SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-217
District Docket No. IX-2016-0001E

IN THE MATTER OF	
CLAUDIO MARCELO STANZIOLA	
AN ATTORNEY AT LAW	

Decision

Argued: September 14, 2017

Decided: December 14, 2017

Francis P. Accisano appeared on behalf of the District IX Ethics Committee.

Richard M. Keil 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 recommendation for "a minimal suspension," filed by the District IX Ethics Committee (DEC). The complaint charged respondent with having violated RPC 1.8(a)(1) and (2) (improper business transaction with a client). For the reasons set forth below, we determine to impose a censure for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1998. He maintains a law office in Long Branch, New Jersey. He has no history of discipline.

Grievant, Michael Longo, was in the business of selling telecommunication and/or network services to small and midsize businesses, and owned commercial and residential real estate. According to Longo, he met respondent while he was a client of the law firm of Tucci, Hot, Crupi, and Stanziola. In early 2015, Longo asked Lex Tucci to represent him in several breach of contract and collection matters. Tucci declined to take the cases. Thereafter, respondent informed Longo that he was planning to leave the firm and perhaps they could "help each other out."

Longo maintained that, around that time, he asked respondent if he knew of anyone interested in purchasing or leasing his building. Respondent replied that he could do neither because he was going through a divorce and did not have the funds. According to Longo, however, respondent was interested in leasing some office space via a barter arrangement because, for divorce purposes, he did not want to convey the impression that he had the funds to pay rent. Although Longo preferred to pay for respondent's services and to receive rent for the office space, he agreed to the barter arrangement.

Respondent prepared a lease agreement, which provided that he would represent Longo in several matters, in exchange for the use of Longo's upstairs office. At the time, William Connelly represented Longo in those matters. Respondent, thus, met with Connelly to review the cases. According to Longo, the two attorneys did not discuss respondent's lease arrangement. Respondent asserted, however, that Connelly offered to review the lease. Respondent claimed further:

> We went forward. He [Connelly] asked me to -- he asked me to draft a lease. I asked him, Do [sic] you have a lease available? He said he did not. He asked me to draft a lease. I drafted something. He made some changes to the documents, substantial changes. And we went into the tenancy.
>
> [T44-18 to 44-23.][1]

Longo claimed that he was not represented by independent counsel in the negotiation of the lease, and respondent did not advise him verbally or in writing of the desirability of seeking and retaining independent counsel to review the lease. According to Longo, he assumed that respondent was representing him with respect to the lease agreement because, at the time, respondent was his lawyer in the other matters. A September 9, 2015 letter from John L. Bonello, Esq., Longo's attorney in a subsequent

[1] T refers to the transcript of the January 25, 2017 DEC hearing.

eviction matter against respondent, confirmed that Connelly did not represent Longo "in any fashion" concerning the lease.

Respondent ultimately admitted that he never forwarded a copy of the lease to Connelly or any other attorney for review; never sent Longo a letter confirming that he was not representing him on the lease; never informed Longo of the hours he spent working on his matters; never provided Longo with any billing records or a retainer agreement, because he assumed that the lease served as a retainer; and never paid Longo rent for the office space.

The lease agreement between respondent and Longo states, in relevant part:

> RENT: Commencing as of the Commencement Date and continuing for the duration of the Term, Landlord reserves and Tenant covenants to pay to Landlord, without demand or notice, and without any setoff or deduction, rent ("Rent") in the amount of $10,500.00 per year, payable in monthly installments of $875.00, on or before the first day of each calendar month beginning. [sic] Landlord is also providing a value of $650.00 per month, for items included as part of this Agreement, found in Section 19 below, for a total rental value of $1,525.00. Any partial month's Rent shall be pro-rated. Except that, Tenant shall not make monthly payments for the first year of the term of this Lease. Instead, Tenant shall represent Landlord in the following cases, in lieu of payment of rent by Tenant and payment of legal fees by Landlord (valued at $250.00 per hour): Long v. Comply First; Parallel Construction v. Michael Longo; Michael Longo

> advs Luke Bell; Encon v. Michael Long. Landlord understands that Landlord shall be responsible for all costs and fees associated with such representation, except for legal fees. Tenant shall begin paying $875.00 in rent to Landlord commencing July 1, 2016.
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> [Ex.PL2¶3;T9.]

Respondent and Longo entered into the lease agreement on or around June 24, 2015. Respondent occupied the premises that month. Soon after entering into the lease, Longo regretted doing so. He was dissatisfied with respondent's inaction in the matters he had taken over from Connelly. Longo noted that the lease did not provide any recourse if respondent failed to represent him in the listed matters.

Respondent agreed that his relationship with Longo soured quickly. By June 30, 2015, they had a falling out and Longo wanted him to move out immediately. Longo claimed that, when asked to do so, respondent replied "F you, sue me," which Longo did. Respondent finally vacated the premises four months later, on November 30, 2015, pursuant to a settlement in the landlord-tenant lawsuit.

According to respondent, Longo immediately became very demanding with regard to the cases he had taken over from Connelly. Longo called him on a regular basis, e-mailed him daily, and became upset if respondent did not reply instantly.

On July 30, 2015, Longo sent respondent an e-mail firing him. According to respondent, he had little opportunity to represent Longo before he was discharged.

Paragraph thirteen of the lease required notices (1) to be given in writing and would be deemed "given" only if hand-delivered; (2) to be sent by certified mail, return receipt requested; or (3) to be sent by a recognized overnight carrier service. Longo did not understand the paragraph, and assumed that the e-mail he sent, asking respondent to vacate the premises, was sufficient notice.[2] Respondent did not vacate the premises until Longo's attorney, John Bonello, instituted proceedings against him seeking a rescission of the agreement and his eviction.

Respondent accused Longo of harassing him and his staff. In turn, Longo claimed that respondent was constantly looking for reasons to accuse him of harassment. Respondent filed harassment charges against Longo with the local police, but, ultimately, dismissed the complaint.

Respondent used the office space from June to November 2015, without paying Longo rent. Longo believed that if

[2] Longo not only misunderstood the notice requirement but also did not understand the reason for including an hourly rate in their "barter" arrangement.

respondent stopped performing the legal services for which they had bartered, he would be required to vacate the premises. However, the lease failed to include such a provision.

According to the DEC, Longo's and respondent's relationship was not a simple commercial tenancy matter, because the "barter" arrangement made it more complex, encompassing legal and payment issues, and perhaps state and federal tax issues. Thus, Longo required independent counsel to review the lease. The DEC found clear and convincing evidence that respondent failed to advise Longo to consult with independent counsel, a violation of RPC 1.8(a).

The DEC found further that Longo suffered serious economic injury as he (1) lost a significant amount of rental income; (2) was forced to retain an attorney to address the issues that respondent's "self-serving actions" created and to institute eviction proceedings against respondent; and (3) was harmed by respondent's failure to properly represent him in the matters referenced in the lease.

Observing that the lease provided for the payment of rent without set-off, as well as the barter arrangement, the DEC found the lease to be both contradictory and self-serving. The DEC took no position on whether it constituted a proper retainer

agreement under RPC 1.5(b) (providing a client with a writing setting forth the basis or rate of the fee).

The DEC pointed out that respondent failed to present any mitigating factors. In aggravation, the DEC noted that respondent involved the police in his issues with Longo, filed a criminal complaint against him, and litigated the issue of possession of the premises in Superior Court. Respondent, thus, failed to take responsibility for his actions, blamed Longo for his ethics problems, used the landlord/tenant issues as a defense and, in part, tried to litigate those issues anew at the DEC hearing.

Relying on In re Fitchett, 184 N.J. 289, 291 (2005) (three-month suspension; suspension warranted when the conflict of interest results in serious economic injury to the client), and In re Pena, 162 N.J. 15, 26 (1999) (six-month suspension; in the absence of actual economic injury to a client, a suspension may be warranted if the attorney's improper conduct was motivated by pecuniary gain), the DEC recommended a "suspension for a minimal amount of time."

* * *

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of

unethical conduct is fully supported by clear and convincing evidence.

RPC 1.8(a) states:

> 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 the 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 a manner that can be understood by the client;
> (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and
> (3) the client gives informed consent, in writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Respondent complied with none of the requirements of this Rule. Longo did not understand several of the provisions of the lease, and the agreement failed to provide him with any means of recourse if respondent failed to fulfill his end of the bargain, a violation of RPC 1.8(a)(1). As to RPC 1.8(a)(2), respondent did not provide Longo with a writing advising him of the

desirability of seeking advice from independent counsel. Finally, Longo did not give his informed written consent to the essential terms of the transaction and clearly did not understand respondent's role in it, as required by RPC 1.8(a)(3). Indeed, Longo believed that respondent was representing him in connection with the lease.

As the DEC noted, because Longo relied on respondent's representation, he suffered economic injury: he lost rental income and incurred additional legal expenses.

During argument before us, respondent maintained that Longo's expectations of him were unreasonable with respect to the work he was to perform on Longo's legal matters and, further, tried to "relitigate" the landlord-tenant issues. These factors, however, have no relevance to respondent's violation of RPC 1.8(a).

When an attorney enters into a business transaction with a client, without observing the safeguards of RPC 1.8(a), ordinarily an admonition or a reprimand is imposed. See, e.g., In the Matter of Damon Anthony Vespi, DRB 12-214 (October 2, 2012) (admonition for attorney who obtained a security interest in property that was the subject of the representation by obtaining a promissory note from the client to guarantee the payment of his $30,000 fee, without complying with the

requirements of RPC 1.8(a)); In the Matter of George W. Johnson, DRB 12-012 (March 22, 2012) (admonition where the attorney, the trustee of a testamentary trust, made a loan from the trust to himself, without seeking court approval, as required; extensive mitigation considered, including that he issued a note and mortgage for the loan, which were recorded; informed the beneficiary's mother about the loan; had an otherwise unblemished record in his forty-four years at the bar; and took no commission or fees from the assets of the trust); In re Futterweit, 217 N.J. 362 (2014) (reprimand for attorney who entered into a business transaction with a client, by agreeing to receive a share of the company's profits in return for legal advice, without complying with the RPC 1.8(a) requirements; the attorney also failed to prepare a writing setting forth the basis or rate of the fee; aggravating factors were the attorney's inconsistent statements made to ethics authorities, his prior admonition, and his failure to acknowledge any wrongdoing or remorse); and In re Cipriano, 187 N.J. 196 (2008) (reprimand for attorney who borrowed $735,000 from a client who was a friend for more than forty years, without regard to the requirements of RPC 1.8(a); he also negligently invaded $49,000 of client funds as a result of poor recordkeeping practices; ethics history included two prior reprimands).

Where the attorney's conflict of interest has caused serious economic harm, a period of suspension has been imposed. See, e.g., In re Fitchett, supra, 184 N.J. 289. In that case, we were divided on the appropriate measure of discipline for the attorney's multiple conflicts of interest that arose when he (1) continued to represent a public entity in litigation with the defendant, Kemi Laboratories, Inc. (Kemi), after he had become employed by Kemi's law firm and (2) filed a suit on behalf of Kemi against the public entity. A majority believed that a reprimand was appropriate because there was insufficient evidence that Fitchett's misconduct caused the claimed economic injury to Kemi. The dissenting minority believed that a three-month suspension was warranted for the conflicts because the attorney's "overall conduct reflected an extreme indifference to Kemi's interests" and to the Rules of Professional Conduct. The dissenting members considered as an aggravating factor the testimony that Kemi lost over $1 million. In the Matter of Frederick Fitchett, III, DRB 04-273 (December 29, 2004).

The Court agreed with the dissenting members and imposed a three-month suspension. In re Fitchett, supra, 184 N.J. at 290. In its Order, the Court cited In re Berkowitz, 136 N.J. 134 (1994), and noted that "a suspension has been required when a conflict of interest visits serious economic injury on the client

or when the circumstances are egregious." Fitchett was suspended because the "circumstances of [his] conflict of interest [were] egregious" and his misconduct was "blatant and gross." In re Fitchett, supra, 184 N.J. at 290-91.

In Pena, the attorney received a six-month suspension for engaging in a conflict of interest by representing his clients in the sale of real estate to his close personal friends and later becoming directly involved in the purchase of the property himself. The Court found that, even though the clients did not suffer economic harm, the attorney acted for his own economic benefit. In re Pena, supra, 162 N.J. at 26.

In our view, respondent's conduct is most similar to that of the attorney in the Futterweit matter (reprimand). Futterweit entered into an improper business transaction with a client, agreeing to share profits with the client's company, in lieu of a fee for legal services. He also failed to provide the client with a writing setting forth the basis or rate of the fee. In the Matter of Marc A. Futterweit, DRB 13-280 (February 21, 2014) (slip op. at 7 and 8).

We considered that Futterweit advanced no mitigating factors, and three aggravating factors existed: (1) he made inconsistent statements in two disciplinary matters; (2) he had been previously admonished for failure to communicate with a

client; and (3) he never acknowledged any wrongdoing on his part or showed remorse for his conduct. Id. at 16. We concluded that, if Futterweit had admitted his mistake rather than "continuously alter[ing] his statements to try to back-pedal and undo prior statements against his interests," an admonition might have been sufficient discipline. Ibid.

Here, too, respondent orchestrated a self-serving agreement wherein he would receive free rent in exchange for providing legal services – services that Longo apparently never received. When Longo became dissatisfied with respondent's inaction, he was unable to remove respondent from the premises without instituting legal proceedings. Thus, respondent's improper business transaction resulted in economic injury to Longo, albeit inexact in amount. Respondent's violation of RPC 1.8(a) was compounded by (1) his failure to provide Longo with a fee writing – the lease did not substitute for such a writing; (2) his less than forthright testimony at the DEC hearing concerning Connelly's involvement with the lease agreement; and (3) his institution of criminal proceedings against Longo, which he ultimately dismissed. In mitigation, we note that respondent had enjoyed an unblemished disciplinary history since his admission to the bar almost twenty years ago. We note further that respondent's relationship with the grievant quickly became

difficult. That said, we find that the aggravating factors warrant increasing the discipline to a censure, instead of the reprimand Futterweit received.

Members Gallipoli and Zmirich voted to impose a three-month suspension. Members Clark and Hoberman 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Claudio Marcelo Stanziola
Docket No. DRB 17-217

Argued: September 14, 2017

Decided: December 14, 2017

Disposition: Censure

Members	Censure	Three-Month Suspension	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark			X
Gallipoli		X	
Hoberman			X
Rivera	X		
Singer	X		
Zmirich		X	
Total:	5	2	2

Ellen A. Brodsky
Chief Counsel