SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-135
District Docket No. VI-2012-0039E

IN THE MATTER OF	:
KEITH O.D. MOSES	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 18, 2015

Decided: December 17, 2015

Jay B. Zacker appeared on behalf of the District VI Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a three- or a six-month suspension filed by the District VI Ethics Committee (DEC). The complaint charged respondent with violations of RPC 1.2(d) (counseling or assisting a client in illegal, criminal, or fraudulent conduct), RPC 1.8(a) (conflict of interest, improper business transaction with a client), RPC 1.4(b) and (c) (failure to communicate with a client and to

explain a matter to the extent reasonably necessary for the client to make informed decisions about the representation), and "RPC 1.1(b) and/or RPC 8.4(a) and (c)," described as "a pattern of conduct involving neglect, dishonesty, fraud, deceit or misrepresentation." We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. In 2002, he received an admonition for failure to cooperate with an ethics investigation into two grievances against him. In the Matter of Keith O.D. Moses, DRB 02-248 (October 23, 2002). On November 3, 2011, respondent received a reprimand for lack of diligence, failure to communicate with the client, and unilaterally deciding not to pursue the client's claim, without first discussing it with the client. In re Moses, 208 N.J. 361 (2011). Effective June 29, 2012, respondent was temporarily suspended for failure to pay costs assessed in the disciplinary proceedings that led to his 2011 reprimand. In re Moses, 210 N.J. 481 (2012). He was reinstated on July 19, 2012. In re Moses, 210 N.J. 614 (2012). On April 26, 2013, respondent received a reprimand for negligent misappropriation, recordkeeping violations, failure to cooperate with the Office of Attorney Ethics (OAE), failure to appear for one demand audit and failure to appear on time for another, and failure to provide documentation establishing that he had corrected his

recordkeeping improprieties, as had been directed by the OAE. In re Moses, 213 N.J. 497 (2013). Effective February 7, 2014, respondent was suspended for three months for knowingly disobeying the rules of a tribunal and conduct prejudicial to the administration of justice. In re Moses, 216 N.J. 432 (2014). Respondent remains suspended to date.

Marie Pierre, the grievant, retained respondent to represent her in an estate and a tenancy matter. In April 1998, Pierre's boyfriend, Robert Finkel, died when she was six months pregnant with their child. Finkel left his estate to the unborn child, via a handwritten will. After the birth of her daughter, Pierre, in her capacity as administratrix of Finkel's estate, retained respondent to probate Finkel's will and to file an eviction complaint.

At the time of Finkel's death in Bergen County, he owned a co-op apartment in Brooklyn, New York, the only estate asset pertinent to this ethics matter. Pierre asked respondent to pursue the removal of the delinquent tenants who occupied the Brooklyn apartment at the time of Finkel's death. Respondent accomplished that task over the course of several months.

According to Pierre, respondent was supposed to look for a replacement tenant. She asserted that, after about six months, with the apartment standing vacant, respondent told her that he

had found a tenant. Pierre testified that she took no further part in the tenancy matter and did not question respondent about the new tenant, the terms of the lease, or how the rent would be collected and apportioned. Over the next twelve years, Pierre testified, she never asked respondent about the tenancy because all of that was "his job." She further never visited the apartment over that period, claiming that "it was too painful" for her to do so.

When he died, Finkel's monthly mortgage payment ($500) and monthly co-op fee ($600) totaled about $1,100 per month. Pierre understood that, going forward, respondent would pay those monthly expenses from the rent he collected. That vague arrangement with respondent was the extent of Pierre's involvement in the tenancy matter. She never opened a bank account for the administration of the estate and, apparently, never tracked any aspect of the co-op finances.

In 2012, Pierre learned that there were problems with her apartment. Norman Zuckerman, a fellow co-op owner, told Pierre that he had attended a co-op meeting at which her unit was discussed. She was "in trouble," because the co-op fees had not been paid since 2010.

Pierre initially claimed that, prior to April 2012, she had been unaware of any arrearages, because both the co-op

association and the lender, CitiMortgage, had sent correspondence to her at an address in Jersey City that she had left some ten years earlier. Once Pierre provided those entities with her current address, in April 2012, she received their notices. There is no indication in the record that, at any time during the ten-year period in question, approximately 2002 to 2012, Pierre had ever informed the co-op association or CitiMortgage that she had moved.

In August 2012, Pierre drove from her home in Chester, New Jersey, to meet with respondent at his office in Jersey City because she had been worried about the apartment and had not been able to reach respondent by telephone. According to Pierre, it was during that meeting that respondent told her that he had been living in the Brooklyn apartment for all of those years and had been paying the mortgage and co-op fees from his own funds, until sometime in 2010, when he experienced personal financial difficulties. Ultimately, the co-op association locked him out of the building.

According to Pierre, she also learned that, as of July 2012, CitiMortgage arrearages amounted to $13,469. As of the DEC hearing, she had not yet paid CitiMortgage, but had retained an attorney to handle the mortgage matter for her. Pierre had paid the co-op association arrearages, in the amount of $12,766.

On cross-examination, respondent sought Pierre's admission that she had knowingly rented the apartment to him, based on an oral agreement between them, negotiated when the apartment was still vacant from the eviction of Finkel's tenants. Pierre, however, was unwavering in her denials that: respondent had asked her if he and his wife could move into the apartment; Pierre had given respondent and his wife permission to live in the apartment; in response to personal financial difficulties in 2005, 2008, and 2009, he told her that he would use funds from his wife to cure delinquencies; and, in 2011, Pierre had participated in a Brooklyn court proceeding regarding the co-op matter.

Although Pierre initially also denied having communicated with respondent over the years, she eventually conceded that she had met with respondent about six times between 1998 and 2012 and that, during that period, they discussed mortgage and co-op payments. Pierre admitted that she never requested to know the identity of the tenant or to sign the lease.

Pierre also conceded that she had an obligation to make sure that she received mail from CitiMortgage and the co-op association and that respondent had contacted her whenever he received notices about delinquencies. Respondent showed Pierre a January 28, 2009 letter to the "Loss Mitigation Department" at

CitiMortgage, which she had signed. Only then did Pierre recall authorizing him to "negotiate and communicate" with CitiMortgage, on her behalf, regarding a 2009 mortgage delinquency and for a subsequent May 2012 delinquency. In the end, Pierre admitted having spoken with respondent "almost every other month" about the apartment, for all of the years in question.

With a few exceptions, respondent's recollection of events was in marked contrast to Pierre's version. Respondent testified that Pierre first approached him in 1996 or 1997 to handle Finkel's estate. According to respondent, at about the time that he had obtained an order evicting the tenants from the co-op apartment, his own Brooklyn home was in foreclosure. After the co-op apartment remained vacant for several months, he told Pierre that he wished to live there. Pierre agreed, on the condition that he pay the monthly mortgage and co-op fees. Respondent and Pierre never discussed anyone but respondent leasing the apartment. Thereafter, respondent testified, he would regularly pay the monthly co-op fees and mortgage. On those occasions when there was a deficit or default, respondent notified Pierre and then paid those arrearages.

Respondent asserted that, although he approached the co-op association for purposes of transferring Finkel's co-op

ownership to either Pierre or her daughter, Shannon, the association would not permit a transfer to Shannon, because she was a minor. Pierre did not want the co-op in her name, because the mortgage obligation would have affected her creditworthiness. Respondent claimed that the inability to transfer the property became a "sticking point" with the association for years, and that he and Pierre agreed to wait until Shannon was eighteen years of age to transfer ownership to her.

For many years, the co-op association did not question respondent's tenancy. At some point between 2007 and 2009, however, the association was reconstituted. The majority of the prior members had resided in another building. When reorganized, the association comprised building residents, many of whom wanted to control who resided in the building. Respondent's tenancy became problematic, because the association had not selected him as a tenant.

The new association would not deal directly with respondent. Rather, it sent notices to Pierre, who would then call respondent about them. When Pierre told respondent that the association had started charging her an additional $300 monthly fee for respondent to remain in the apartment, he told Pierre that he would try to work it out, but the association did not

cooperate. Pierre never paid the extra fees, which were billed directly to her. As a result, respondent became "virtually an illegal tenant" and, in 2011, the co-op association filed an eviction action.

According to respondent, he never received notice of the eviction action, and a default judgment was entered against him. In March or April 2011, he was evicted. Pierre and the estate, too, defaulted in that action, never having been served with the complaint.

In July 2012, respondent and Pierre filed a "Request For Judicial Intervention" in King's County, New York, seeking an injunction to prevent the sale of the apartment and to restore Pierre's possession of the property. According to Pierre, the co-op association was listing the unit at a price substantially below its estimated value due to damages to the unit caused by respondent's unfinished renovations, which she had not authorized. She estimated those damages at between $35,000 and $45,000.

Respondent testified that he had not undertaken renovations. Rather, at the time of his eviction from the unit, he had been in the midst of repairing the bathroom, which had sustained some damage from a leak in the building roof. Specifically, he had removed old water-damaged tiles and

purchased replacement tiles. However, he had not yet installed them by the time he was evicted and locked out of the unit.

Respondent admitted that he had entered into an improper business transaction with Pierre by his oral lease arrangement with her, without complying with the requirements of RPC 1.8(a). He maintained, however, that at the time he entered into that oral agreement, he was not aware that his conduct was unethical.

Respondent testified that he had always kept Pierre informed about the status of the mortgage and co-op fee payments. Respondent provided no writings to evidence his communications with Pierre, stating that their communications were oral in nature. He was adamant, however, that Pierre "had copies . . . of anything that had to be submitted to her" and "throughout this period of 13 years or more, she has been totally cognizant of every single thing that has been going on between myself and the co-op association and myself and the mortgage company."

Respondent further insisted that he kept Pierre involved in every significant aspect of the matters for which he had been retained, including the co-op association's position on his tenancy. Here, he noted that he had never hidden his tenancy from either Pierre or the association and, further, that the association was willing to accept this tenancy on the condition

of payment of an additional monthly fee for the owner sublet. Thus, he maintained that he had never engaged in any neglect or dishonesty or deceit in respect of his tenancy.

The remaining charge alleged gross neglect, which respondent denied. The estate matter had been completed, with estate taxes paid and a final accounting completed, before he even entered into the oral lease agreement with Pierre. The only remaining estate task was the transfer to Shannon, which Pierre had agreed could not occur until the child reached eighteen years of age.

Respondent testified that he regretted entering into the lease transaction with Pierre and was remorseful for the harm that he had caused. He felt responsible for Pierre's losses and expressed an intent to repay her when he was financially able to do so.

The DEC found that Pierre knew that respondent was the tenant in the co-op apartment, but that respondent had entered into an improper business transaction with her. Specifically, respondent failed to reduce the oral lease agreement with Pierre to writing; failed to advise Pierre of the advisability of consulting an attorney about the transaction; and failed to obtain her informed consent to the terms of the transaction and his role in it, a violation of RPC 1.8(a)(2) and (3).

The DEC further found that, because respondent had undertaken "substantial" renovations to the bathroom, but failed to complete them, he had shirked his duty, as attorney in charge of tenant issues, to handle that tenant issue for Pierre, a violation of RPC 1.1(b).

The DEC found that respondent had engaged in a pattern of neglect by causing the foreclosure, the problems with the co-op association, and the problems with CitiMortgage and Pierre, in violation of RPC 1.1(b).

Although the DEC found that respondent had violated RPC 8.4 (c), it did not specify the conduct to which this finding applied.

In respect of the charge that respondent assisted Pierre in conduct that he knew was illegal, criminal, or fraudulent, the DEC concluded that, although respondent may have broken co-op association rules by his tenancy, those actions did not rise to the level of fraud, criminal conduct, or illegality. The DEC, thus, dismissed the RPC 1.2(d) charge.

The DEC also dismissed the RPC 1.4(b) charge, because Pierre admittedly communicated with respondent and met with him on at least six occasions over the course of the representation. Although the DEC found that respondent's failure to inform Pierre about the conflict had rendered her unable to make an

informed decision about the representation, it declined to find a violation of RPC 1.4(c).

The DEC dismissed the RPC 8.4(a) charge, finding that respondent's renovation of the bathroom, even without Pierre's consent, did not violate RPC 1.1 or RPC 8.4.

The DEC recommended a three- or six-month suspension for respondent's violations of RPC 1.8(a), RPC 1.1(b), and RPC 8.4(c).

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

Respondent clearly failed to comply with the requirements of RPC 1.8(a), which prohibits an attorney from entering into a business transaction with his client, unless: (1) the transaction and the terms are fair and reasonable and are fully disclosed and transmitted to the client in an understandable manner; (2) the client is advised in writing of the desirability of seeking independent counsel and is given the opportunity to do so; and (3) the client gives his informed written consent to the essential terms of the transaction and the lawyer's role in it, including representation.

Respondent admittedly took none of the precautions that the rules required of him. He did not set forth the terms of the

transaction in a writing. He failed to advise Pierre, in writing, that she should consult an independent attorney about the deal. Finally, he never sought Pierre's written, informed consent to the transaction and his role in it. Respondent, thus, violated RPC 1.8(a).

The remaining charges, however, should be dismissed. The DEC correctly dismissed the RPC 1.2(d) charge, alleging that respondent had assisted his client in illegal, criminal or fraudulent conduct. There is no evidence that respondent or Pierre engaged in any such conduct. Although respondent's tenancy may have run afoul of co-op rules there is no evidence establishing that respondent counseled or assisted Pierre to hide his tenancy from the co-op board. Rather the evidence establishes that the co-op board was well aware of respondent's tenancy, but simply did not approve of it. We, thus, dismiss the RPC 1.2(d) charge for lack of clear and convincing evidence.

The DEC also correctly dismissed the RPC 1.4(b) and (c) charges. The evidence demonstrated, and the DEC specifically found, that respondent had communicated with Pierre throughout his occupancy of the co-op apartment, which spanned more than a decade. Moreover, Pierre admitted that she had telephoned him almost every other month to discuss the ongoing rental situation. She also met with respondent on at least six

occasions and knew about the delinquencies in the mortgage and co-op fee payments, because he orally informed her about them. We dismiss both the RPC 1.4(b) and (c) charges for lack of clear and convincing evidence.

We cannot agree with the DEC's finding that respondent was guilty of a violation of RPC 1.1(b) (pattern of neglect) by virtue of his failure to pay rent and co-op fees, causing the foreclosure, and his "subsequent dealings with the co-op board, Citibank, and Ms. Pierre." First, we note that a pattern of neglect consists of no less than three instances of neglect in three separate client matters. In re Rohan, 184 N.J. 287 (205). Here, respondent acted as counsel for Pierre only in one matter – that is, the estate matter. As noted earlier, respondent was not charged with misconduct in the handling of Pierre's fiancé's estate, which he had concluded, apparently to everyone's satisfaction, even before he took up tenancy in the co-op.

Moreover, respondent's failure to pay the mortgage payments and co-op fees for a unit that he occupied as a tenant does not rise to the level of an ethics infraction. Indeed, respondent may be civilly liable to Pierre for whatever damages she may have suffered by respondent's tenancy failures, but it cannot be

said that his conduct violated any Rule of Professional Conduct in this regard.

For these reasons, we dismiss the RPC 1.1(b) charge.

Finally, there was simply no evidence or testimony adduced during the hearing that could sustain a finding that respondent either induced another to violate the rules (RPC 8.4(a)), or that he had engaged in dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). As noted earlier, the DEC found, and we agree, that respondent had informed Pierre about his tenancy and of any delinquencies in mortgage and co-op fees, as well as the co-op association's objection to respondent's tenancy. We, therefore, dismiss those charges as inapplicable.

Respondent, thus, is guilty of a sole violation of RPC 1.8(a).

When an attorney enters into a loan or other business transaction with a client, without observing the safeguards of RPC 1.8(a), the discipline has ranged from an admonition to a short suspension, depending on the existence of other factors, such as additional ethics violations, significant harm to the client, or the attorney's prior discipline. See, e.g., In the Matter of David M. Beckerman, DRB 14-118 (July 22, 2014) (admonition for attorney who, during the course of the attorney's representation of a financially-strapped client in a

matrimonial matter, lent the client $16,000, in monthly increments of $1,000, to enable him to comply with the terms of a pendente lite order for spousal support; further, to secure repayment for the loan, the attorney obtained a note and mortgage from the client on his share of the marital home; the mortgage was invalid; the attorney also paid for the replacement of a broken furnace in the client's marital home; by failing to advise the client to consult with independent counsel, failing to provide the client with written disclosure of the terms of the transactions, and failing to obtain his informed written consent to the transactions and to the attorney's role in them, he violated RPC 1.8(a); by providing financial assistance to the client, he violated RPC 1.8(e)); In the Matter of John W. Hargrave, DRB 12-227 (October 25, 2012) (admonition for attorney who obtained from his clients a promissory note in his favor, in the amount of $137,000, representing the amount of legal fees owed to him, and secured the payment by a mortgage on the clients' house; the attorney did not advise his clients to consult with independent counsel, before they signed the promissory note and mortgage in his favor); In the Matter of Damon Anthony Vespi, DRB 12-214 (October 2, 2012) (admonition for attorney who secured payment of his $30,000 legal fee by obtaining from the client a promissory note for that amount, an

assignment of payments owed to the client under certain contracts due, and a personal guaranty; the attorney failed to inform his client, in writing, of the advisability of obtaining the legal advice of independent counsel regarding the transaction and to obtain the client's informed consent, in writing, to the terms of the transaction and to the attorney' s role in the transaction; violation of RPC 1.8(a); in mitigation, we took into account that no ethics infractions had been sustained against the attorney since his 1998 admission to the bar); In re Futterweit, 217 N.J. 362 (2014) (reprimand for attorney who agreed to share in the profits of his client's business, in lieu of legal fees, without first advising the client, in writing, of the desirability of seeking the advice of independent counsel and obtaining the client's written consent to the transaction; violation of RPC 1.8(a); the attorney also violated RPC 1.5(b) by failing to provide the client with a writing setting forth the basis or rate of his fee; in aggravation, we noted that the attorney had given inconsistent statements to the district ethics committee, that he had received an admonition for failure to communicate with a client, and that he had neither acknowledged any wrongdoing nor shown remorse for his conduct); In re Botcheos, 217 N.J. 147 (2014) (reprimand imposed on attorney whose client had lent him

$425,000 and $750,000, respectively, for the purchase of two properties, without first advising the client, in writing, of the desirability of seeking the advice of independent counsel and obtaining the client's written consent to the transactions, the terms of which, the parties stipulated, were fair and reasonable to the client; violation of RPC 1.8(a); the attorney had prepared mortgages, but failed to record them, and defaulted on one of them, resulting in a foreclosure action against him; a reprimand was imposed because the attorney had exposed his client to a $1,175,000 risk of loss by failing to record the mortgages and because the client did not get the benefit of his bargain in respect of the property that went into foreclosure); In re Monzo, 216 N.J. 331 (2013) (reprimand for attorney who purchased a parcel of unimproved real estate from a client whom he had represented in various personal and business matters; the attorney and the client also entered into a construction agreement whereby the client's construction company would perform preliminary work on the site where the attorney intended to build his house; ultimately, disputes arising out of these transactions led to "acrimonious, time-consuming and expensive" litigation between the attorney and the client; apparently the client was made whole by way of a settlement agreement with the attorney; no prior discipline); In re Cipriano, 187 N.J. 196

(2008) (motion for discipline by consent; reprimand for attorney who borrowed $735,000 from a client without regard to the requirements of RPC 1.8(a); he also negligently invaded client funds ($49,000) as a result of poor recordkeeping practices; two prior reprimands (one included a violation of the conflict of interest rules)); and In re Moeller, 201 N.J. 11 (2009) (three-month suspension for attorney who borrowed $3,000 from a client without observing the safeguards of RPC 1.8(a), did not memorialize the basis or rate of his fee, and did not adequately communicate with the client; aggravating factors were the attorney's failure to take reasonable steps to protect his client when he withdrew from the matter and his disciplinary record (a one-year suspension and a reprimand)).

Here, respondent's misconduct is similar to Monzo and no more serious than Cipriano, both reprimand matters. Like respondent, the attorney in Monzo became involved in a real estate transaction with a client whom he had represented in other capacities. Both Monzo's and respondent's business transactions ended in acrimony. Both representations resulted in harm to the client. Respondent's misconduct is certainly no more serious than presented in Cipriano, where the attorney borrowed $735,000 from the client. Cipriano also negligently misappropriated $49,000 of client funds held in his trust

account, due to poor recordkeeping, an element not present here. Cipriano also had two prior reprimands, including one that involved a conflict of interest. Although respondent has prior discipline, as discussed immediately below, his conduct in the prior matters did not include a conflict of interest.

With a reprimand as the base sanction for respondent's misconduct, we consider aggravating and mitigating factors. Respondent caused harm to the client. Pierre paid the co-op association $12,766 for arrearages that accumulated as a result of respondent's actions. She still owed CitiMortgage at least $13,469 when she terminated respondent's representation in 2012. In addition, respondent has a fairly substantial ethics history: a 2002 admonition; a 2011 reprimand; another reprimand in 2013; and a 2014 three-month suspension from which he has not sought reinstatement.

In mitigation, respondent has acknowledged both his wrong-doing and the harm he caused Pierre and is remorseful for his actions. He has not, however, made Pierre whole. We determine that, because of the aggravating factors, a reprimand would not adequately address respondent's misconduct. We, therefore, vote to impose a censure.

Vice-Chair Baugh was recused. Member Rivera did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Keith O.D. Moses
Docket No. DRB 15-135

Argued: June 18, 2015

Decided: December 17, 2015

Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh					X	
Clark			X			
Gallipoli		X				
Hoberman			X			
Rivera						X
Singer			X			
Zmirich			X			
Total:		1	5		1	1

Ellen A. Brodsky
Chief Counsel