SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-105

IN THE MATTER OF :
NORMAN ROBBINS, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: January 24, 1990

Decided: May 25, 1990

Gary M. Schwartz appeared on behalf of the District VIII Ethics Committee.

Richard A. Norris appeared on behalf of respondent, who was also present.

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

This matter is before the Board based upon a recommendation for a private reprimand, which the Board determined to hear as a presentment.

Respondent has been a member of the New Jersey bar since 1960. On November 22, 1985, he entered into a written contract with the Church of Christ at East Brunswick ("the Church") to purchase a parcel of land at a price of $127,000. The transaction was contingent, among other things, upon respondent's ability to obtain a minor subdivision approval on the land. In the event that closing of title did not take place by July 1, 1986, the Church could cancel the contract (Exhibit J-1 in evidence).

According to respondent's testimony, he diligently processed the minor subdivision application. Events beyond his control, however, caused a delay in the approval until September 10, 1986. On October 7, 1986, the planning board set forth the approval in a formal resolution.

Notwithstanding the clause that provided for the cancellation of the agreement if closing of title did not occur before July 1, 1986, the Church did not exercise its right to cancel the contract. Respondent testified that, throughout the application process, he kept the Church's attorney apprised of its developments and unforeseen delays.

Pursuant to statute, after a minor subdivision is approved, the applicant must file a plat or record a deed, duly signed by the chair and secretary of the planning board, within 190 days from the date of the resolution. According to respondent's calculations, the 190 days were to expire on or about April 15, 1987.

After the subdivision was approved, the Church invoked the relevant provision of the contract that called for a closing prior to July 1, 1986, and informed respondent that the transaction was deemed cancelled. Respondent then filed a suit for specific performance against the Church. That suit was settled in February 1987, when respondent agreed to pay an additional $30,000 sum for the land.

Shortly thereafter, respondent prepared and submitted to the planning board a deed describing the approved subdivision, which deed had to be signed by the chair and secretary prior to being

recorded at the county clerk's office. The planning board clerk, however, would not accept the deed unless it was signed by the grantor and the grantee -- both the Church in this case.

Respondent contended that there is no statutory requirement that the deed be signed prior to its submission for the planning board's signature. Respondent was aware that time was of the essence, and that the planning board secretary would be unavailable for about one month. In the face of the clerk's refusal to accept the offered deed, respondent wrote in the "signatures" of the two Church trustees as grantors, and the "signature" of one of those trustees as secretary, and further notarized all "signatures." The deed was dated March 2, 1987 (Exhibit J-3 in evidence).

Respondent explained that he signed and notarized the deed for the sole purpose of accomplishing the memorialization of the subdivision. He claimed that it was his intent to "white-out" the illegitimate signatures and to obtain the trustees' signatures before recording the deed with the county clerk. He also contended that he inserted the signatures with the consent of the Church's attorney, whom he telephoned on March 2, 1987, prior to submitting the deed to the planning board. According to respondent, the attorney voiced no objection to what respondent was about to do (T64, 65, 67).[1] At no time did respondent disclose to the planning board that the signatures on the deed were not legitimate (T71).

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[1] T denotes the transcript of district ethics committee hearing on May 6, 1988.

The attorney's recollection of the events differs from respondent's. He testified that on March 3, 1987, after respondent had submitted the deed to the planning board, respondent called him to announce that he, respondent, had signed the names of the trustees on the deed, but that he intended to "white-out" the fictitious signatures and obtain the correct signatures before recording the deed (T32, 34, 43).

One of the trustees, Michael T. Lovelace, also testified at the district ethics committee hearing. He claimed that, during a planning board meeting "either in February or March 1987," his attorney "whispered" to him that "something had to be whited out" on the deed in the planning board's possession, but that he did not quite understand what the attorney meant. The following day, he dispatched a messenger to the planning board's office to obtain the last required signature on the deed. Although the messenger was unable to retrieve the deed, he glanced at the signatures thereon. The messenger reported to Mr. Lovelace that the deed was "signed and ready to go." When Mr. Lovelace asked the messenger who had signed the deed, the messenger replied "you and Mr. Sweeny [the other trustee]." Mr. Lovelace then instructed the planning board not to release the deed, and asked the Church's attorney to prepare a second deed with proper signatures. The attorney did so and submitted it to the planning board (Exhibit J-4 in evidence).

Ultimately, the transaction was satisfactorily completed. The two trustees then filed an ethics grievance against respondent.

At the conclusion of the ethics hearing, the panel found that respondent had made a false statement of a material fact to the planning board, in violation of R.P.C. 4.1(a)(1), and misrepresented a material fact, in violation of R.P.C. 8.4(c). The panel recommended that respondent receive a private reprimand.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the district ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. The Board does not agree, however, with the committee's recommendation that respondent be privately reprimanded.

As the record reveals, respondent improperly signed a deed purporting to bear the signatures of the parties in interest and, furthermore, completed the acknowledgment and executed the jurat thereon. To his credit, respondent did not deny the impropriety of his conduct; he sought to mitigate it, however, by asserting that he "signed" the deed with the assent of the Church's attorney.

To be sure, the record does not establish to a clear and convincing standard that respondent's acts were undertaken without the attorney's acquiescence. Accordingly, the Board forbears from considering the propriety of an attorney's signing a deed in the parties' stead. Respondent's subsequent conduct, however, in

signing the acknowledgment in his capacity as attorney at law of New Jersey constituted an outright misrepresentation, in violation of R.P.C. 8.4(c).[2]

Furthermore, he did not disclose to the planning board that the trustees' signatures were not genuine and that the jurat had been improperly taken. Respondent argued that the planning board would not be reviewing the deed for the authenticity of the signatures, but for the accuracy of the subdivision terms. Respondent's argument overlooks the fact that the planning board assumed that the deed submitted for its signature had been properly executed and duly notarized.

This case is similar to In re Conti, 75 N.J. 114 (1977), where the attorney received a severe public reprimand for directing his secretary to sign the grantors' names, as well as for signing his name as a witness and completing the acknowledgment. In his brief to the Board, respondent claimed that Conti is distinguishable from this matter because, contrary to Conti, respondent had specific authorization to sign the grantors' names. Furthermore, unlike the attorney in Conti, respondent intended to "white out" the "signatures" prior to recording the deed. The Board disagrees with respondent's rationale. In the first instance, the record is not entirely clear that respondent had the consent of the Church's

[2] The Board does not find that respondent violated R.P.C. 4.1(a)(1) inasmuch as that rule contemplates unethical conduct during the representation of a client. Here, respondent was not acting as a party's attorney, but in his own behalf.

attorney. Secondly, the fact still remains that respondent executed an improper jurat, for which there can be no excuse.

In In re Coughlin, 91 N.J. 374 (1982), an attorney was publicly reprimanded for the improper execution of the jurat on an affidavit of consideration and the execution of the acknowledgment on a deed outside the presence of the grantor. As stated in Coughlin, "[a] common requirement for the proper execution of a jurat or the taking of an acknowledgment is that the affiant or acknowledging party swear under oath in person in the presence of the attorney." Id. at 377.

> "...[T]here is no way in the law whereby an officer authorized to take an oath may certify that he had done such an act when in fact he has not, and in the nature of things there can be no such proceeding as the absent administration of an oath or the administration of an absent-oath. The thing is perfectly incongruous and impossible. The administration of an oath means something or nothing. It cannot be distorted; there is no room for construction, and for a violation of the law in this regard there can be no excuse."
> [In re Breidt and Lubetkin, 84 N.J. Eq. 222, 226 (Ch. Div. 1915).]

The Board is aware that the deed carrying the false signatures was not recorded in the county clerk's office. That respondent intended to erase the phony signatures prior to recording the deed in no way excuses the wrong, however. By improperly affixing his jurat, respondent committed an inexcusable act. His conduct is made all the more unacceptable because it was intended to advance his own interest in the transaction. The foregoing, coupled with

respondent's prior ethics history,[3] compels the Board to recommend unanimously that he be publicly reprimanded. Two members did not participate.

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

Dated: 5/25/10 By: _____
Raymond R. Trombadore
Chair
Disciplinary Review Board

[3] In 1971, respondent was suspended for six months for (1) creating a conflict of interest situation when he represented a client before the Woodbridge municipal court, while acting as prosecutor and (2) thwarting the prosecution of criminal charges by arranging for the payment of money conditioned on the dismissal of charges. In re Friedland, 59 N.J. 209 (1971).