the payment of $240,000 to FMC in 1988, in exchange for "private investment consulting work" from 1986 through 1988.

Apparently, the FMC agreement was a fiction created by respondent sometime after February 1989 to reduce Dr. Strom's 1988 taxes. How much Dr. Strom understood of the scheme is debatable. However, there is no credible evidence of a legitimate agreement, as claimed by respondent.

Indeed, Dr. Strom began his medical practice in 1985. In 1986, his adjusted gross income was $30,852. In 1987, it was $149,598. It is inconceivable that, in 1986, Dr. Strom would have contracted to pay $120,000 a year for an investment consultant. Furthermore, in his December 1987 "service agreement," respondent agreed to provide numerous services to Dr. Strom, including "investment consultation" and "general financial consulting services" for $8,500 per year. The disparity between those two figures – $120,000 and $8,500 – accentuates the absurdity of the alleged FMC agreement. It is also noteworthy that the service agreement makes no mention of the FMC agreement and that respondent never mentioned the $240,000 in his subsequent bills.

Respondent's unconvincing attempts to distinguish between his and FMC's services also highlighted the fictional nature of the agreement, as did his contradictory statements as to whether the agreement was in writing. Throughout the litigation, respondent maintained that the agreement was oral. At the ethics hearing, he testified that there was a contract signed in 1986, a note signed in 1988 and a 1990 handwritten memorandum evidencing the FMC agreement. Respondent's explanation was that, during the litigation, he did not have any written documents, had forgotten about the contract and the note and had not "focused"

on the FMC agreement because he accepted Dr. Strom's position that the claim was barred by the statute of limitations. It is highly implausible that respondent would not have focused on such a large claim or that he would have simply abandoned it without presenting evidence or, at least, an argument that the claim was not time-barred. Furthermore, respondent's contention that he had believed that the claim was time-barred is belied by the fact that, in his appellate brief, he argued that he had not been afforded the "opportunity at trial" to prove that FMC's claim had been assigned to him or "to address the merits" of the claim.

For all of the foregoing reasons, we found that there was no agreement between FMC and Dr. Strom and that, in asserting the existence of the agreement during the litigation, respondent violated RPC 3.1, RPC 3.3(a)(1) and RPC 8.4(c). We also found that respondent violated RPC 8.1(a) and RPC 8.4(c) by continuing to assert the authenticity of the FMC agreement to the OAE.

On the other hand, there is no clear and convincing evidence that respondent charged Dr. Strom excessive legal fees, in violation of RPC 1.5, because it is impossible to ascertain what portion of the $222,601 paid by Dr. Strom was for fees. Dr. Strom testified that his payments to respondent were for (1) fees, (2) repayment of tax payments advanced by respondent and (3) the purchase of low income housing tax credits. He was unable to parcel out the payments for each item. While there is a strong suspicion that the tax credits were part of a tax scheme and that there were few advances for taxes, that suspicion alone is

insufficient to support a finding to a clear and convincing standard in this regard.

The ethics complaint also charged that respondent violated RPC 1.5 because he "maintains that he performed . . . services . . . valued at $467,801.00." However, respondent never billed Dr. Strom for that amount. Respondent claimed that he billed Dr. Strom $277,801, which allegedly included the repayment of tax advances, as well as fees. It was not until he was sued by Dr. Strom that respondent asserted the $240,000 claim. Respondent's assertion of the FMC agreement in the litigation is more appropriately handled by the RPCs set forth above, rather than RPC 1.5.

We found, however, clear and convincing evidence that respondent violated RPC 8.4(c) in connection with his bills to Dr. Strom. As already discussed, Dr. Strom had no idea of the specific purpose of each of his payments. Respondent's billings did not match the payments. In fact, respondent was unable to provide coherent explanations for the bills or the payments. When asked about specific billings, he gave vague, sometimes inconsistent answers. He testified that references to "tax work" and "taxes" on the bills were mistakes because tax work was included in the annual fee and the bills were for work not encompassed by the annual fee agreement. When questioned about the $17,109 billed for "tax work" in September 1988, respondent replied "I can't tell you every detail of the extra work I did, but most of the work involves being at his business establishments and looking after his accounting matters, that's my recollection." However, that, too, was encompassed by the annual fee agreement. As stated by the special master, "the conclusion is inescapable

that Respondent simply made it up as he went along, justifying the fees as the subject of 'negotiation' between he [sic] and Strom in the manner of a merchant in a third-world rug bazaar rather than a professional of any nature, much less a lawyer." Therefore, we found that respondent violated RPC 8.4(c).

The special master properly denied the OAE's request that the complaint be deemed amended to add charges that respondent violated RPC 8.4(b) and RPC 8.4(d) in the Strom matter. The request was made in a post-hearing submission, with little explanation of the proposed charges. During the hearing, respondent was not on notice that he had to defend himself against charges that he committed criminal acts or that he engaged in conduct prejudicial to the administration of justice. There is no evidence that respondent has ever been charged with a crime, much less convicted of one. It is true that the IRS disallowed certain deductions in respondent's 1988 tax return and in the tax returns of his clients. It is also true that it referred to one of respondent's client's transactions as a sham. Those cases, however, did not involve criminal charges. Therefore, the special master appropriately denied the OAE's request that the complaint be amended to add violations of RPC 8.4(b) and RPC 8.4(d).

With respect to the Van Roy matter, it is undisputed that respondent entered into a fee agreement, in California, with California residents, to provide "legal representation for personal estate planning and Internal Revenue Service representation" and that the agreement referred to the California Business and Professions Code and the California Rules

of Professional Conduct. It is also undisputed that respondent was not admitted to the California bar. The fee agreement was on letterhead identifying respondent as an attorney with a Moorestown, New Jersey address. There was no representation as to which state bar respondent was admitted.

Respondent contended that the only work he did for the Van Roys was in connection with their IRS problem. He admitted that he discussed the possibility of using "estate planning" to address the IRS problem, but contended that no such work was done because the IRS problem was "resolving itself." As noted earlier, the Van Roys did not testify.

In the fee agreement, respondent did not misrepresent that he was admitted in California. The OAE argued that the references to the California business code and to the California Rules of Professional Conduct in the agreement were deceptive and intended to mislead the Van Roys. Because there was no evidence that the Van Roys were misled by the fee agreement, we dismissed the RPC 8.4(c) charge.

We also dismissed the charge that respondent violated RPC 5.5(a), for the reasons discussed by the special master. There was no evidence that respondent did any work for the Van Roys, other than in connection with their problem with the IRS. Practice before federal courts and administrative agencies is governed by federal law.

The New Jersey Supreme Court Committee on the Unauthorized Practice of Law ("CUPL") addressed the issue of whether a New York attorney, not admitted in New Jersey, could open an office here, if he limited his practice to matters involving United States

customs and tariff laws. The CUPL opinion stated as follows:

> A person not a member of the New Jersey Bar, who is admitted to practice before a federal agency, may have an office in this State to perform those functions which are reasonably within the scope of practice authorized to any non-lawyer by any valid federal statute or valid federal administrative regulation. To this extent New Jersey's substantial interest in regulating the practice of law within its borders must yield under the federal supremacy clause, but not beyond.

CUPL Opinion 7, 94 N.J.L.J. 1077 (1971).

More recently, the CUPL addressed inquiries from two out-of-state attorneys about establishing an office in New Jersey for the purpose of representing clients in immigration matters. The CUPL stated that the out-of-state attorneys could not open an office in New Jersey, even if the attorneys made it clear that they were limiting their practice to immigration law. However, the CUPL continued, this did not mean that the attorneys could not represent New Jersey residents before the Immigration and Naturalization Service. "In such cases, if the client sought out the attorney in the attorney's licensing state, or if the attorney is of counsel in a New Jersey firm, there is no regulation prohibiting such attorney from appearing before the I.N.S. in this State." CUPL Opinion 27, 133 N.J.L.J. 652 (1993). Finally, the CUPL held that "an out-of-state attorney's representation of a party in an arbitration proceeding conducted under the auspices of the AAA in New Jersey does not constitute the unauthorized practice of law." CUPL Opinion 28, 138 N.J.L.J. 1558 (1994). See, also, Ex Parte McCue, 211 Cal. 57, 66, 293 P. 47, 51 (1930), where the California Supreme Court held that the state laws governing the practice of law "are applicable to our

state courts only. The federal courts are governed entirely by federal enactment and their own rules as to admission and professional conduct."

Since respondent's representation of the Van Roys in IRS matters was permissible, even if he was not a California attorney, he did not violate RPC 5.5(a) and, therefore, we dismissed the entire Van Roy matter.

In summary, in the Strom matter, respondent (1) entered into an improper loan transaction with his client, Dr. Strom; (2) unilaterally changed the terms of the note, to the detriment of Dr. Strom; (3) never gave Dr. Strom a mortgage on the property securing the loan, as required by the note; (4) did not have his wife sign the note, even though she and respondent owned the property jointly; (5) made misrepresentations concerning his fees and services in his communications to Dr. Strom; (6) asserted a fraudulent counterclaim in Dr. Strom's suit for payment of the loan, namely, the purported $240,000 FMC agreement; and (7) made misrepresentations to the OAE concerning the FMC agreement. Respondent's actions violated RPC 1.8(a), RPC 3.1, RPC 3.3(a)(1), RPC 8.1(a) and RPC 8.4(c).

As to the appropriate sanction, we are convinced that respondent's pattern of deceit and deficiency of character warrants a lengthy suspension.[29] See In re Silberberg, 144 N.J. 215 (1996) (two-year suspension for "witnessing" and notarizing at a real estate closing the "signature" of a man the attorney knew to be deceased and providing ethics authorities with

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[29] As set forth above, there is a strong suspicion that respondent was involved in fraudulent tax schemes on behalf of his clients and himself. If there were clear and convincing evidence of such misconduct, respondent might well be facing disbarment.

two false written statements regarding the case; the sanction reflected the attorney's "pattern of deceit"); In re Weston, 118 N.J. 215 (1996) (two-year suspension for signing a deed and affidavit of title in the name of a client without authorization and misrepresenting to the purchaser's attorney that the documents were genuine); In re Kornreich, 149 N.J. 346 (1997) (three-year suspension where, after being involved in a minor motor vehicle accident, the attorney denied having been at the scene, lied to the police and the prosecutor, and implicated her babysitter as the driver of her automobile; she then attempted to dissuade the babysitter from returning to New Jersey to defend charges later filed against the babysitter); In re Lunn, 118 N.J. 163 (1990) (three-year suspension where the attorney submitted a false written statement allegedly signed by the attorney's wife in support of attorney's own claim, then lied about it under oath in a civil action); In re Kushner, 101 N.J. 397 (1986) (three-year suspension for attorney's false certification to the court in a civil action that his signatures on promissory notes were forgeries).

The special master recommended that respondent be disbarred because he was convinced that "nothing short of disbarment will adequately protect the public and preserve the public's confidence in the integrity and trustworthiness of this profession." While the special master cited several cases regarding the purpose of discipline and the conduct expected of attorneys, he did not cite any analogous disbarment case. The OAE, in turn, cited In re Edson, 108 N.J. 464 (1987). In Edson, the attorney was disbarred for advising two clients to manufacture evidence in the defense of their drunk-driving cases, permitting

one of the clients to offer false testimony at his trial, counseling and assisting a witness to testify falsely in a trial, giving false information to his expert witness for the purpose of having him testify under oath in reliance upon the false facts and giving false information to a municipal prosecutor. In determining that disbarment was warranted, the Court observed that there "could hardly be a plainer case of dishonesty touching the administration of justice and arising out of the practice of law." Id. at 473.

The OAE also analogized respondent's conduct to that of the attorney in In re Cardone, 157 N.J. 23 (1999), which led to a three-year suspension. Cardone entered into three business transactions with a client: a $72,000 loan, a $130,000 partnership venture and a $123,000 loan, knowing that, if he had disclosed the actual terms of the transaction, the client would not have agreed to them. The transactions were not fair and reasonable to the client, Cardone did not advise her to seek independent counsel and did not obtain her written consent to the transactions. After inducing his client to lend him the funds and signing an agreement that the debt was non-dischargeable, Cardone sought to discharge it in bankruptcy, although he later abandoned that position. Cardone also engaged in at least two instances of conduct involving dishonesty, fraud, deceit or misrepresentation and failed to maintain proper business and trust account records.

We regard respondent's misconduct as more analogous to that of the attorney in Cardone, than the attorney in Edson. Although we are deeply disturbed by respondent's propensity for dishonesty, we are not convinced that respondent's actions warrant

disbarment. The purpose of discipline is not the punishment of the offender, but the "protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). Disbarment "is reserved for the case in which the misconduct of an attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." In re Templeton, 99 N.J. 365, 376 (1985). Respondent's actions, while egregious, do not demonstrate that his ethics deficiencies are so "intractable and irremediable" that disbarment is warranted. Unquestionably, however, respondent's misconduct warrants a lengthy term of suspension.

Based on the foregoing, seven members of the Board determined to suspend respondent for three years and to caution him that any future ethics infractions may result in disbarment.

Two members voted to disbar respondent. Those members were of the opinion that respondent's actions showed such a profound lack of professional good character that they warranted the most severe sanction.

Prior to reinstatement to practice, respondent shall complete twelve hours of courses in professional responsibility offered by the Institute for Continuing Legal Education or other courses approved by the OAE and shall provide the OAE with proof of satisfactory completion of the courses.

We further unanimously determined to require 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

In the Matter of Gary S. Friedmann
Docket No. DRB 02-006

Argued: April 18, 2002

Decided: June 24, 2002

Disposition: Three-year suspension

Members	*Disbar*	*Three-year Suspension*	*Reprimand*	*Admonition*	*Disbar*	*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 7/23/02
Robyn M. Hill
Chief Counsel