SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-488

IN THE MATTER OF	:
MARK E. GOLD	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 20, 1996

Decided: October 17, 1996

John J. Breslin, III appeared on behalf of the District IIB Ethics Committee.

Robert Margulies appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District IIB Ethics Committee ("DEC"). In a three-count complaint, respondent was charged with violations of RPC 1.8 (prohibited business transaction with client) (first count); RPC 1.7(a)(2) (representing a client where the representation of that client is directly adverse to another client), RPC 1.7(b)(2)(representing a client where the representation is materially limited by the lawyer's responsibility to another client or the lawyer's own interest), RPC 1.7(c)(2)(creating an appearance of impropriety by representing

multiple clients) (second count); and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d)(conduct prejudicial to the administration of justice)(third count).

Respondent was admitted to the New Jersey bar in 1972. He has a law office in Hackensack, New Jersey. Respondent has no prior disciplinary history.

* * *

The Dori-Gold Loan Transaction

Marilyn Dori was respondent's legal secretary. She began working for respondent in 1987. In 1988, Mrs. Dori and her husband Cosmo, the grievant in this matter, purchased a residence. Because of his work relationship with Mrs. Dori, respondent represented the Doris in that transaction, free of any charges. Apparently, Mrs. Dori prepared all the necessary closing documents and respondent appeared at the closing.

According to Mrs. Dori, in 1989 respondent, who was having financial problems at the time, approached her about obtaining a loan from her and her husband. Respondent, in turn, contended that it was Mrs. Dori, who, aware of his economic problems, offered to help him financially.

Mr. Dori testified that his wife had told him that respondent was having problems with the IRS. At some undisclosed date, respondent went to the Doris' home to discuss the loan. As a

result of their discussions, the Doris lent respondent $57,000. Respondent informed the Doris that he needed the loan for only a short period of time. Respondent claimed that he wanted to make the terms of the loan attractive to the Doris and offered to pay them an interest rate of fifteen percent.

At the time of the loan, Mr. Dori was working as a real estate appraiser. He had never before loaned money to anyone. Moreover, up until that time, respondent was the only attorney with whom he had dealt. According to Mr. Dori, respondent suggested a second mortgage on his residence in Tenafly, New Jersey as security for the loan. Mr. Dori testified that he did not know what a second mortgage was and that respondent did not explain the ramifications of such a transaction. Moreover, according to Mr. Dori, respondent never suggested that the Doris discuss the loan with another attorney or have another attorney review the documents involved before signing them.

After the Doris agreed to the loan terms, respondent prepared the note and the mortgage. According to the note, dated August 7, 1990 (Exhibit 4 to Exhibit C-1), the Doris lent respondent and his wife, Toni Gold, the sum of $57,000 at the rate of fifteen percent interest. The note provided that the principal sum and interest were to be paid as follows: $712.50 on the seventh day of September 1990 and a like sum on the seventh day of each and every month thereafter until the seventh day of August 1991, when the balance of the unpaid principal and interest was due. Mr. Dori did

not know whether the transaction had actually given them a second mortgage on respondent's property.

Around the time of the due date of the loan, respondent ran into more serious financial problems. He testified that he advised the Doris of his problems and that they verbally agreed to extend the due date of the loan. Respondent recalled an agreement that he would continue to pay the interest until the principal was paid off. To the contrary, however, Mr. Dori understood that the extension would be for only an additional six months. Respondent added that he had informed Mr. Dori that the principal would be paid off when he settled a large medical malpractice case he was handling.

Mr. Dori claimed that, after he agreed to extend the due date of the loan, respondent made payments only occasionally and that some of the checks had been returned for insufficient funds.

Respondent testified that he continued to make the interest payments until April 1992, at or about the time he filed for divorce. By then, he and his wife were no longer living together, as he had been forced out of his house. An order of support had been entered against him, apparently around that time, for monthly payments of $6,500. The amount of the support payments was a matter of ongoing litigation. Respondent claimed that, because of these financial difficulties, he was unable to continue making interest payments on the Dori loan.

Respondent asserted that he had developed a friendship with the Doris, which Mr. Dori denied. In fact, Mr. Dori believed that,

at the time he and his wife had loaned respondent money, respondent was acting as their attorney. After all, respondent had prepared the loan documents and had represented to the Doris that the loan was secured by a second mortgage on respondent's house.

When respondent's payments stopped, Mr. Dori obtained an attorney to recover the outstanding balance of the loan. Their new attorney obtained a judgment against respondent, after respondent failed to contest a suit by the Doris. As a result, the Doris have a lien against certain settlement proceeds, presumably from the malpractice case mentioned above.

As of the date of the DEC hearing, the Doris also held a second mortgage on respondent's house. However, because respondent defaulted on the primary mortgage, it appears that there was little, if any, money left to satisfy the Doris' second mortgage.

Respondent claimed that, prior to the Doris loan, he had shown them an appraisal of the marital house. The appraisal, however, was completed in March 1988, when the property had been valued at $1,100,000. The loan was made in 1990 and respondent never obtained a new appraisal of the house. The record, therefore, does not disclose the value of the house at the time of the loan. Respondent claimed that he believed that Mr. Dori would be obtaining an independent appraisal of the house. There is no indication that the Doris did so, that they were aware of the importance of obtaining an appraisal or that they knew of any marital difficulties between respondent and his wife in 1990.

Respondent admitted that he did not discuss with the Doris the fact that their mortgage would be a second mortgage on his house. While respondent did not recall exactly the amount of the first mortgage, he claimed it was between $450,000 and $700,000. He believed that the Doris were aware of the first mortgage, as Mrs. Dori had prepared the closing documents on the house. Accordingly, respondent reasoned, it was unnecessary to tell the Doris that they were getting a second mortgage. Respondent claimed that, nevertheless, he believed that he was adequately protecting the Doris' interest because he felt that there was "sufficient loan value" at the time of the loan to protect the Doris. Respondent added that he did not want to see the Doris lose any money.

As of the time of the DEC hearing, respondent had not repaid the Doris, even though his medical malpractice case had settled. Apparently there were competing claims against the monies, which were being held in his trust account pending the resolution of those claims. [1]

The Dori - J.A. Cobb & Sons, Inc. Loan Transaction

In late 1990, after the Doris lent money to respondent, respondent and Mr. Dori discussed the possibility of a loan by the Doris to one of respondent's clients, a company by the name of J.A.

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[1] The presenter filed a motion to supplement the record, which was granted, and submitted a certification executed by the Doris concerning respondent's failure to repay the loan. Respondent's reply again alluded to competing liens against his funds and the fact that he intends to satisfy the Doris lien.

Cobb & Sons, Inc. ("Cobb"). Respondent informed Mr. Dori that Cobb needed $68,000 for a short period of time and was willing to pay eighteen percent interest. The loan was to be secured by a first mortgage on a property owned by Cobb. Apparently there were no mortgages on the property, which was situated in Jersey City. According to respondent, the property was worth a substantial amount of money.

At or about the time the loan was being contemplated, there were either eminent domain or condemnation proceedings against the property by the city. The circumstances surrounding the proceedings were not fully fleshed out at the DEC hearing. At some point, however, possibly prior to the loan, the proceedings were concluded. Respondent claimed that the Jersey City Redevelopment Authority (presumably in contemplation of the condemnation) had offered Cobb $212,000 for the property. Cobb, however, needed a short-term loan, apparently to pay off liens on the property. According to respondent, Cobb could not sell the property or obtain a traditional mortgage because of the numerous liens on the property, including tax liens.

In anticipation of locating a lender for Cobb, respondent examined the Jersey City property and discovered that there was rental income on the property, apparently being collected by Cobb, which would appear to make the loan a safer investment. Respondent claimed that, before going to Mr. Dori, he had discussed a loan for Cobb with several other clients, who, from time to time, had made loans to others. Apparently they were not interested in this

investment. When respondent approached Mr. Dori about the loan, he informed Mr. Dori of the terms: a first mortgage on the property and an eighteen percent interest rate. Respondent may also have shown Mr. Dori the written offer from the Jersey City Redevelopment Authority to Cobb in the amount of $200,000. Exhibit R-6. Under the circumstances presented by respondent, Mr. Dori believed that he would obtain a good return for the short-term loan and that Cobb needed the loan for no more than two or three years. Mr. Dori, therefore, agreed to make the loan to Cobb, whereupon respondent prepared all of the documents involved in the transaction. According to Mr. Dori, he understood that respondent was representing both him and Cobb. Respondent, however, failed to advise Mr.Dori to consult with another attorney.

The loan agreement was signed in November 1990. Exhibit 6 to Exhibit C-1. The note provided that payments of interest only were to be made in consecutive monthly installments of $900 on the first day of each month, commencing December 1, 1990, until the first day of November 1993. Each payment was to be applied to the interest then due.

Respondent claimed that, although the initial condemnation proceedings had fallen through, he knew that the property would be condemned again shortly, because the city wanted it for the redevelopment of Liberty Harbor North in Jersey City.

Respondent may have advised Mr. Dori of some problems involved with the condemnation proceedings because, shortly before Mr. Dori

was to make the loan, he got "cold feet." T100.[2] Mr. Dori, therefore, wanted respondent to guarantee payment of the loan, in the event of default by Cobb. Respondent agreed. It was only because of respondent's guarantee that Mr. Dori went through with the loan.

Respondent claimed that, although he had never guaranteed a loan before, he had done so in this instance because

> I wanted this client to get the money because it was going to mean that they were going to have money and they were going to like me and probably start more business with me and, you know, I wanted to look good. [T100]

Respondent did not believe that there was a risk involved in guaranteeing the loan.

Notwithstanding respondent's claim that there was no risk involved, he felt that, because he did not actually know whether Cobb would default, he too should get a portion of the interest payments, on the off-chance of a default. Respondent remarked, "Now, I told my client when I did the closing I told him that I had a -- I said, you know, you better thank me because I had to guarantee this thing for you." T101.

As noted above, it was Mr. Dori's understanding that respondent was representing both parties to the loan transaction. He was aware that Cobb had paid respondent's fee from the loan proceeds. In addition, respondent was to receive a percentage of the monthly interest payment to Mr. Dori. The formula that Mr. Dori described at the hearing yielded $180 per month to respondent.

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[2] T denotes the transcript of the DEC hearing of October 13, 1994.

Because of respondent's personal guarantee, respondent and Mr. Dori agreed to enter into a partnership agreement for the Cobb loan. Respondent prepared a document memorializing the agreement between the two. Although Mr. Dori did not recall signing the agreement, he conceded that the signature on the document was his. Apparently, Mr. Dori subsequently decided that he did not want a formal partnership because he did not want to involve an accountant. Mr. Dori and respondent, therefore, did nothing to further the partnership agreement, other than to sign the document. According to respondent, he had forgotten all about the partnership at the time that the formal ethics complaint was filed against him.

At all times during this transaction, despite the partnership agreement, Mr. Dori believed that respondent was acting as his and Cobb's attorney. Mr. Dori understood that, while they may have been partners for that one transaction, respondent was still representing him, as well as Cobb.

Although the record is not clear, it appears that Cobb made interest payments, as required. At some point, however, possibly once condemnation proceedings were reinstated, Cobb stopped making the interest payments. Respondent then instituted court proceedings to have certain monies from the condemnation proceedings released to the Doris. Respondent represented the Doris in that matter and did not charge them a fee. Mr. Dori believed that, as a result of respondent's efforts, he recovered all of the interest and principal owed to him from the Cobb transaction.

Mr. Dori contended that, even though respondent was late making interest payments to him in their personal transaction, Mr. Dori did not withhold any of the interest payments to respondent from the Dori-Cobb transaction during the time Cobb continued to make interest payments. Initially, respondent denied getting any interest payments from Mr. Dori, but eventually conceded that he probably received only four interest payments —— the payments that coincided with Mr. Dori's cancelled checks presented at the hearing. Exhibit 9 to Exhibit C-1. Respondent had first argued that the cancelled checks were from Mrs. Dori, as reimbursement for her continuation of medical benefits after she left his employ. After a DEC panel member noted that the check amounts equalled the amount derived under the formula presented by Mr.Dori, respondent conceded that the four checks probably represented his share of the interest payments from the Cobb transaction. Mr. Dori, however, claimed that respondent received more than those payments; but that other cancelled checks had been destroyed in a flood.

Despite the fact that Cobb had paid respondent a fee and there was an agreement as to interest payments between Mr. Dori and respondent, Mr. Dori believed that respondent was both his attorney and his partner. Mr. Dori did not know whether Cobb was aware of the relationship between himself and respondent at the time of the loan.

Mr. Dori testified that respondent did not recommend that he seek other counsel to review the agreement and he did not prepare a written document waiving Mr. Dori's right to separate counsel.

Respondent believed, however, that he had told Mr. Dori that he could get his own attorney, but that Mr. Dori and his wife declined to do so because the transaction "looked good" and they wanted to go ahead with it.

The W-2 Statements

Marilyn Dori started working for respondent in 1987 as a legal secretary. After she obtained her paralegal certification in 1989, she assumed additional responsibilities. Mrs. Dori stopped working for respondent in 1992.

Mrs. Dori had the authority to draw and sign checks on respondent's business account. Generally, she showed the checks to respondent before they were mailed out or cashed. She claimed, however, that she was never instructed to make any deposits for state or federal taxes withheld from salaries. Moreover, Mrs. Dori did not recall making deposits to the bank for those taxes or sending payments to those authorities. According to Mrs. Dori, respondent never instructed her that that was one of her responsibilities. Mrs. Dori signed her salary checks and also drew, signed and sent the checks for health and life insurance benefits.

Mrs. Dori would obtain her W-2 statements from respondent once they were prepared by respondent's accountant, Robert Ingis. Mrs. Dori's W-2 statement for 1991 (Exhibit 10 to Exhibit C-1) indicated, among other things, that $2,273.23 had been withheld for

social security tax, $3,956.20 for federal income tax, $531.64 for medicare tax and $795.63 for state income tax. Mrs. Dori's W-2 statement for 1989 (Exhibit 11 to Exhibit C-1) showed that the following amounts were withheld: $2,759.55 for social security tax, $770.12 for state income tax and $4,599.01 for federal income tax. Those amounts, however, were never paid to the proper authorities.

Mrs. Dori did not recall giving the accountant information about tax deposits that she had made in 1989 or 1991 on wages paid to her. Afterwards, Mrs. Dori received a statement from the Social Security Administration (Exhibit 12 to Exhibit C-1), indicating that social security taxes had not been paid in her behalf in 1989 and 1991, contrary to the information listed in her W-2 forms. In addition, she realized that she and her husband had filed federal and state income tax returns including the information from the W-2 forms.

Although Mrs. Dori suspected that respondent had not paid the necessary taxes to the government, it was only in 1993, after her tax returns for 1989 and 1991 had been filed, that she specifically learned of that fact. Before that, respondent was having problems with unspecified "other bills" and she, therefore, assumed he was facing difficulties with withholding taxes as well.

Once Mrs. Dori became suspicious, she had a conversation with Ingis about the payment of the withholding taxes. She asked Ingis whether there was a problem and whether respondent had failed to

pay her taxes. According to Mrs. Dori, "I was told that if he did not, it was not my problem."

Mrs. Dori indicated that, while it was possible that she may have occasionally sent checks for tax payments to the state or federal government, it was at respondent's request and for his convenience, rather than as part of her designated duties.

Respondent claimed that, during the period of 1989 and 1991, he believed that Mrs. Dori had forwarded the payroll taxes to the proper entities. Respondent trusted her with those responsibilities because she was a very good secretary and a "lovely woman."

Respondent asserted that he learned in 1991 that the taxes had not been paid. It was a large amount of money that he could not pay at the time. Respondent claimed that he discussed the matter with Mrs. Dori and informed her that he could not pay the taxes until he settled a large malpractice case. Mrs. Dori did not recall such a conversation. According to respondent, he thought the malpractice case would settle in 1991, but it did not settle until June 1994. He maintained that he did not knowingly fail to pay the taxes and that he honestly thought that payment had been made. Respondent explained that his accountant prepared the W-2s and that Ingis and Mrs. Dori discussed what had to be done to prepare the documents.

Richard Ingis testified that he had been respondent's accountant since 1988 or 1989. He first met Mrs. Dori in June 1987, when he rented space from respondent prior to becoming

respondent's accountant. Ingis explained that Mrs. Dori gave him the information necessary to prepare the W-2s. He testified that respondent never gave him any information regarding W-2s or any other tax information necessary to prepare the tax returns. Mrs. Dori was his sole source for that information.

Ingis recalled that Mrs. Dori would call him and indicate that she needed her W-2 or that she needed Ingis to prepare the payroll tax return or the W-2s. He would then request certain information, which she would provide. From that information, he was able to determine the amounts taken out for federal and state taxes, social security and Medicare. Mrs. Dori would provide Ingis with the amount of the net checks and the amounts withheld. Based on that information, Ingis prepared the W-2s for respondent. Ingis knew that the amounts had been withheld from the employees because the net checks "were obviously smaller than the gross amount" that had been given to him. Based on that information, he inferred that certain monies were not paid over to the employee.

Ingis was aware of a problem when he went over respondent's business checking account for 1989 and did not see any deposits made for the amounts withheld. When Ingis prepared respondent's general ledger for 1989, 1990 and 1991 and prepared Schedule C, he realized that the amounts withheld had not been paid to the proper authorities. Ingis indicated that he probably made the discovery in or about the end of 1991. When Ingis was requested to prepare Mrs. Doris' W-2, he did not have the information to determine

whether the sums listed as withheld had actually been sent to the government.

Ingis claimed that, in late 1991, he was in respondent's office to prepare respondent's escrow accounts. Mrs. Dori came to him and showed him two or three tax notices. She asked whether she could get in trouble because the taxes had not been paid. Ingis informed her that she was not personally liable, that it was respondent's responsibility and that the government could not come after her. Ingis discussed the matter with respondent after he saw the tax notices. When he questioned respondent, respondent indicated that he was in the process of settling a "big case," at which time he would remit the taxes to the government.

Ingis indicated that he did not know about a problem with the 1989 W-2's until he started taking care of respondent's 1990 general ledger, possibly in late 1991. He saw that the liabilities were there, but there were no checks paid reducing the liabilities. Therefore, it was clear to him that the taxes had not been paid. When Ingis was asked whether the money was still in the account, he replied, "he spent it on something else. That's correct. He was [sic] effectively withheld it and liable to the government and liable personally for that money." T151.

Ingis indicated that he was preparing all the returns in respondent's behalf and that respondent would pay off all his liabilities when he settled the malpractice case. Ingis estimated that with all the late fees and penalties respondent probably owed in the neighborhood of $40,000, apparently for failing to remit the

payroll taxes. Ingis also noted that, while respondent would have been required to file quarterly statements to the federal and state authorities, indicating the amount of taxes withheld, Ingis himself had not prepared them for respondent. Respondent indicated that he was the one attending to the quarterly filings.

* * *

In the loan transaction from the Doris to respondent, the DEC found that respondent failed to advise the Doris to obtain the advice of independent counsel on the "desirability" of seeking separate counsel in connection with the loan transaction.

The DEC also found that respondent failed to properly advise the Doris of the difficulties that could arise in the event of a default on the loan or default or foreclosure on the first mortgage on the property. The DEC did not, however, cite any specific rule violation.

As to the Doris-Cobb loan, the DEC found that respondent failed to inform Mr. Dori of his right to have independent counsel and also to obtain his consent to represent the interests of both parties in the loan transaction, in violation of RPC 1.7(a)(2), RPC 1.7(b)(2) and RPC 1.7(c)(2).

The DEC did not find that respondent's conduct in failing to remit the monies withheld from Mrs. Dori's salary to the appropriate taxing authorities gave rise to violations of RPC 8.4(c) or RPC 8.4(d). The DEC did not make any specific findings

as to whether respondent was aware at the time that the monies had not been withheld or whether respondent had intentionally failed to remit those monies.

As mitigation, the DEC considered that respondent represented Mr. Dori without charge in the collection of the principal and interest due on the Cobb loan.

According to the DEC, respondent indicated that approximately $150,000 to $160,000 was being held in his attorney trust account (the fees from his medical malpractice settlement) to pay off various "claims" against the fees, including the Doris' judgment, contested amounts from his matrimonial action and amounts due to the respective taxing authorities. Respondent assured the DEC that he would "do his best" to reimburse the Doris.

In sum, the DEC found only violations of RPC 1.7(a)(2), 1.7(b)(2) and 1.7 (c)(2).

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent was charged with a violation of RPC 1.8 for his conduct in the loan transaction with the Doris. That section states, in relevant part:

> A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in

> writing to the client in manner and terms that should have reasonably been understood by the client, (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

Although the Doris were not respondent's clients at the time of the loan, Mr. Dori testified that he believed that respondent was acting as his attorney because he drafted the note and mortgage used in the loan transaction. In addition, because Mrs. Dori was respondent's legal secretary, it was reasonable for her and her husband to assume that respondent was representing their interests. Yet, respondent failed to disclose to them the terms of the transaction, which terms were neither fair nor reasonable. Certainly, if respondent and his wife were having marital problems at the time of the transaction, the soundness of the transaction was questionable. Moreover, respondent failed to advise the Doris of the advisability of seeking independent counsel and did not obtain written consent to represent them.

In a similar case, In re Chester, 127 N.J. 318(1992), the Court reprimanded an attorney who solicited his secretary to make an unsecured loan of $9,000 to a client of the attorney, while giving the secretary assurances that he would protect her interests. Ultimately, the client defaulted on the loan, causing great economic injury to the secretary.

In Chester, it was found that, although the secretary was not strictly a client of the attorney, she had reason to rely on his assurance that he would protect her interests. On that basis, it

was concluded that the attorney's conduct, although not violative of a specific disciplinary rule, was nevertheless reprehensible. An attorney must act with high standards in his business transactions and that his professional obligations reach all persons who have reason to rely on him or her, although not strictly clients. Id.

Here, too, this respondent's conduct fell short of the requirements of the rules dealing with conflict of interest. He failed to advise the Doris of his marital problems, failed to obtain an appraisal of his property and failed to ensure that the Doris' interests were protected. Despite the lack of a formal attorney/client relationship, it was reasonable for the Doris to rely on respondent to protect their interests. An aggravating circumstance was the Doris' need to hire another attorney to obtain a judgment against respondent for the amount of the loan owed to them plus accrued interest. The Doris had to spend at least an additional $8,000 to enforce their claim. Additionally, as of the DEC hearing, even though the Doris had a judgment against respondent, they had not yet been repaid. The Doris, thus, suffered great financial harm from respondent's misconduct.

Similarly, in the Cobb transaction, while no formal attorney/client relationship existed, the Doris believed that respondent was acting as their attorney. In fact, respondent performed legal services in their behalf. Respondent prepared the documents in the matter and, moreover, once Cobb stopped making the interest payments required under the agreement, respondent

instituted legal proceedings in behalf of the Doris'. Respondent's dual representation of mortgagor and mortgagee under these circumstances clearly created a conflict of interest situation. Even though it does not appear that the Doris suffered any financial losses from this transaction, respondent's motivation of self-gain is an aggravating factor: respondent testified that he was specifically interested that the Cobb loan go through in anticipation of future legal business from Cobb.

Generally, in cases involving conflict of interest, without more, and absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate discipline. In re Berkowitz, 136 N.J. 134 (1994). See also In re Carney, 138 N.J. 43 (1994)(public reprimand for violation of RPC 8.4(c), where attorney failed to reveal to a client that the financial consultant to whom respondent referred the client for advice regarding the investment of a substantial settlement, was the attorney's wife). The Court, however, has not hesitated to impose a period of suspension when an attorney's conflict of interest has caused serious monetary loss to clients. See, e.g., In re Butler, 142 N.J. 460(1995)(three-month suspension for representation of buyer and seller in a complex real estate transaction, negotiating a modification to the contract and withholding relevant information from the sellers in negotiating the modification); In re Guidone, N.J. (1994)(three-month suspension where attorney deliberately concealed his involvement in a business venture to buy a parcel of property from a club; the attorney also represented the club in the transaction); In re Dato,

130 N.J. 400(1992)(one-year suspension where an attorney purchased a client's property at below-fair-market price); In re Humen 123 N.J. 289 (1991)(two-year suspension where attorney advised his client, a widow, to purchase property from his friend, took over management of the property, misrepresented its profitability to his client and later purchased the property from his client without advising her to obtain separate counsel); In re Gallop, 85 N.J. 317 (1981)(six-month suspension where attorney took a deed to his housekeeper's real property to her disadvantage); and In re Hurd, 69 N.J. 316 (1976)(three-month suspension where attorney convinced client to transfer title to real property to attorney's sister for twenty percent of property's value).

* * *

As to the payroll taxes, the DEC summarily found that, even though equivalent sums had been withheld from Mrs. Dori's wages and not been remitted to the proper authorities, respondent's conduct in this regard did not rise to the level of violations of RPC 8.4(c) and (d). The record is not clear as to whose function it was to actually forward the taxes to the proper authorities. Mrs. Dori admitted that, although this was not part of her regular responsibilities, she may have, on occasion, sent the payroll taxes to the proper authorities, at respondent's request. Respondent, in turn, testified that he believed that Mrs. Dori was taking care of the payments. This, however, did not relieve him of the

responsibility to ensure that the payroll taxes were paid as required. The issue is whether respondent's conduct here was intentional or merely neglectful.

Other states have found that the failure to pay over payroll taxes involves an element of dishonesty or misrepresentation, akin to RPC 8.4(c), even where the attorney has claimed that the failure was unintentional. See People v. Franks, 866 P.2d 1375(1994). While there is no clear and convincing evidence in this record that respondent's failure to remit the taxes was intentional, it is undeniable that respondent violated his fiduciary obligation to properly remit his employee's funds to the governmental authorities. He also violated RPC 1.15 (b) when he failed to keep the taxes segregated and intact. Attorneys should be forewarned that, in the future, such misconduct will be met with stern discipline.

Based on respondent's overall conduct, the Board unanimously determined to suspend him for six months.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 10/17/96

LEE M. HYMERLING
Chair
Disciplinary Review Board

Supreme Court of New Jersey
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF Mark E. Gold

DOCKET NO. DRB 95-488

HEARING HELD: March 20, 1996

DECIDED: October 17, 1996

	Disbar	Six Month Suspension	Reprimand	Admonition	Dismiss	Dis quali-fied	Did Not Partici-pate
HYMERLING		X					
BUFF		X					
COLE		X					
HUOT		X					
THOMPSON		X					
PETERSON		X					
MAUDSLEY		X					
SCHWARTZ		X					
ZAZZALI		X					

By Robyn M. Hill
ROBYN M. HILL
CHIEF COUNSEL