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November 23, 2016

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Donald Warren**
Docket No. DRB 16-284
District Docket No. XIV-2014-0027E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (three-month suspension or such lesser discipline as the Board deems warranted) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a three-month suspension is the appropriate discipline for respondent's violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.7(a)(2) (concurrent conflict of interest); RPC 1.8(a) (improper business transaction); and RPC 1.15(d) and R. 1:21-6 (recordkeeping).

Specifically, On January 7, 2014, Myriah Stanley (Stanley) filed a grievance against respondent, alleging that, in his capacity as trustee of the Myriah Anne Stanley Trust (Stanley Trust), he misappropriated her funds.

Stanley had received $300,000 as proceeds from her deceased father's life insurance policy. Respondent and Stanley's mother, Marie A. Leiggi (Leiggi) were dating, and Leiggi discussed with him placing Stanley’s funds in trust. According to Stanley, although Leiggi thought she should serve as the trustee for her daughter's funds, respondent suggested that he do so because he was more qualified. Leiggi, too, claims that respondent convinced her that he should be the trustee. Leiggi believed that the funds would be deposited, and remain, in a Merrill Lynch account until Stanley was twenty-five years old.

During the OAE's investigation, respondent explained, that, in 1998, he lived with Stanley and Leiggi, and that, at some point that year, he and Leiggi were engaged to be married. He filed the appropriate paperwork with the Surrogate's Court and was appointed trustee. When respondent assumed the role as trustee, the balance of the trust was approximately $272,000. The funds were transferred into an investment account at Merrill Lynch, which was established by respondent's sister, an account manager.

By August 2002, the funds in the Merrill Lynch account had decreased to approximately $157,000 because of market fluctuations and interim disbursements to Stanley. Believing that the market was in a "free fall," respondent decided to move the money out of the account. Instead, he determined to extend a $110,000 mortgage, at eight percent interest, secured by real property. The property belonged to respondent's former secretary, whom he initially identified as Joyce Wright Fitzgerald (Joyce), and who had worked for him for six months in 1998. She and her husband were having difficulty obtaining a second mortgage on their home in Hamilton, New Jersey.

In fact, Mary Carol Wright (Carol), Joyce's mother, was respondent's secretary and the wife of Carl Wright.[1] Respondent told the OAE that Carol stopped working for him because she had some health/personal issues that she needed to address. He did not consider his former secretary to be a friend and he did not know her very well. Respondent maintained that the loan was given to Carl and Carol, and that Joyce and her husband, Tim, planned to move into the house to help them with the payments.

Joyce and Tim had purchased the property in 1998. Joyce then transferred ownership to Carl, because she was experiencing financial difficulty and had filed for bankruptcy. The house was

[1] For the sake of clarity, going forward, "Carol" will be referenced. Because, however, respondent had referred to "Joyce" as his secretary during the OAE's investigation of this matter, the stipulation incorrectly refers to "Joyce" in some instances.

solely in Carl's name at the time the loan was made. At the time, Joyce, Tim, Carol, Carl, and Joyce's son lived in the house. Joyce had not been working for about seven years. Tim was employed by Amazon.

According to Carol, she had worked for respondent in his law office as a secretary/receptionist for about one year. She never socialized with respondent outside of the office. About six months into her employment with respondent, she and Carl began to experience financial difficulties and were facing imminent foreclosure on their house. Respondent offered to loan them money from Stanley's trust fund, explaining that he first needed to obtain authorization from someone to be able to do so. Joyce told the OAE that respondent did not perform any credit or background checks, and that the money was available within two to three days.

Respondent maintains that he fully and candidly communicated with everyone regarding the funds. Indeed, he claimed that the decision to move the funds from the Merrill Lynch account was made jointly by Stanley, Leiggi, and himself. Although respondent did not know whether he ever received written permission from Stanley to lend the money and was not able to produce any such writing, Stanley confirmed that respondent told her that his secretary needed money to purchase a home and that, if the loan were made, the secretary would make a payment every month with interest.

Despite discrepancies about the events leading up to the loan, at some point, respondent conducted a credit check on Carl, which revealed that he had some credit problems, due to late payments. Respondent said that Carl had explained the late payments as attributable to his health problems, which caused him to miss some work. He assured respondent, however, that "he was fine now." Respondent admitted that he did not pay much attention to Carl's credit history, but rather focused on two property appraisals he had seen, as well as the balance on the first mortgage, when considering giving this loan to Carl, Carol, and Joyce. He believed that the value of the property provided sufficient collateral to secure the $110,000 loan. At the time, he was aware of two earlier appraisals on the property, one for $400,000 and another for $440,000. He did not, however, obtain an updated appraisal. Respondent had never been inside the house prior to issuing the mortgage.

Although respondent was loaning Stanley's money to Carl, as sole owner of record of the home, he added Carol on the note to have more "liability." Respondent neither investigated whether Carl and Carol were employed at the time of the loan nor performed a credit check on Carol. The first time he met Carl was the day the loan documents were signed at respondent's office.

Eventually, two mortgages were recorded in connection with the $110,000 loan. The first mortgage, in the amount of $50,000, was recorded on October 23, 2001. The second mortgage, in the amount of $60,000, was recorded on April 18, 2002. In both mortgages, the borrowers were Carl, Carol, and Joyce, and the lender was the Myriah Anne Stanley Trust, Donald E. Warren, Trustee. The following checks were disbursed to Carl:[2]

1. On September 7, 2001, check No. 241 for $20,000 which cleared on September 17, 2001;
2. On September 7, 2001, check No. 242 for $40,000 which cleared on September 11, 2001.
3. On September 28, 2001, check No. 244 for $40,000 which cleared on October 2, 2001;
4. On October 22, 2001, check No. 246 for $10,000 which cleared on October 25, 2001.

Respondent told the OAE that Carl wanted two separate mortgages so that he would have the option to retire them at different times. Notwithstanding the three different dates on the checks, respondent believes that he delivered all of the checks on the same date, and does not know why they cleared the account on different days.

Shortly after the loan was made, Carl and Carol filed for bankruptcy, stopped making payments on the loan, and did not return any of respondent’s calls. On May 15, 2002, respondent retained Michael Kahme, Esquire (Kahme), of the Hill Wallack law firm, to file a foreclosure action on his behalf, for the outstanding mortgages. Eventually, Wells Fargo, the primary mortgage lender, also filed a foreclosure action.

[2] The record does not explain why the checks were issued only to Carl, when Carol and Joyce were also the borrowers under the mortgage.

Soon thereafter, Wells Fargo informed respondent that the property would be sold at a sheriff's sale. Respondent then decided to buy the property with personal funds, repair it, and resell it to recover some money for Stanley. Respondent wanted to do so because of his relationship with Leiggi, and denied that he was motivated by a belief that he owed Stanley any money. When respondent purchased the property, he told Leiggi that he planned to sell it to try to recoup some of the money. Leiggi asked respondent whether he was going to put Stanley's name on the deed for the property, but he did not do so. Contemporaneously, respondent told Chuck Gainey, Stanley's uncle by marriage, that respondent would obtain a second mortgage on the house, so that he could pay back the money that was lost.

Respondent purchased the property for $318,000; however, as a result of the extensive repairs he was required to make, he took a large loss and was unable to give any money to Stanley. Joyce, however, claimed the house was "move in ready" when respondent bought it. In any event, after the renovations were completed, respondent and Leiggi moved into the house. Leiggi eventually moved after the relationship ended. Respondent still resides at the property.

Respondent's records relating to this matter are extremely limited because he purged several hundred "gallons" of paper records after the last entry was substantially older than seven years. Respondent did not retain all of the records relating to Stanley's money.

In October 2004, respondent withdrew the balance of $3,097 from the trust. Although he provided no documents confirming the disposition of those funds, he told the OAE, "I guarantee you [Stanley] got it, I just can't tell you how". At some point, Stanley asked respondent for any funds remaining in her trust and for documents relating to her trust fund. According to Stanley, she received no response.[3]

As of July 15, 2014, the date the OAE interviewed respondent, he had made no attempt to sell his house and had no plan to do so. He believes that Stanley filed this grievance

[3] It is unclear whether this request for documents was made at or near the time the loan was made, or whether it was made after the relationship among respondent, Leiggi, and Stanley had deteriorated.

against him because she is angry that he married another woman, instead of her mother. He added that he had remained friendly with Leiggi until the grievance was filed.

Respondent stipulated that, by his conduct, he violated RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c) (failure to communicate), RPC 1.7(a)(2), RPC 1.8(a), RPC 1.15(d) and R. 1:21-6, and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Board determined that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.7(a)(2), and RPC 1.8(a). It further determined, however, to dismiss the alleged violations of RPC 1.4(b), RPC 1.4(c), and RPC 8.4(c).

Specifically, respondent did not perform a credit check on Carol, ignored issues in Carl's credit report, never determined the employment status of Carl or Carol, never obtained an appraisal on the property, and never visited the property. As a fiduciary, respondent was charged with the responsibility of protecting Stanley's interests. He utterly failed in those responsibilities. Not only did respondent engage in gross neglect and a lack of diligence, violations of RPC 1.1(a) and RPC 1.3, but also his conduct was reckless – he essentially gave away $110,000 of the funds in Stanley's trust.

Most significantly, respondent entered into a prohibited business transaction by knowingly acquiring ownership in the property, pitting his interests in direct conflict with Stanley's interests. Respondent purchased the property without informing Stanley, in writing, of the transaction and never received, in writing, her informed consent thereto. This transaction created a significant risk that respondent's representation of Stanley, as her fiduciary, would be materially limited by his own personal interest, a violation of both RPC 1.7(a)(2) and RPC 1.8(a).

As noted, the Board determined that the remaining violations identified in the consent to discipline should be dismissed. Despite respondent's stipulation to these violations, the facts do not support them. Specifically, respondent stipulated to having violated RPC 1.4(b) and (c) because he never asked Stanley or Leiggi to sign any documents and he could not recall whether he had received Stanley's written permission to lend her funds to another. Both Leiggi and Stanley indicate that there was some communication regarding the trust, the

Merrill Lynch account, and the mortgage. Although respondent's failure to obtain signed documents and written consents support the RPC 1.7(a)(2) and RPC 1.8(a) violations, they do not establish violations of RPC 1.4(b) and (c).

Further, respondent's violation of RPC 1.15(d) and R. 1:21-6 was premised on his failure to maintain all of the records relating to the trust, even though "Carl and Carol filed for bankruptcy and [Stanley] has not been made whole as a result of the financial losses sustained." The stipulation, however, cites no authority for the contention that records must be retained beyond the seven years after the event that they record, as required by R. 1:21-6(c). Although Advisory Committee on Professional Ethics Opinion 692, 163 N.J.L.J. 220 (January 15, 2001), supplemented by Advisory Committee on Professional Ethics 692 (Supplement) 170 N.J.L.J. 343 (October 28, 2002) provides that "property of the client" must be returned to the client or maintained indefinitely, such items typically include original wills, deeds, stocks and other "material of inherent value." The stipulation contains no mention of any such items in this case. The Board, therefore, declines to find these violations.

Finally, respondent is alleged to have violated RPC 8.4(c) by misrepresenting to Leiggi that he would purchase the property to recoup money and by further misrepresenting to Stanley's uncle that he would obtain a second mortgage on the property in order to compensate her. The stipulation, however, also provides that respondent was unable to repay any money because of the loss he sustained on the house, caused by unanticipated renovations it needed. Moreover, the stipulation contains no indication that, when respondent made those statements, he had no intent to compensate Stanley for her loss. Hence, the alleged violation of RPC 8.4(c), too, is unsupported by the stipulation.

It is well settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). In some situations, a reprimand may result, even if the attorney commits other ethics improprieties. See, e.g., In re Hunt, 215 N.J. 300 (2013) (attorney found guilty of a concurrent conflict of interest by agreeing to represent Essex County at a time when he had been retained to pursue a claim against the county on behalf of a client; he also was guilty of engaging in gross neglect and lack of diligence, failing to keep the client informed about the status of the matter, failing to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, failing to comply with recordkeeping requirements, and making misrepresentations to disciplinary authorities and to a client; mitigating factors included the attorney's lack of a disciplinary history in his twenty-eight years at the bar and his acknowledgement of wrongdoing by stipulating to the misconduct).

Where an attorney's conflict of interest has caused serious economic injury or the circumstances are more egregious, the Court has not hesitated to impose a period of suspension. See, e.g., In re Wildstein, 169 N.J. 220 (2001) (three-month suspension for attorney who engaged in a conflict by acting as executor and trustee to an estate that held an interest adverse to another estate of which the same attorney was the executor and beneficiary; the attorney had added himself as a residuary beneficiary to the second estate, creating an improper testamentary gift; attorney also failed to disclose material facts to the beneficiaries of both estates and made misrepresentations to disciplinary authorities during the investigation into those matters; the attorney was also found guilty of gross neglect, lack of diligence, and failure to communicate with his clients in regard to the two estates); In re Butler, 142 N.J. 460 (1995) (three-month suspension for an attorney who failed to inform his clients, the sellers, of the buyers' contract to sell the property to a third party; the contract had been executed before closing of title with the attorney's client; the attorney also represented both parties in negotiating a contract of sale and in negotiating a modification of its terms); In re Hurd, 69 N.J. 316 (1976) (three-month suspension for attorney who arranged a loan transaction in which his friend, who was unsophisticated in business transactions, transferred property to Hurd's sister for approximately twenty percent of its value; previously unblemished twenty-two-year career was a mitigating factor); In re Feranda, 154 N.J. 4 (1998) (six-month suspension imposed where the attorney, who was both a tax attorney and a certified public accountant, engaged in a conflict of interest by simultaneously representing two parties to a real estate transaction; attorney also failed to safeguard the client's funds pending completion of the transaction; harm to the client and the attorney's denial of wrongdoing were considered in aggravation); In re Shelly, 140 N.J. 501 (1995) (six-month suspension for attorney who took loans from a client without documentation and without advising the client to obtain independent counsel prior to entering into the loan); In re Dato, 130 N.J. 400 (1992) (one-year suspension where the attorney represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value, and resold it ten days later for a $52,500 profit); In re Humen, 123 N.J. 289 (1991) (two-year suspension where the attorney engaged in numerous sensitive business transactions with his client, in which the attorney's interests were in direct conflict with those of the client); In re Harris, 115 N.J. 181 (1989) (two-year suspension where the attorney induced the client to lend large sums to another client of whom the attorney was a creditor, without informing the first client of the financial difficulties of the borrowing client); and In re Casale, 213 N.J. 379 (2013) (three-year suspension for attorney, who at the request of his long-time friend and client, represented an elderly widow, who was in poor health and of questionable competence, in the sale of her million-dollar home to the attorney's friend; the terms of the sale and consequent mortgage loan were grossly unfavorable to the widow, who ultimately received no payments on the mortgage; the attorney also convinced the widow to include a provision in her will forgiving any outstanding mortgage on her death);

But, see, In re Wolk, 82 N.J. 326 (1980) (disbarment where attorney grossly and intentionally exaggerated his services in a personal injury action on behalf of one client; in a second client matter, attorney concealed material facts about a multi-family dwelling, including its real value and unpaid taxes, in order to manipulate a recently widowed client into making a $10,000 investment in a second mortgage on the property; not only was the attorney counsel to the bank that owned the property, but he was also the president and held a twenty-five percent share; the transaction proved to be very one-sided in the attorney's favor).

The Board found that respondent's conduct in this matter not only was egregious in nature, but also caused serious economic harm to Stanley. Furthermore, respondent appears to have benefited financially from Stanley's loss by purchasing the property and residing in it to this day.

Respondent's conduct in this case is somewhat analogous to that of the attorney in Hurd, supra, in that it involved both a personal relationship and a fiduciary relationship. In Hurd, the attorney always had been an advisor and confidante of his next door neighbors, the Skinners. In re Hurd, supra, 69 N.J. at 318. After having resided in their home for fifty-seven years, the Skinners fell on hard times and eventually, the City of

Elizabeth obtained their property for unpaid water and property taxes. The City, however, elected not to take immediate possession. Id. at 319. The Skinners sought the advice of Hurd in order to prevent their loss of the property. Hurd determined that $1,701.43 was required to redeem the property and advised Mrs. Skinner to attempt to obtain the money from her family or her principal employer. One of her employers was Hurd's sister, who subsequently loaned her the money. Id. at 320.

Eventually, the parties gathered at Hurd's office to review documents that conveyed the property to his sister from the Skinners for the taxes due. Id. at 321. The Skinners, however, believed documents related to a loan, rather than the transfer of the property. Id. at 323.

The Court held that, even absent an attorney-client relationship, an attorney owes a fiduciary obligation to those he has, or should have, reason to believe rely on him. Id. at 330. The Skinners relied on Hurd and were deprived of their property thereby.

Here, respondent took advantage of the loss to Stanley, to whom he owed a fiduciary duty, and created an opportunity that resulted in a significant windfall for himself. His intentions may have been pure at the time of the loan and at the time he purchased the house. Nonetheless, respondent has now lived in that house for more than eleven years and will be the beneficiary of any appreciation in its value. Meanwhile, Stanley has lost $110,000 and any economic opportunity that money would have created for her over that same period. Although respondent did not make misrepresentations, as did the attorney in Hurd, his conduct is similar in the level of outrageous behavior and the extent of the economic injury it caused.

In mitigation, the Board considered that respondent has no history of discipline in twenty years at the bar; has shown contrition and remorse, according to the OAE; and has cooperated with ethics authorities by entering into a stipulation.

The Board, therefore, determined that, under the totality of the circumstances, respondent's conduct warrants a three-month suspension.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 4, 2016;

2. Stipulation of discipline by consent, dated July 8, 2016;

3. Affidavit of consent, dated July 28, 2016;

4. Ethics history, dated November 23, 2016.

Very truly yours,

Ellen A Brodsky

Ellen A. Brodsky
Chief Counsel

Enclosures
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