SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-421
District Docket No. XIV-2013-0129E

IN THE MATTER OF	
JOSEPH A. GEMBALA, III	
AN ATTORNEY AT LAW	

Decision

Argued: April 21, 2016

Decided: September 14, 2016

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Mark J. Molz appeared on behalf of respondent.

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

This matter was before us on a motion for reciprocal discipline, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following the Supreme Court of Pennsylvania's imposition of a two-year suspension on respondent. Respondent was disciplined due to his affiliation with a for-profit loan modification company in connection with services provided to thirty-three homeowners.

We determined to grant the motion and impose a one-year suspension on respondent, retroactive to October 25, 2012, the date of his suspension in Pennsylvania.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1985. At the relevant times, he maintained an office for the practice of law in Barrington, New Jersey and Philadelphia, Pennsylvania.

In 2014, respondent received a reprimand for having violated RPC 1.5(b) (failure to communicate, in writing, the basis or rate of his legal fee) and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6). The violations arose from his conduct in a single client matter, which was handled by respondent and Secure Property Solutions, LLC (SPS), the loan modification service company involved in the matter now before us. In re Gembala, 217 N.J. 148 (2014) (Gembala I).

Briefly, Gembala I was before us on a disciplinary stipulation in which the parties had agreed to some, but not all, of the same RPC violations at issue in the matter now before us. Most of the violations in Gembala I were dismissed, however, because the stipulated facts failed to support them.

This case involves thirty-three homeowners/grievants, from nineteen states, who sought the services of SPS and respondent

between August and December 2009. With few exceptions, the underlying facts in all thirty-three cases are nearly identical.

The facts are taken from the Joint Petition in Support of Discipline by Consent, dated June 27, 2012 (Joint Petition). In March 2009, SPS, a business that provided loan modification services to the public, was located in the same building as respondent's New Jersey law office. SPS was owned by Michael Malone and Christopher Frisch. Ernesto Ranieri was its president and chief operating officer.

On March 19, 2009, respondent met with Malone, Frisch, and Ranieri, who informed him that SPS wanted to expand its business to include non-New Jersey residents. They sought an affiliation with respondent "in order to continue to provide loan modification services in New Jersey without being licensed in New Jersey under New Jersey's Debt Adjuster Act."

On that same date, Ranieri e-mailed a number of documents to respondent. They included documents that were sent to prospective clients by SPS and another New Jersey-based company, Hope Today Mitigation Services, whose documents SPS had "planned to adopt." Ranieri also e-mailed "sample documents that SPS planned to send to prospective clients . . . if Respondent decided to affiliate himself with SPS." They included a sample cover letter, fee agreement, and "working agreement."

The sample letterhead contained the following at the top: JOSEPH A. GEMBALA, III, ATTORNEY AT LAW. Directly underneath appeared SPS's New Jersey office address. The letter, which enclosed a sample retainer agreement, titled "**FEE AGREEMENT FOR CASE WORK TO JOSEPH A. GEMBALA III,**" provided, in pertinent part:

> a. Be advised that this law firm along with its modification processing center, Secure Property Solutions, is here to help you with your loan modification, aiding you to stay in your home and keep your dream alive.
>
> b. Please know that Secure Property Solutions and our legal staff will be here to help you with any questions regarding your disclosures and/or the modification process.
>
> c. **ALL CHECKS ARE MADE PAYABLE TO: JOSEPH A. GEMBALA, III.**
>
> d. Rest assured that our team has expertise in mortgage and real estate law.
>
> e. By signing below, you hereby agree to abide by the legal fee retaining agreement.
>
> [Ex.A¶16.]

The sample cover letter closed with respondent's name.

The sample "WORKING AGREEMENT" provided that the client was employing respondent and SPS to act as the client's "agent in assisting client with certain problems resulting from mortgage delinquency and/or foreclosure situations." The agreement also

provided for a full refund of the client's deposit, "minus $895 attorney retainer fee," if respondent and SPS were unable to reach a "solution" with the client's mortgage service company.

On March 20, 2009, Frisch e-mailed to respondent a web address for the New Jersey Department of Banking & Insurance's guidelines for businesses seeking to provide loan modification services and requested that respondent contact him "with any input." The web page for that web address contained warnings regarding mortgage loan modification "activity," including the admonition that, because loan modification services constituted "debt adjustment," a "debt adjuster" must be licensed. New Jersey-licensed attorneys who were not principally engaged as debt adjusters were exempt from the licensing requirement. Respondent reviewed the web page.

On March 31, 2009, Malone e-mailed respondent the contact information for the company employed by SPS to process telephone check payments, explained the application process, and asked respondent to contact him if respondent "needed anything else."

At some point thereafter, respondent decided to affiliate his law firm with SPS. In this regard, respondent agreed that the SPS sample documents, identified above, would become the loan modification paperwork that would be sent to prospective

clients, who, upon retention of respondent and SPS, would be required to complete and return the paperwork to SPS.

Respondent and SPS agreed that respondent would receive the loan modification clients' "fee payments" and that he would retain a share of those fees. Specifically, respondent deposited the fee payments into "a bank account," retained his share of the fee, and transferred the remainder to an SPS bank account. "At the outset of Respondent's affiliation with SPS," he received $395 of the fee paid by a client for loan modification services. As the affiliation progressed, respondent's share decreased from $395 to $195 to $95 to $0.

During his affiliation with SPS, respondent maintained a website, declaring that he could represent individuals in matters involving loan modifications, among others. The website also contained a webpage titled "LOAN MODIFICATION," which described how respondent and "his processing center, [SPS], have helped countless homeowners during this difficult time through the process of a loan modification." The webpage contained the following additional representations:

> a. At Joseph A. Gembala, III & Associates, one of the areas of the law in which we specialize is the representation of homeowners who are behind on their mortgage payments and\or are facing mortgage foreclosure.

b. Contact Joseph A. Gembala, III & Associates to discuss the possibility of a loan modification.

c. **Why you need an experienced real estate attorney:**

- Bank loss mitigation specialists are skilled negotiators and need to protect the interest of the bank

- The loan modification is a legal process and, if not handled properly, may make things worse for you in the long run

- Our attorneys and negotiators have extensive experience negotiating with banks and they understand state and federal laws as well as lending regulations

- Our attorneys can use the Truth in Lending Act (TILA) and the Real Estate and Settlement Procedures Act (RESPA) to your advantage

- Banks listen to attorneys because they know the law

d. Contact Joseph A. Gembala, III & Associates to stop the foreclosure process and save your home.

[Ex.A¶43.]

During respondent's affiliation with SPS, SPS also maintained a website. That website contained a separate "LOAN MODIFICATION" page, asserting that SPS "has been contracted by the Law Firm of Joseph A. Gembala, III & Associates to assist homeowners who are behind on their mortgage payments and\or are facing mortgage foreclosure." The SPS webpage stated:

a. Together Joseph A. Gembala, III & Associates and the processing center, [SPS], have helped countless homeowners during this difficult time through the process of a loan modification.

[Ex.A¶47.]

Directly underneath, the SPS webpage contained the same paragraph titled "why you need an experienced real estate attorney" as did respondent's webpage. It concluded with the following:

c. If you would like to learn more about the Law Firm of Joseph A. Gembala, III & Associates, click **here**.

[Ex.A¶47.]

The homeowners in all thirty-three disciplinary matters retained respondent and SPS to provide loan modification services. They completed, signed, dated, and returned loan modification paperwork to SPS that was virtually identical to the same documents respondent had received from Ranieri as part of the thirteen-page facsimile transmission. Although the homeowners made advance payments towards the loan modification services, either in full or in part, they ceased receiving communications from respondent and/or SPS regarding their loan modification cases and, further, were unable to reach respondent and/or SPS to ascertain the status of their loan modification cases. None of them received refunds of the advance payments they had made.

Although respondent and each of the homeowners had entered into an attorney-client relationship, respondent did not personally provide loan modification services to them. Yet, both the loan modification paperwork provided to the homeowners by SPS and the websites maintained by SPS and respondent "conveyed the impression" that respondent was "either working with SPS to provide loan modification services, overseeing and supervising the rendering of such services by SPS, or providing loan modification services through the Gembala firm." Thus, the parties to the Joint Petition stipulated that the documents and the website contained

> false and misleading information concerning, but not limited to, the rendering of loan modification services by Respondent or other "legal staff," the supervising by Respondent of loan modification services rendered by SPS, and the refunding of any advance fees paid.
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> [Ex.A¶52;Ex.A¶54.]

In January 2010, SPS shut down and took no further action on "any unresolved loan modification cases." Sometime later that month, respondent learned what had happened and, further, that the abandoned cases included those involving the homeowners in the Pennsylvania disciplinary matter.

The thirty-three homeowners/grievants were from nineteen states and, with a few exceptions, had contacted SPS and entered

into agreements with SPS and respondent for the modification of their mortgage loans, between June and December 2009. Those agreements "substantially comported with" or were "similar to" the sample documents that respondent had received from Ranieri. The documents sent to twenty of the homeowners made no mention of SPS.

With one possible exception, in each case, the homeowner paid a fee, or a portion of the fee, in amounts ranging from $300 to $2,595. In most cases, the homeowner received, completed, and returned the paperwork. In all but one matter, either no action was taken on the homeowner's loan or the homeowner's case was "abandoned," prior to the conclusion of the matter.

Further, after the homeowners had returned their completed paperwork, some heard nothing at all from SPS or respondent. For many, their communications were ignored; and, in some cases, the phone was consistently busy until, eventually, it was disconnected. Ultimately, some of the homeowners learned that SPS and respondent were no longer involved in the loan modification business.

Despite the abandonment of the homeowners' cases, none of the homeowners' fees had been returned, prior to the institution of the Pennsylvania disciplinary matter. Accordingly, in

addition to the two-year suspension, the Supreme Court of Pennsylvania ordered respondent to refund to the homeowners "his share of the fees he retained from the loan modification fees." In his certification in response to the OAE's motion, dated January 31, 2016, respondent states that he has made full restitution to all of the homeowners.

By entering into the Joint Petition, respondent admitted to the facts recited above and to the RPC violations that formed the basis for the Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania to the Pennsylvania high court.

As was his obligation, respondent informed the OAE of the two-year suspension imposed in Pennsylvania.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;

> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In our view, a one-year suspension, retroactive to October 25, 2012, the date of respondent's suspension in Pennsylvania, is the appropriate measure of discipline for his unethical conduct.

According to the Joint Petition, respondent admitted to having violated Pennsylvania's equivalent to New Jersey's RPC

1.3 (lack of diligence); RPC 1.4(b) and (c) (failure to communicate with the client); RPC 1.16(d) (upon termination of representation, failure to take steps to protect a client's interests); RPC 5.3(b) and (c)(2) (failure to supervise a nonlawyer employee); RPC 5.4(a) (unlawful fee-sharing with a nonlawyer); RPC 7.5(a) (false or misleading letterhead); RPC 8.4(a) (violation or attempted violation of the RPCs, individually, or through the acts of another); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

As a preliminary matter, we note that, in Advisory Committee on Professional Ethics Opinion 716 and Committee on the Unauthorized Practice of Law Opinion 45, 197 N.J.L.J. 59 (July 6, 2009) (Opinion 716/Opinion 45), the New Jersey Advisory Committee on Professional Ethics and the Committee on the Unauthorized Practice of Law addressed the propriety of a relationship between an attorney and a for-profit loan modification service. The joint opinion provides, in part:

> Payment of monies to a loan modification company who refers or recommends clients to an attorney is flatly prohibited. Accepting legal fees from such a company, or dividing a total fee paid by a homeowner in part to the company and in part to the attorney, is impermissible fee-sharing. A New Jersey attorney may not provide legal advice to customers of a for-profit loan modification company, whether the attorney be considered in-house counsel to the

> company, formally affiliated or in partnership with the company, or separately retained by the company. A New Jersey attorney may not share legal fees with a for-profit loan modification company or assist the company in the unauthorized practice of law.
>
> If an attorney is approached and retained directly by the homeowner client, the attorney may use an in-house financial or mortgage analyst or contract with an analyst, who processes the homeowner's paperwork and may take initial steps in renegotiating the loan. The attorney, however, is responsible for and must supervise the work, and the compensation paid to the analyst may not comprise improper fee-sharing.
>
> [Ibid.]

Here, the homeowners/grievants ostensibly retained respondent to represent them, which would have been permissible under Opinion 716/Opinion 45 only if the homeowners had approached respondent "directly." They did not. Rather, their first contact was with SPS, which directed them to respondent, who then entered into a retainer agreement with them, even though SPS did all the work. Thus, respondent's affiliation with SPS was unethical, as a matter of law. Moreover, he violated RPC 5.4(a) when he agreed to share with SPS the fee charged to the homeowners for loan modification services.[1]

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[1] Although respondent also may have violated RPC 5.5(a)(2) (assisting a nonlawyer in the unauthorized practice of law), the Joint Petition did not address that Rule.

RPC 7.1(a) prohibits an attorney from making "false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement." RPC 7.5(a), in turn, proscribes the "use of a firm name, letterhead, or other professional designation that violates RPC 7.1." By allowing SPS to place his name on the letterhead of a form letter containing SPS's address, respondent violated RPC 7.5(a).

RPC 5.3(b) requires a lawyer with direct supervisory authority over a nonlawyer to "make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." Under RPC 5.3(c)(2):

> A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> . . . .
>
> (2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action . . . .[2]

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[2] In addition to a lawyer with "direct supervisory authority over the person," Pennsylvania RPC 5.3(c)(2) also applies to "a partner" or a lawyer who has "comparable managerial authority in the law firm in which the person is engaged."

SPS carried out its activities through its own employees. Respondent had no role in supervising their activities. Thus, he cannot be found to have violated either RPC 5.3(b) or RPC 5.3(c)(2). See In re Hecker, 205 N.J. 263 (2011), DRB 09-372 (August 9, 2010) (slip op. at 64-69) (in a factually similar case, the attorney lent his name to a debt collection agency to "lend clout" to the agency's collection efforts when no real employer/employee relationship existed between the two; rather, by use of the attorney's name, the agency hoped to avoid the proscription against representing to a debtor that an attorney was involved in the debtor's account; thus, we held that, in the absence of a genuine employer-employee relationship between the attorney and the agency's employees, the attorney could not be found guilty of a failure to supervise those employees, in violation of RPC 5.3(b)).

In a case that also is factually similar to the matter now before us, the attorney permitted his wife, the owner of several loan modification companies, to use his law firm's address and telephone number, as well as his name, on the documents that her companies provided to their clients, thereby leading the customers to believe that he, as an attorney, would be handling their loan modification agreements. In re Velahos, 220 N.J. 108 (2014). Although the attorney had improperly affiliated with his

wife's companies, the record lacked evidence that he was the employees' direct supervisor and, thus, responsible for ensuring that their conduct was compatible with his obligations as a lawyer. Accordingly, we rejected the stipulated violation of RPC 5.3(b) in that case.

Because respondent's relationship with SPS was a sham, he never acted as the attorney for the grievants. However, respondent knew that each of the grievants had signed a retainer agreement and, thus, believed that he was their attorney. Accordingly, he was bound by the RPCs governing attorneys' ethics obligations to their clients. Cf., Petrillo v. Bachenberg, 139 N.J. 472, 483-84, 486 (1995) (noting that "attorneys may owe a duty of care to non-clients when the attorneys know, or should know, that non-clients will rely on the attorneys' representations and the non-clients are not too remote from the attorneys to be entitled to protection").

RPC 1.3 requires a lawyer to act with "reasonable diligence and promptness in representing a client." RPC 1.4(b) requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." RPC 1.4(c) requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Finally, RPC

1.16(d) requires a lawyer, upon termination of the representation, to "take steps to the extent reasonably practicable to protect a client's interests," such as "refunding any advance payment of fee that has not been earned or incurred." Respondent violated all of these rules.

After entering into an attorney-client relationship with the grievants, respondent did nothing to assist them, choosing instead to abdicate all responsibility in favor of SPS and its employees, which did next to nothing for the homeowners. While the clients' matters were presumably active, respondent did not communicate with them about anything. What little communication he did have with the clients came only after they had contacted him about refunds and, even then, he failed to promptly comply with their requests for information or provide them with any explanation that would allow them to make an informed decision about how to proceed in the face of SPS's derelictions and ultimate disappearance. Finally, respondent did nothing to protect his clients' interests after he learned that SPS had disappeared, leaving the homeowners with no recourse. He refunded their monies only after Pennsylvania had instituted disciplinary proceedings against him and required those refunds. Thus, respondent violated RPC 1.3, RPC 1.4(b) and (c), and RPC

1.16(d). In turn, respondent violated RPC 8.4(a) which proscribes the violation of RPCs "through the acts of another."

Finally, respondent's conduct amounted to a violation of RPC 8.4(c) in several respects. First, the arrangement between respondent and SPS itself was dishonest. Respondent affiliated with SPS so that it could avoid the statute requiring debt adjusters to be licensed. In exchange, he received a part of the fee paid by each of SPS's customers.

Second, an attorney who lends his name to a company and permits it to send letters on the attorney's stationery violates RPC 8.4(c). In re Hecker, supra, 205 N.J. 263 (2011).

Third, respondent made multiple misrepresentations, in general, and to each individual grievant. Respondent's website misrepresented that respondent and "his processing center, [SPS], have helped countless homeowners during this difficult time through the process of a loan modification;" that he specialized in the representation of homeowners with distressed mortgages; that he, his attorneys, and his negotiators had "extensive experience negotiating with banks;" and that he could "stop the foreclosure process and save your home." SPS's website misrepresented that it had been "contracted by" respondent's firm to assist homeowners with distressed mortgages and that,

together, respondent and SPS had "helped countless homeowners . . . through the process of a loan modification."

In addition, respondent's cover letter, transmitting the loan modification "paperwork" to the customers solicited by SPS, misrepresented that his law firm and SPS were "here to help you with your loan modification, aiding you to stay in your home and keep your dream alive;" "here to help you with any questions regarding your disclosures and/or the modification process;" and that his law firm had "expertise in mortgage and real estate law." Further, the loan modification "paperwork," as well as the websites maintained by respondent and SPS, "conveyed the impression" that respondent was "either working with SPS to provide loan modification services, overseeing and supervising the rendering of such services by SPS, or providing loan modification services through the Gembala firm."

In summary, the facts established conclusively in the Pennsylvania disciplinary proceeding clearly and convincingly support a finding here that respondent violated RPC 1.3, RPC 1.4(b) and (c), RPC 1.16(d), RPC 5.4(a), RPC 7.5(a), RPC 8.4(a), and RPC 8.4(c). The facts do not support a finding that respondent violated RPC 5.3(b) and (c)(2).

There remains for determination the appropriate measure of discipline to impose on respondent for his unethical conduct.

Generally, standing alone, lack of diligence, failure to communicate with a client, failure to refund the unearned portion of a retainer, and the use of misleading letterhead results in an admonition. See, e.g., In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (RPC 1.3 and RPC 1.4(b); attorney filed a defective foreclosure complaint and failed to correct the deficiencies, despite notice from the court that the complaint would be dismissed if they were not cured; after the complaint was dismissed, he took no action to vacate the dismissal, a violation of RPC 1.3; the attorney also failed to tell the clients that he had never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated, a violation of RPC 1.4(b)); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005) (one-year delay in refunding unearned portion of fee, a violation of RPC 1.16(d)), and In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (attorney used letterhead that identified three attorneys as "of counsel," despite having no professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) in that two of those attorneys were sitting judges, which could have created a perception that he had improper influence with the judiciary; we noted other improprieties).

It is well-settled that misrepresentation to a client results in the imposition of a reprimand. See, e.g., In re Kasdan, 115 N.J. 472, 488 (1989), citing In re Dreier, 94 N.J. 396 (1983); In re Rosenthal, 90 N.J. 12 (1982); In re Ackerman, 63 N.J. 242 (1973); and In re Bloom, 60 N.J. 113 (1972). When the attorney makes misrepresentations to multiple clients, greater discipline is imposed. See, e.g., In re Casey, 170 N.J. 6 (2001) (three-month suspension imposed on attorney who, in four client matters, misrepresented to each client that his case was progressing in due course; attorney also exhibited gross neglect and a pattern of neglect, failed to communicate with the clients, and failed to expedite litigation).

In cases involving improper fee sharing with nonlawyers, the discipline has ranged from an admonition to a lengthy suspension, depending on the severity of the lawyer's conduct, the presence of other, serious violations, and the lawyer's ethics history. See, e.g., In the Matter of Paul R. Melletz, DRB 12-224 (November 16, 2012) (admonition for attorney who hired a paralegal for immigration matters as an independent contractor and, for a few years, evenly divided the flat fee charged to immigration clients); In the Matter of Ejike Ngozi Uzor, DRB 12-075 (May 29, 2012) (admonition imposed where, over a four-month period, attorney permitted a loan-modification entity, owned by nonlawyers, to operate under his law firm name and shared fees

charged to the loan-modification clients; the attorney also violated RPC 5.4(d)(3) (prohibiting a nonlawyer from exercising control over the professional judgment of the lawyer) by allowing the nonlawyers to administer "law firm finances" through the attorney's business account; mitigation included the attorney's inexperience at the time of the misconduct (he had been admitted to the bar only months earlier), his short-term involvement with the entity, the immediate termination of the relationship once he realized its impropriety, and his protection of the entity's clients from harm by working without compensation and by contributing his own funds to pay former staff to complete open files); In the Matter of Geno Saleh Gani, DRB 04-372 (January 31, 2005) (admonition for attorney who contracted with a Texas organization to develop a New Jersey practice to prepare living trusts, made misleading communications about his services, engaged in other advertising violations, shared legal fees with non-attorneys, and assisted others in the unauthorized practice of law); In re Burger, 201 N.J. 120 (2010) (reprimand for attorney who paid a paralegal employee fifty percent of the legal fees generated by immigration cases that the paralegal referred to the attorney; we determined that the employee's earnings, both from the fee shares and her weekly salary, were not excessive for the

position of a paralegal/secretary); In re Agrapidis, 188 N.J. 248 (2006) (reprimand imposed where, over a four-year period, attorney shared fees with nonlawyer employees on twelve occasions by paying them a percentage of legal fees received from clients whom the employees had referred to the attorney; Agrapidis was not aware of the prohibition against fee-sharing and viewed the payments as "bonuses"); In re Gottesman, 126 N.J. 376 (1991) (attorney reprimanded for compensating his paralegal/investigator by paying him fifty percent of his legal fees; the attorney also assisted the employee in the unauthorized practice of law; although Gottesman believed the fee share arrangement was permissible because his former firm had engaged in the same practice, the Court found that his ignorance of the disciplinary rules was not a defense to the ethics charges); In re Velahos, supra, 220 N.J. 108 (censure; attorney worked in conjunction with his nonlawyer wife, who owned various loan modification companies that solicited work from homeowners in various states; the companies' documents listed the attorney's law office address and telephone number and identified him as a "representative;" we found that, by lending his name to these companies, the attorney led the customers to believe that he, as an attorney, would be handling their loan modification agreements, violations of RPC 5.4(b) and

RPC 5.5(a)(1); the attorney also violated RPC 8.4(b) by his involvement in a business that required an advance payment from a North Carolina client seeking a loan modification, which was prohibited under the law of that state); In re Marcus, 213 N.J. 493 (2013) (censure, by consent, for attorney who paid nonlawyer employees a percentage of fees received from clients whom they referred to the attorney; the attorney had been reprimanded three times for unrelated infractions); In re Macaluso, 197 N.J. 427 (2009) (censure imposed on attorney, who, as a nominal partner, participated in prohibited compensation arrangement with employee and failed to report the controlling partner's misconduct); In re Fusco, 197 N.J. 428 (2009) (companion case to Macaluso) (attorney suspended for three months for paying a nonlawyer claims manager both a salary and a percentage of the firm's net fee recovered in personal injury matters that were resolved with the manager's "substantial involvement;" the claims manager received a larger percentage of the firm's fees in cases that he had referred to the firm; other infractions included failure to supervise nonlawyer employees and failure to report another lawyer's violation of the RPCs); In re Malat, 177 N.J. 506 (2003) (three-month suspension imposed on attorney who entered into an arrangement with a Texas corporation to review various estate-planning documents on behalf of clients, for

which the corporation paid him; the attorney had a previous reprimand and a three-month suspension); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who agreed to share fees with a nonlawyer, entered into a law partnership agreement with a nonlawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Moeller, 177 N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a Texas corporation (AES) that marketed and sold living trusts to senior citizens, whereby he filed a certificate of incorporation in New Jersey for AES, was its registered agent, allowed his name to be used in its mailings and was an integral part of its marketing campaign, which contained many misrepresentations; although the attorney was compensated by AES for reviewing the documents, he never consulted with the clients about his fee or obtained their consent to the arrangement, he assisted AES in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); and In re Rubin, 150 N.J. 207 (1997) (in a default matter, attorney suspended for one year for assisting a nonlawyer in the unauthorized practice of law, improperly dividing fees with the nonlawyer without the client's

consent, engaging in fee overreaching, violating the terms of an escrow agreement, and making misrepresentations to the client about a real estate transaction and about his fee).

Only two of the above-cited cases involve arrangements between lawyers and loan modification services: Uzor and Velahos. In Uzor, the attorney received an admonition. That case is far different from the one here, however. Unlike Uzor, who was salaried, respondent received a portion of the fee paid by the homeowners. Moreover, unlike Uzor, who had been practicing law for only a few months, respondent had been practicing law for nearly twenty-five years at the time of his violations. Further, unlike Uzor, after SPS had disappeared, respondent took no action to protect the homeowners from harm, either by working without compensation or by contributing his own funds to hire the staff required to complete the open files, or both.

Although both respondent and the attorney in Velahos permitted a loan modification service to use their law firm addresses, other factors demonstrate that respondent's conduct was far more serious and, therefore, deserving of discipline greater than a censure. First, respondent was involved in many more matters than Velahos. In addition, there was no evidence that Velahos was involved in the actual solicitation of customers. Here, however, respondent was very much involved in

that process, as evidenced by his website, as well as SPS's website.

Given the number of violations committed by respondent, the number of homeowners involved, and his involvement in the solicitation of SPS customers, we determine that a suspension is warranted. Respondent's conduct is analogous to that of the attorney in Moeller, who received a one-year suspension. As did Moeller, respondent allowed SPS to use his name; he was an integral part of its marketing campaign, which contained multiple misrepresentations; he assisted SPS in the unauthorized practice of law; and he neither consulted with the clients about his fee nor obtained their consent to the arrangement between him and SPS.

Thus, under the totality of the circumstances, we determine that a one-year suspension is warranted.

We are mindful of respondent's unblemished ethics history over a span of nearly twenty-five years prior to his 2014 reprimand. However, based on respondent's experience and the information made available to him by SPS, prior to their affiliation, he should have been suspicious, at the least. Moreover, the publication of Opinion 716/Opinion 45 placed him on notice of the impropriety of the arrangement that he forged with SPS.

Moreover, we reject respondent's claim, based on the 2014 reprimand, that he already has been disciplined for the misconduct at issue in this matter. As stated previously, the 2014 case involved a single homeowner. Here, thirty-three homeowners complained to Pennsylvania disciplinary authorities about his conduct. These grievants' complaints were not the subject of prior discipline.

At the same time, respondent's prior reprimand should not be considered in aggravation because Gembala I was based on the same conduct at issue in this disciplinary proceeding, which took place within the same timeframe.

Further, although respondent claims, in his certification submitted to us in this matter, that he did not give SPS permission to put his "name on their offices or to write letters over [his] name," the Joint Petition states otherwise. Specifically, respondent agreed, in Pennsylvania, that the SPS sample documents, which included a letterhead with the name of his firm and SPS's address on a form letter to be signed by respondent, would become the loan modification paperwork that would be, and was, sent to prospective clients, who, upon retention of respondent and SPS, would be required to complete and return that paperwork to SPS. Respondent cannot now disavow this fact in New Jersey.

Finally, in light of the passage of time, we conclude that the one-year suspension should apply retroactively. Respondent's conduct took place in late 2009, nearly seven years ago. Respondent's two-year suspension in Pennsylvania was imposed in late 2012, nearly four years ago. His reinstatement in Pennsylvania is pending.

Member Zmirich voted to impose a one-year prospective suspension. Member Gallipoli 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph A. Gembala, III
Docket No. DRB 15-421

Argued: April 21, 2016

Decided: September 14, 2016

Disposition: One-year retroactive suspension

Members	Disbar	One-year Suspension	One-year Retroactive Suspension	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli						X
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich		X				
Total:		1	7			1

Ellen A. Brodsky
Chief Counsel