SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket DRB No. 88-276

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| IN THE MATTER OF | : |
| FRANK J. GRIFFIN | : |
| AN ATTORNEY AT LAW | : |

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 17, 1989

Decided: October 11, 1989

James A. Waldron, Esq., appeared on behalf of the District I Ethics Committee.

Respondent did not appear.[1]

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

This matter is before the Board based upon a presentment filed by the District I Ethics Committee.

Following his graduation from law school, respondent was admitted to the New Jersey bar in November 1982. He was fifty-one years old at that time. After experiencing difficulty in obtaining

[1]Respondent's attorney was served with notice of the Board hearing by regular and certified mail and acknowledged receipt thereof. On May 17, 1989, the day of the hearing, Board counsel was contacted by another attorney. That attorney indicated that respondent had telephoned him five minutes earlier and had advised the attorney that he, respondent, was presently on an "alcoholic binge" and had forgotten about this matter. Respondent did not waive appearance and the attorney's request for an adjournment was denied.

employment, respondent opened his own office in Egg Harbor City, New Jersey. In March 1983, respondent met Patricia Kearney (grievant) at a tavern in Egg Harbor City. Grievant, an alcoholic, had been in various institutions on and off since 1979 in an attempt to cure her alcohol problem. At the time that she met respondent, grievant had a number of legal problems, including several disorderly person complaints then pending against her, together with potential litigation resulting from her inability to pay substantial medical bills. Grievant had limited assets: she had inherited a house in Absecon, New Jersey, and was employed on an occasional basis at a local restaurant.

During the next several days after their initial meeting, grievant and respondent discussed her legal problems. Eventually respondent moved into grievant's home and agreed to pay her $50 per week to rent a room. Their relationship grew to include sexual relations.

Respondent agreed to represent grievant on her disorderly persons complaints and credit problems. He requested an initial retainer of $300 in addition to his fee of $75 per hour. Thereafter, respondent negotiated with grievant's creditors and was able to reduce her total debt from $20,000 to approximately $4,600. Respondent also represented grievant in municipal court on the disorderly person charges filed against her.

In June 1983, respondent suggested to grievant that she obtain a mortgage on her house to satisfy her financial obligations. He further suggested that she borrow an additional amount for his own

use. On June 6, 1983, a secondary mortgage loan commitment was issued to grievant by Collective Federal Savings and Loan Association (Collective).

Thereafter, on June 17, 1983, both respondent and grievant signed a written agreement, prepared by respondent and notarized by a notary public (Exhibit C-11). Under the terms of the agreement, grievant was to apply for a $20,000 mortgage loan, utilizing her home as collateral therefor. Respondent was to co-sign the loan, accept primary responsibility for its payment, and obtain life insurance in the amount of the loan, with grievant as the beneficiary. The agreement further provided for respondent to forego any monies due him as fees by grievant. Finally, respondent was to receive three-quarters of the loan proceeds and grievant one-quarter.

The loan closing took place on the same day that the agreement was signed. Both grievant and respondent signed the note for $20,000 (Exhibit C-4). Grievant also signed a $20,000 mortgage (Exhibit C-5). A check representing the balance of the loan proceeds was given to grievant (Exhibit C-8). Grievant and respondent then went to another branch of Collective, cashed the loan check, and had two checks issued, one to grievant for $4,860 and the other to respondent for $14,580 (Exhibits C-9 and C-10).

During the period of cohabitation with respondent, grievant continued to suffer from her alcoholism and entered several rehabilitation programs. Sometime after the mortgage loan was obtained, grievant entered a clinic through arrangements made by

respondent. Respondent left grievant's residence sometime in late 1983.

Respondent made payments on the loan until June or July 1986. When he discontinued those payments, grievant was forced to take them over. Grievant retained an attorney, who wrote to respondent on August 4, 1986, requesting that respondent pay arrearages on the loan and also the rent owed to grievant (Exhibit C-13). Respondent ignored these requests.

Grievant continued the loan payments until late 1987 when she was no longer financially able to do so. When the loan fell into default, grievant was forced to sell her house in January 1988, in order to avoid the start of foreclosure proceedings.

Both respondent and grievant testified at the March 29, 1988 ethics hearing. Grievant, who was described by her subsequent attorney as an "untutored, unknowledgeable, unsophisticated young lady" (Exhibit C-13), was accompanied to the hearing by a social worker. The social worker advised that she had been grievant's caseworker for the past six months because of grievant's inability "to cope [with] problems with daily living" (T10).[2]

Grievant testified that her alcoholism had become progressively worse since 1979, when she was first institutionalized for the problem. She stated that, when she met respondent, they had drinks together and, later that night, respondent came to her house. He then

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[2]"T" refers to the transcript of the March 29, 1988 ethics hearing.

> [P]roceeded to come over every day until the loan money was taken out. And then he stayed six or seven months at my house. It started out he was supposed to pay me rent and he never paid me a dime. He said it look [sic] like I needed an income so he was going to stay and rent a room from me, which he never paid me a dime (T24).

Grievant testified further that she paid respondent $450 in legal fees in connection with her credit problems and the disorderly person complaints. Respondent never explained the loan agreement to her and never advised her to seek independent counsel (T32, 33, 42). She did not recall ever receiving a June 14, 1983 letter from respondent requesting that she reconsider her decision "not to consult another attorney regarding the loan...." (Exhibit R-2). Grievant explained the circumstances under which she signed the loan application on May 17, 1983 (Exhibit C-2):

> I remember I was drunk. I had been drinking for, you know, weeks and weeks, and [respondent] kept bringing booze in the house for me all the time, which my other witness - she is still on vacation, but she can witness that. Even when I was so sick I couldn't even get out of the house to get alcohol [respondent] kept bringing it in (T26).

Grievant did not specifically recall signing the mortgage commitment letter (Exhibit C-3), the note (Exhibit C-4), the mortgage (Exhibit C-5), or the agreement drafted by respondent (Exhibit C-11). She testified that "all I know is I signed a lot of papers and I don't even know what they were" (T27). Grievant testified further that she did not understand that respondent was to receive three-quarters of the loan proceeds (T32). She claimed that she only received approximately $2,800 from the loan (T30),

although the check endorsed by her reflects payment of $4,860 (Exhibit C-9). She denied having a romantic relationship with respondent, but admitted to having sex with him "because I was afraid he wouldn't pay the loan off" (T54). Grievant paid the balance of $18,000 due on the mortgage when she sold the house in 1988 (T85).

Respondent's testimony is at variance with grievant's. He indicated that he met grievant when he saw her collapse in front of a tavern in Egg Harbor City. He gave her his business card and requested the tavern owner to take her home (T94). Respondent claimed that grievant telephoned him the following day and invited him to dinner at her home (T95). At that time, they discussed her legal problems and respondent submitted a fee arrangement to grievant[3] (T95). Because grievant could not afford his legal services, she offered to rent respondent a room for $50 per week. Respondent claimed that he and grievant "became very friendly. We became very close" (T96). He stated that they discussed getting married (T101). Respondent was aware of grievant's alcoholism before the loan agreement was signed and explained that "she was in and out of a couple rehab programs and detoxes [sic] ... she had a continuing ongoing problem with her, it was an illness. She would be sober, and clear ... and then the alcoholism would come into play" (T97-98). Respondent contended that it was grievant who suggested the higher loan so he could expand his law practice

[3]The nature of the fee agreement was not revealed by respondent.

(T128); that he advised grievant several times that she should seek the advice of independent counsel because of the possibility of a conflict of interest situation in the loan transaction; and that he wrote her a letter dated June 14, 1983 (Exhibit R-2), requesting that she reconsider her decision not to consult with another attorney (T103, 104). He did not recall, however, how he transmitted the letter to grievant. He stated that he either mailed it to her or "left it on the dining room table" (T160). The letter was not provided to the committee until the March 28, 1989 hearing, although other documents had been previously submitted by respondent. Respondent testified that he went over "every sentence" of the loan agreement between him and grievant (T117). He also claimed that he paid some rent to grievant, although he "thought that the legal representation and the matters [he] was handling for her far outweighed fifty bucks a week in room rent" (T122). Respondent admitted that he was acting as grievant's attorney during the time the loan was made (T132, 133). Finally, respondent acknowledged that he had agreed to pay off the entire loan, but ceased making payments sometime in 1986 because of health problems related to diabetes (T102, 107).

The hearing panel concluded that respondent had violated the provisions of RPC 1.8 "by entering into an agreement with a client which was inherently unfair to the client, unreasonable in its terms, and without adequate disclosure made by the respondent and without providing the client a reasonable opportunity to obtain

independent counsel." The panel also concluded that respondent had violated RPC 1.14 in that he

> [k]new that the client had a severe impairment induced by alcohol dependency and that the client was only periodically lucid but nevertheless respondent moved into her home, commenced an intimate relationship with the client, took advantage of the client's mentally impaired state; induced the client to mortgage her home and to pay over 75% of the net proceeds thereof to the respondent for the purpose of helping respondent establish his law practice, purchase office furniture and equipment and to pay respondent's past due child support.

The Committee recommended that respondent be publicly disciplined.

## CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board is satisfied that the committee's findings of unethical conduct are fully supported by clear and convincing evidence.

The Board concludes that respondent violated DR 5-104(A)[4] when he entered into a business transaction with a client without full disclosure of its consequences and without insisting that the client seek the independent advice of counsel. This Board finds that respondent's testimony to the contrary was not persuasive. It is clear that the interests of respondent and grievant in the

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[4]Respondent's misconduct occurred prior to September 10, 1984, the effective date of the Rules of Professional Conduct. The Disciplinary Rules, therefore, apply.

loan transaction differed. Respondent was obviously motivated by personal financial gain, rather than the protection of grievant's interests. The record demonstrates that grievant relied upon and trusted respondent. She expected respondent, as her attorney, to exercise his professional judgment on her behalf. Moreover, their relationship went beyond the attorney-client relationship, as demonstrated by respondent's statement that they had discussed marriage. These factors, combined with the overwhelming evidence of grievant's rampant alcoholism, conclusively confirm not only grievant's reliance on respondent, but respondent's knowledge of the trust and reliance placed on him.

Finally, it is clear that respondent did not provide full disclosure to grievant as required by DR 5-104(A):

> An attorney in his relations with a client is bound to the highest degree of fidelity and good faith. The strongest influences of public policy require strict adherence to such a role of conduct. Since the relationship puts the attorney in a position to avail himself of the necessities of his client and to gain knowledge that can be used to the client's disadvantage, any transactions between attorney and client are presumptively invalid in law - a presumption that can be overcome by only the clearest and most convincing evidence showing full and complete disclosure of all facts known to the attorney and absolute independence of action on the part of the client. [Matter of Nichols, 95 N.J. 126, 131 (1984) (citations omitted).]

Respondent failed to show that he made the required disclosure to grievant, as required by DR 5-104(A). Grievant was in the throes of alcoholism when she signed the various loan documents. She did not understand that respondent was to receive three-

quarters of the loan proceeds. She testified that respondent never explained the loan agreement to her or advise her to seek independent counsel. It is also clear that grievant was unable to display meaningful independence of action. She was essentially unemployed and severely overcome by alcohol problems. Respondent embarked upon the relationship with grievant as her attorney and protector. He immediately moved into her house as a tenant and proceeded to handle her various legal affairs. He then gained grievant's complete trust and developed a sexual relation with her. The vague reference in the notarized "agreement" between respondent and grievant (Exhibit C-11) concerning her alleged understanding of a possible conflict does not in any way satisfy the full and complete disclosure requirement of the disciplinary rules. Regardless of respondent's letter of June 14, 1983, respondent should have either insisted that grievant retain independent counsel or refused to consummate the loan transaction. See In re Wolk, 82 N.J. 326, 334 (1980); In re Hurd, 69 N.J. 316, 329 (1976).

The record is clear that respondent took advantage of grievant. He knew of grievant's precarious financial situation and of her dependence on alcohol, yet forged ahead with his plans to obtain three-quarters of the loan proceeds for his own benefit. Although respondent agreed to pay off the entire loan, he was not financially stable. Moreover, he risked nothing in the event of a default, in contrast to grievant, who risked, and ultimately lost, her home. His actions were improper and adversely reflect on his fitness to practice law, contrary to DR 1-102(A)(6).

Given its finding that respondent's conduct was unethical, the Board must recommend the imposition of appropriate discipline. The purpose of discipline, however, is not to punish the attorney, but to protect the public from the attorney who does not meet the standards of responsibility required of every member of the profession. Matter of Templeton, 99 N.J. 365, 374 (1985). The quantum of discipline must accord with the seriousness of the misconduct in light of all relevant circumstances. In re Nigohosian, 88 N.J. 308, 315 (1982). While mitigating factors are relevant and may be considered, Matter of Robinovitz, 102 N.J. 57, 62 (1986), none has been presented to this Board.[5]

The discipline imposed in other cases where an attorney has improperly entered into business transactions, contrary to DR 5-104(A), has ranged from a public reprimand to disbarment. See Matter of Nichols, 95 N.J. 126 (1984) (attorney publicly reprimanded for, among other things, entanglement with a client in a business transaction without disclosure of possible conflicts); In re Brown, 88 N.J. 443 (1982) (three-year suspension of attorney for improperly obtaining loan from client, threatening criminal action in order to obtain improper advantage in a civil matter, taking jurat out of client's presence, and improperly altering document); In re Wolk, 82 N.J. 326 (1980) (attorney disbarred for business dealings with recently widowed client, who was both naive

[5]While there are some allusions to respondent's own drinking problems (T100), no such evidence was offered by respondent either in defense of his actions or as a mitigating circumstance.

and inexperienced in business, to his own benefit and without full and clear disclosure, and for attempt to defraud court in order to procure larger fee at the expense of his client, a paralyzed eight-year old); In re Hurd, 69 N.J. 316 (1976) (attorney suspended for three months for improperly arranging unconscionable business transaction between unsophisticated and elderly neighbor, who relied on respondent for advice, and attorney's sister).

Respondent's conduct in the case at hand falls somewhere between the egregious actions in Brown and Wolk and the less serious misconduct in Nichols and Hurd. The fact that respondent took advantage of an individual whose judgment was impaired by alcoholism is particularly disturbing to the Board. Moreover, unlike that of the attorney in Nichols, respondent's misconduct resulted in a devastating loss to his client.

The Court has stated that it "will no more tolerate the hoodwinking of helpless clients out of funds in a business venture that is essentially for the benefit of the lawyer than it will outright misappropriation of trust funds." In re Wolk, supra, at 335. However, in the absence of outright misrepresentation by respondent or proof that he anticipated or planned the devastating impact of his actions on his client, the Board cannot recommend either of the severe sanctions imposed by the Court in Wolk or Brown. The record clearly and convincingly demonstrates that respondent, in participating in and benefitting from a loan agreement with a helpless client, without insisting on independent counsel for the client or providing full disclosure to the client,

violated DR 5-104(A) and DR 1-102(A)(6). Therefore, the Board unanimously recommends that respondent be suspended from the practice of law for a period of one year. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for appropriate administrative costs.

DATED: 10/11/85

Raymond R. Trombadore
Chair
Disciplinary Review Board