SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 97-293

IN THE MATTER OF	:
ANTHONY F. SARSANO,	:
AN ATTORNEY AT LAW	:

DECISION

Argued: October 16, 1997

Decided: FEBRUARY 17, 1998

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 XI Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for his conduct in connection with a real estate transaction.

Respondent was admitted to the New Jersey bar in 1974. He maintains a law office in Union City, New Jersey. Respondent has no history of discipline.

Respondent does not dispute the allegations of the complaint. In the course of his representation of a buyer in a real estate transaction, respondent prepared two separate

RESPA statements to mislead the lender. The RESPA statement that was ultimately submitted to the lender did not disclose a $73,000 second mortgage held by the sellers. Respondent represented Enrique Perez, the buyer. The sellers, the Simones, were originally represented by Doreen E. Winn, Esq. The closing was scheduled to take place on January 26, 1989.

At the DEC hearing, Winn testified that she had recently become associated with the firm of Greenberg, Feiner, Benisch & Walden when she was asked to take over the Simones' file. Luis A. Alum, Esq., a former partner with that firm, had been handling the file until he left the firm. Winn explained that, just before the closing, one of the partners warned her to review the RESPA statement and, if it was different from the one that had been originally submitted to the firm, not to close the transaction. Winn stated that, once she noted a discrepancy, she called her office for advice and was told not to proceed with the closing. Winn had no recollection as to why the partner had become suspicious that something might be amiss. Upon returning to her office, she was advised to memorialize what had transpired and did so.

Winn testified that, while at the closing, she questioned respondent about why the secondary financing had been omitted from the bank's copy of the RESPA. Respondent allegedly told her not to worry about it, adding that the matter had already been "worked out" with Alum and that the transaction had to be done that way because the bank would not approve the transaction otherwise.

The closing took place within the next day or so. This time Winn did not represent the sellers, who had once again retained Alum.[1]

For his part, respondent testified that he did not specifically remember the details of the transaction. He recalled that, before the closing, he had reviewed the documents with his client and realized that secondary financing would be necessary. According to respondent, he believed that there was nothing in the bank documents that excluded secondary financing. Respondent readily admitted that he had used bad judgment, adding that he had not prepared any of the documents related to the secondary financing. Respondent also denied preparing the rider to the contract that acknowledged the need for the secondary financing. Respondent claimed that, because the transaction had taken place such a long time ago, he could not specifically recall when the secondary financing issue had come about. When questioned by the DEC as to why he had prepared two RESPA statements, respondent replied as follows:

> I know that even though I felt that there was nothing specific in the instructions concerning the secondary financing, . . . the lender generally found out and contacted them. That's why I did it like that.
>
> [T39-40][2]

Respondent admitted knowing that the seller was taking back a second mortgage; that the RESPA statement that he submitted to the bank did not disclose the second mortgage;

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[1]Alum was also the subject of both an ethics and a criminal investigation. Although twenty-four client files were obtained from the law firm alleging a pattern of fraud, the U.S. Attorney's office declined prosecution. As to the ethics matter, hearings have been concluded but a report has not yet been issued.

[2]T denotes the transcript of the April 23, 1997 DEC hearing.

that, although there may not have not been specific instructions prohibiting secondary financing in the matter, he was aware that banks and mortgage companies frowned upon or prohibited secondary financing; that he did not contact the lending institution to determine whether they would allow secondary financing in that transaction; and that he failed to disclose the secondary financing because he was concerned that "the closing would not take place."

The mortgage loan was the subject of a foreclosure in 1992. The record is silent about the details surrounding the foreclosure.

In mitigation, respondent testified that he was a sole practitioner and also the public defender in Union City. He explained that he obtained his health benefits as the public defender and was the sole provider for his two young children and a wife with "some health problems." Respondent further stated that the matter had taken place six and one-half years ago and that he was presently unable to find anyone involved in the matter that could testify in his behalf.

In a July 26, 1995 reply to the OAE investigation, respondent explained his conduct as follows:

> As I previously indicated in this matter and readily admit my complicity. [sic] I did not do this because I was trying to increase my fees or realize any substantial gains from the transaction other than my normal fee.
>
> I did not put this transaction together but I admittedly agreed to go along with its terms which I realized were not completely legitimate.
>
> Of course, I cannot justify my actions, I can only state, by way of mitigation,

that, at the time this procedure of using undisclosed secondary mortgage was widespread among many lawyers.

However, it readily became apparent to me that this, [sic] conduct was wrong and extremely dangerous. Many years ago I decided never to do this again.

[Exhibit E to complaint]

Respondent's letter also stated that if he is suspended he cannot keep working as the Union City public defender and will lose not only all of his income, but also the medical benefits for his family. He underscored his great need for the medical benefits by explaining that his wife had recently undergone testing for a serious illness, the diagnosis for which was as of yet inconclusive. Respondent stated that, although he felt uncomfortable about revealing such private matters, he did so because he did not know what he would do without medical insurance and a source of income.

At the DEC hearing, the OAE conceded that respondent was extremely cooperative in connection with the investigation, that he contacted the office immediately upon receiving the initial inquiry and that he had been "very remorseful."

The DEC found that respondent's conduct violated RPC 8.4(c). In recommending a reprimand, the DEC noted that it had considered "the extremely adverse impact a suspension would have on respondent." The DEC highlighted the fact that respondent's wife suffered from a serious medical condition and that, if respondent were suspended, he would lose his medical insurance benefits. The DEC also considered respondent's contrition and the aberrational nature of his conduct that, the DEC believed, would not be repeated.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the evidence. Indeed, respondent's preparation of two RESPA statements to mislead the bank was a violation of RPC 8.4(c). This leaves only the issue of discipline. Similar misconduct has merited a reprimand. See In re Blanch, 140 N.J. 519 (1995) (where the attorney failed to disclose secondary financing in closing documents, contrary to the lender's written instructions). See also In re Doig, 134 N.J. 118 (1993) (where the attorney received a reprimand after she altered a deed following closing, did not inform the bank of her action, misrepresented the reason for the inclusion of an additional name on the deed and engaged in a conflict of interest by the dual representation of parties with adverse interests).

Based on the foregoing, the Board unanimously determined to impose a reprimand.

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

Dated: 2/17/98

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD VOTING RECORD

In the Matter of Anthony F. Sarsano
Docket No. DRB 97-293

Argued: October 16, 1998

Decided: February 17, 1998

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali							x
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
Total:			8				1

By Isabel Frank 3/17/98
Robyn M. Hill
Chief Counsel