

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 88-224

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IN THE MATTER OF  
STEVEN J. HALPERN  
AN ATTORNEY-AT-LAW

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: May 17, 1989

Decided: July 27, 1989

Joel N. Kreizman, Esq., appeared on behalf of the District IX Ethics Committee.

Respondent appeared pro se.

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 IX (Monmouth County) Ethics Committee. Respondent was admitted to the New York bar in 1963 and to the New Jersey bar in 1983. In May 1986, respondent represented William Gunderson in the purchase of real estate from Eastern Planned Communities (EPC) at Kings Landing, New Jersey. Under the terms and conditions of the contract, within one week of the closing of title, respondent was obliged to remit \$110,482.90 in proceeds due to the seller directly to its lender, City Federal, along with a partial mortgage release.

This obligation notwithstanding, respondent did not forward the proceeds to City Federal until June 3, 1987, 13 months after the closing. EPC discovered the outstanding debt early in 1987 when it realized City Federal was charging it interest that had been accruing on the loan. Thereafter, although counsel for EPC corresponded with respondent on more than one occasion requesting payment, his letters were ignored. During telephone conversations with counsel, respondent offered personal reasons for the delay.

At the hearing before the District IX Ethics Committee, respondent pointed to a dispute as to the date the closing had actually taken place, in an effort to explain the non-payment of interest on the loan. Respondent argued that the disputed date led to uncertainty regarding the exact amount of interest owed.

With respect to his failure to remit the undisputed principal amount within a reasonable time after the closing, respondent explained that his mother had been seriously ill and hospitalized in Florida. He had been constantly traveling between New Jersey and Florida during May and June 1986. Respondent was unable to provide an explanation for his subsequent delay in repaying the mortgage. He admitted to the hearing panel that he "was not correct in this matter" and was "derelict."

Respondent failed to remit the required payment until soon after a May 29, 1987 demand audit by the Office of Attorney Ethics. The audit report described respondent's books and records as

"woefully deficient" and in violation of R 1:21-6. See Exhibit P-10 introduced into evidence at the district committee hearing on April 11, 1989. The deficiency was such that the auditors were unable fully to investigate respondent's trust account. Nevertheless, it was determined that, at all times, respondent had sufficient funds to pay off the mortgage in question. Accordingly, no evidence was adduced to indicate misappropriation of the mortgage funds.

At the conclusion of the hearing, the panel determined that respondent had exhibited gross negligence in handling this matter, in violation of R.P.C. 1.1(a), and poor recordkeeping, in violation of R.P.C. 1.15(d).

#### CONCLUSION AND RECOMMENDATION

Upon review of the full record, the Board is satisfied that the conclusions of the ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

Respondent was grossly negligent in failing to remit the real estate sale proceeds in a timely manner to City Federal in order to satisfy the existing mortgage on the purchased property. Once retained, respondent owed his client a duty to pursue his interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1,

5 (1982). Respondent's conduct constituted gross negligence and lack of due diligence, in violation of R.P.C. 1.1(a) and R.P.C. 1.3.

Respondent's ethics infractions were not confined to a breach of the duty of due diligence owed to his client. Indeed, this duty may also extend to the bank providing the purchase funds in a real estate transaction to fulfill its expectation that its mortgage will have a priority. Theoretically, it is the responsibility of the seller's attorney to make certain that all the seller's financial obligations, including existing mortgages, are promptly discharged following the closing of title. As a matter of practice, however, it is the buyer's attorney who segregates from the seller's proceeds sufficient funds to satisfy all outstanding judgments, loans, mortgages, liens, and encumbrances affecting the property in order to obtain clear title for the buyer and ensure that the buyer's mortgagee has a first lien. The prompt payment of all existing liens also benefits the seller, who expects his personal responsibility and liability under the existing mortgage(s) to be extinguished. An attorney's professional obligation may reach parties who have reason to rely on him, even though they are not clients. In re Katz, 90 N.J. 272, 284 (1982), citing In re Lambert, 79 N.J. 74, 77 (1979).

In addition to respondent's gross negligence in failing to remit the sale proceeds to City Federal in a timely fashion, a demand audit conducted by the Office of Attorney Ethics revealed

that respondent's record and bookkeeping practices were deficient, in violation of R. 1:21-6 and R.P.C. 1:15(d). The audit determined, however, that there was no evidence of misappropriation of client funds.


Given this clear and convincing evidence of respondent's unethical conduct, the appropriate quantum of discipline must be determined. The purpose of discipline is not the punishment of the offender, but rather 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). "The severity of the discipline must comport with the seriousness of the ethical infraction in light of all the relevant circumstances." In re Nigohosian, 86 N.J. 308, 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

In mitigation, the Board considered that respondent's mother was seriously ill at the time of the closing and for approximately one month thereafter. His mother's illness necessitated respondent's frequent travel between Florida and New Jersey for several weeks. While these personal circumstances may mitigate respondent's non-payment of the proceeds for May and June 1986, they do not explain or justify the subsequent delay.

Respondent's disregard of his ethical responsibilities to both his client and his profession cannot be countenanced. The Board, therefore, unanimously recommends that the respondent be publicly reprimanded.

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

Dated: 7/27/89

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board