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RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 962  
TRENTON, NEW JERSEY 08625-0962  
(609) 815-2920

ELLEN A. BRODSKY  
CHIEF COUNSEL

PAULA T. GRANUZZO  
DEPUTY CHIEF COUNSEL

MELISSA URBAN  
FIRST ASSISTANT COUNSEL

TIMOTHY M. ELLIS

LILLIAN LEWIN

BARRY R. PETERSEN, JR.

COLIN T. TAMS

KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

November 20, 2017

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

Re: In the Matter of Michael Augustine Amato  
Docket No. DRB 17-332  
District Docket No. XIV-2016-0492E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or censure) 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 reprimand is the appropriate discipline for respondent's violation of RPC 1.8(a) (entering into a prohibited business transaction with a client).

Specifically, Robert Taurosa and RCT Policies FLP (RCT) retained respondent in connection with the purchase and sale of life insurance policies. Taurosa also retained respondent in various other commercial and personal matters. On February 20, 2015, respondent made two loans to RCT, for \$25,000 and \$500,000, respectively. The \$500,000 loan was for the purchase of a life insurance policy in connection with the business activity of RCT. Three days later, on February 23, 2015, respondent loaned \$3,077.06 to RPM Auto Sales (RPM). RPM is a company owned and operated by Taurosa. On March 14, 2015, RPM repaid the \$3,077.06 loan.

Subsequently, on June 19, 2015, respondent and Taurosa engaged in a currency transaction involving Iraqi Dinar. Taurosa initially paid \$21,519.95 for the currency transaction. On the same day, respondent issued Taurosa a check for \$21,519.95, reimbursing him for the currency transaction he initially funded.

Finally, on October 21, 2015, RCT repaid both the \$25,000 and the \$500,000 loans to respondent. Respondent had not received informed consent from his clients prior to engaging in any of the aforementioned business transactions, as required by RPC 1.8(a)(3).

In aggravation, the OAE submits that respondent's violation was not a "single aberrant, even compulsive, act[.]" See In re Kelly, 120 N.J. 679, 689 (1990). Respondent engaged in multiple transactions with his client. In mitigation, respondent has no history of discipline, the client suffered no harm, and respondent admitted his wrongdoing and entered into a stipulation for discipline by consent.

Respondent admitted that, in 2015, he made three loans to his client without receiving the client's written informed consent. Further, respondent entered into an unauthorized business transaction with his client by allowing Taurosa to fund a currency transaction on behalf of respondent. Again, in relation to the currency transaction, respondent failed to obtain Taurosa's informed consent, in writing. In so doing, respondent violated RPC 1.8(a)(3).

When an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition. See, e.g., In the Matter of David M. Beckerman, DRB 14-118 (July 22, 2014) (during the course of the attorney's representation of a financially-strapped client in a matrimonial matter, he loaned the client \$16,000, in monthly increments of \$1,000, to enable him to comply with the terms of a pendente lite order for spousal support; further, to secure repayment for the loan, the attorney obtained an impermissible mortgage from the client on his share of the marital home; the attorney also paid for the replacement of a broken furnace in the client's marital home; by failing to advise the client to consult with independent counsel, failing to provide the client with written disclosure of the terms of the transactions, and failing to obtain his informed written consent to the transactions and to the attorney's role in them, the attorney

violated RPC 1.8(a); by providing financial assistance to the client, he violated RPC 1.8(e)) and In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (attorney made small, interest-free loans to three clients, without advising them to obtain separate counsel; the attorney also completed an improper jurat; significant mitigation considered).

Discipline greater than an admonition has been imposed when an attorney engages in multiple business transactions without the informed consent of the client, aggravating factors are present, or the attorney is guilty of additional ethics infractions. See, e.g., In re Futterweit, 217 N.J. 362 (2014) (reprimand imposed on attorney who agreed to share in the profits of his client's business, in lieu of legal fees, without first advising the client, in writing, of the desirability of seeking the advice of independent counsel and obtaining the client's written consent to the transaction; violation of RPC 1.8(a); the attorney also violated RPC 1.5(b) by failing to provide the client with a writing setting forth the basis or rate of his fee; in aggravation, the Board noted that the attorney had given inconsistent statements to the district ethics committee, that he had received an admonition for failure to communicate with a client, and that he had never acknowledged any wrongdoing or showed remorse for his conduct) and In re Kazer, 189 N.J. 299 (2007) (reprimand for attorney who made nineteen loans to eleven clients; altruistic motivations considered in mitigation).

Here, respondent entered into three loans and one unauthorized business transaction, without his client's informed consent. This misconduct is most similar to that of the attorney in Shamy, supra, who made three small, interest-free loans to clients. Shamy also took an improper jurat. In imposing only an admonition in that matter, the Board considered significant mitigating factors not present here. Additionally, the attorney in Kazer, supra, received only a reprimand despite making nineteen improper loans to eleven clients. There, too, the Board considered mitigation not present in the instant matter. In both those matters, the Board noted the altruistic motivations of both Shamy and Kazer.

Therefore, based on the foregoing, the Board determined that, without that significant mitigation, Kazer would have received a censure and Shamy a reprimand. Respondent's four transactions bring his conduct much more in line with the misconduct committed by Shamy. In mitigation, respondent has no history of discipline

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and readily admitted his wrongdoing by entering into a stipulation for discipline by consent. Further, his client was not harmed by the transactions. That mitigation does not tip the scale in favor of a downward departure, however, because of the large amount of money involved in these loans, which far exceeds the small loans made by Shamy. Hence, the Board determined that a reprimand was warranted.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 12, 2017.
2. Stipulation of discipline by consent, dated September 5, 2017.
3. Affidavit of consent, dated October 6, 2017.
4. Ethics history, dated November 20, 2017.

Very truly yours,

  
Ellen A. Brodsky  
Chief Counsel

c: (without enclosures)  
Bonnie C. Frost, Chair  
Disciplinary Review Board (via e-mail)  
Charles Centinaro, Director, Office of Attorney Ethics  
(via e-mail and inter-office mail)  
Joseph A. Glyn, Assistant Ethics Counsel  
Office of Attorney Ethics (via e-mail)  
Mark D. Garfinkle, Esq., Counsel for Respondent (via e-mail)