SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 18-154
District Docket No. XIV-2014-0566E

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| In The Matter Of | : |
| Anthony F. Sarsano | : |
| An Attorney At Law | : |

Decision

Argued: September 20, 2018

Decided: November 5, 2018

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Mario M. Blanch 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 reprimand, filed by Special Ethics Master Edwin H. Stern, P.J.A.D. (ret.), based on respondent's conduct in a residential real estate transaction. Although the Office of Attorney Ethics (OAE) charged respondent with having violated RPC 1.5(a)

(unreasonable fee), RPC 1.7(a)(2) (concurrent conflict of interest), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), the special master dismissed the RPC 1.5(a) and RPC 8.4(c) charges. In finding that respondent violated only RPC 1.7(a)(2), the special master was guided by Opinion 696 of the Advisory Committee on Professional Ethics, 180 N.J.L.J. 486 (May 9, 2005) (Opinion 696), which sets forth the conditions under which an attorney, who either serves as the executor of an estate or represents an executor of an estate, may list, or recommend the listing of, the decedent's real property to a real estate agency that employs the attorney's spouse where the spouse will not receive any financial benefit from the sale.

The OAE agrees that a reprimand is in order, but argues that, in addition to RPC 1.7(a)(2), the clear and convincing evidence supports the finding that respondent violated RPC 1.5(a) and RPC 8.4(c).

We agree with the special master's finding that the clear and convincing evidence supports only the RPC 1.7(a)(2) charge, and determine to impose a reprimand on respondent for that violation.

Respondent was admitted to the New Jersey bar in 1974. At the relevant times, he maintained an office for the practice of law in Union City.

In 1998, respondent received a reprimand for having violated RPC 8.4(c), by preparing two different RESPA statements for the purpose of

concealing secondary financing from the lender. In re Sarsano, 153 N.J. 364 (1998).

This matter involves a failed residential real estate transaction between Susan Cassanello, the seller, and Dharmendra Rampersaud, the purported buyer. The facts are both convoluted and confusing.

In November 2017, the special master conducted a two-day disciplinary hearing. Only respondent and his wife, Sonnia Pepe (Pepe), testified.

As of respondent's November 1, 2017 testimony, he was practicing law on a part-time basis. Real estate matters comprised fifty to sixty percent of his business.

Pepe had been a real estate agent for "[m]any years." During the relevant period, she was affiliated with Century 21 Gallery Realty (Gallery), in Union City. Julian Hernandez was Gallery's owner and broker of record. According to Pepe, he also was Gallery's secretary, and she was the president. Despite Pepe's title, it was not clear whether she held an ownership interest in Gallery. Respondent was not "aware" of any, and Pepe did not remember.

Gallery's office was located in the same building as respondent's, but each business had a separate entrance. Despite the separate entrances, respondent testified that he and Gallery "could very well" have shared a single secretary.

Pepe testified that, in addition to her real estate work, she assisted respondent in the operation of his law office by interpreting for his Spanish-speaking clients and by answering the telephone, for example. As of Pepe's November 21, 2017 testimony, she was dividing her time between respondent's office and a real estate agency office in Dover, New Jersey.

According to Pepe, in 2008, Cassanello approached her about listing four properties with Gallery. All four were in foreclosure. Cassanello listed two of the properties with Pepe, and two with Gallery associate José M. Torres, whom Cassanello also knew. One of the properties listed with Torres was located in North Bergen, New Jersey.

On an unidentified date, Pepe showed the North Bergen property to Dharmendra Rampersaud, a prospective buyer. Pepe claimed that Torres represented Cassanello, the seller, and Pepe represented Rampersaud, the buyer, and, thus, a dual agency agreement was not necessary.[1] Although

[1] Pepe testified that she had given Rampersaud a "CIA" disclosure, which stated that she represented him as the buyer, and that the document did not require a signature. The document was not a part of the record. We are unaware of a "CIA" disclosure, however, a Consumer Information Statement, "CIS," explains the different types of agents involved in a residential real estate transaction, and requires signatures. See N.J.A.C. 11:5-6.9. No such document was a part of the record.

respondent agreed that Pepe was the buyer's agent, he did not know whether she had acted as a dual agent in that transaction.

When Pepe showed the North Bergen property to Rampersaud, she informed him that the listing price was $299,000, but that the property was in foreclosure and, thus, subject to short sale approval. At the same time that Rampersaud was working with Pepe, he was communicating with Cassanello's spouse, who told him that "the best idea is to offer whatever the price it was at that moment." An existing appraisal valued the property at $355,000, which is the amount that Rampersaud offered and Cassanello accepted.

On October 29, 2008, Cassanello and Maharanie Habibullah, as buyer, executed a contract for the sale of the North Bergen property for $355,000. As Cassanello's lawyer, respondent prepared the contract, which was subject to short sale approval by Cassanello's lender. Respondent believed that the contract identified Habibullah as the buyer, instead of Rampersaud, because Rampersaud feared that he would not qualify for a mortgage.

The contract required a $10,000 initial deposit, which was paid on October 28, 2008, in the form of a check drawn on the joint checking account of Rampersaud and his wife, Latchmin Rampersaud. The contract also required, on execution, the payment of the $45,000 balance of the deposit. That sum was never paid, however.

According to respondent and Pepe, both Cassanello and Rampersaud knew that respondent and Pepe were married and did not object to their involvement in the transaction. Indeed, Pepe testified that she had provided Cassanello with a waiver in respect of respondent's acting as an attorney in the transaction. Cassanello signed the form, which contained an acknowledgment that she knew that respondent and Pepe were married. The waiver is not a part of the record. The complaint, the OAE's proposed findings of fact, and respondent's testimony are silent on the issue.

The contract reflects the payment of a two-and-a-half percent commission to Gallery. As shown below, the actual commission for the sale was five percent, all of which was to go to Gallery.

On February 19, 2009, Mateo Perez, Esq. informed respondent that he represented Rampersaud; that, although the closing was scheduled for March 25, 2009, his client was not in a position to close on the short sale transaction; and that he and his client would appear at the closing, nevertheless. Perez's letter continued:

> [t]his transaction as explained to us by Mr. Rampersaud will be a convergancy [sic] subject to my client obtaining mortgage approval. He should remain in possession per terms of the lease that has been prepared.
>
> [Ex.P6.]

Respondent did not know what Perez meant by the term "convergancy."

On March 23, 2009, Gallery's owner submitted a $17,000 commission bill, which was based on five percent of the $355,000 purchase price. According to Pepe, she was entitled to $5,950 of that amount as her commission, less $200 to cover office expenses.

On March 25, 2009, "a meeting for a closing" on the transaction too place. Respondent testified that he, Cassanello, and Victor Ruiz (another seller) were seated at the table with Perez and two of Rampersaud's relatives. Although the closing did not take place, a number of documents were signed so that Rampersaud could take possession of and lease the property while he continued to seek financing.

One document was entitled

> AGREEMENT BETWEEN SUSAN CASSANELLO, VICTOR RUIZ, BELGICA E. VILLAMAR AND MAHASANIE [SIC] HABIBULLAH, DHARMENDRA RAMPERSAUD AND LATCHMIN RAMPERSAUD FOR THE PURCHASE OF PREMISES LOCATED AT [ ] NORTH BERGEN, NEW JERSEY 08047
>
> [Ex.P7.]

This document was signed by Cassanello, Ruiz, and Belgica E. Villamar, as sellers, and by Habibullah and the Rampersauds, as buyers. Perez signed the document as "witness for the buyer."

Respondent testified that the purpose of the agreement was to place Rampersaud in a position to "comply with obtaining a mortgage," so that he would be able to purchase the property from Cassanello. The purchase price "would be whatever a short sale approval amount was."

Because Rampersaud wanted to take possession of the property while he continued to seek financing, the agreement provided that, in exchange for Habibullah's and the Rampersauds' payment of $30,000 to Cassanello, Ruiz, and Villamar (collectively, the grantors), the grantors agreed to vacate the North Bergen property by April 1, 2009, and to execute a deed conveying the property to Habibullah. In addition to the deed, the grantors were to "simultaneously execute" a sixty-month lease, commencing on April 1, 2009, and requiring the payment of $1,000 in monthly rent.

Respondent testified that the purpose of the lease was to protect Cassanello while Rampersaud and his family were in possession of the property without having obtained a mortgage commitment. Respondent and Pepe explained that the use of the $30,000 payment turned on whether Rampersaud purchased the property or rented it. If Rampersaud obtained financing, the $30,000 would be applied to the transaction. If he leased the property, the funds would be applied toward rent.

Because the North Bergen property was in foreclosure at that time, the grantors agreed to "cooperate and participate in a foreclosure mediation" and to accept the result. In addition, according to respondent, Rampersaud was to "make every reasonable effort to refinance this property."

Perez reviewed the agreement with Rampersaud, line by line, to make certain that he understood all of the terms. Acknowledging that he understood the entire agreement, Rampersaud signed it in front of all present.

Respondent testified that, when he represented the seller in a real estate closing, his practice was to prepare the closing documents, which included the deed and affidavit of title. In respect of the North Bergen transaction, respondent prepared a quitclaim deed, as the agreement required. Respondent believed that the above agreement and the deed were executed simultaneously.

The quitclaim deed, dated March 25, 2009, identified the grantors as Cassanello, Ruiz, and Villamar. The consideration was $1 because, according to respondent, "this was somewhat of a conditional transaction," and he was not certain that Rampersaud would obtain financing.

Respondent did not record the quitclaim deed because he did not know whether Rampersaud would qualify for a mortgage. Further, he explained, had the deed been recorded, if Rampersaud did obtain financing, the lender would

require a new deed reflecting Rampersaud, rather than Habibullah, as the owner.

On March 25, 2009, Rampersaud issued to respondent a $20,000 personal check, which respondent deposited in his trust account. Respondent previously had deposited the $10,000 initial deposit in that same account. $5,000 was escrowed for the payment of any outstanding pending water bills and utilities that Cassanello may have been owed.

Respondent testified that, at the closing, Rampersaud, acting against his attorney's advice, gave $17,000 in cash to Pepe, stating that he wanted to compensate her, "as the Realtor, for her efforts in this transaction." According to respondent, "Mr. Rampersaud's direct quote [was] I want to do this right now." Pepe's testimony mirrored respondent's.

Pepe remitted the funds to Hernandez, who split the commission "50/50" with Torres. According to Pepe, she received $5,950 of the $17,000, less $200 to cover office expenses.

Because Rampersaud had not obtained financing as of April 1, 2009, the parties executed a lease, which respondent prepared. Respondent claimed that the contract of sale was still valid, however, and that the two documents worked "conjunctively."

Also, on April 1, 2009, the Rampersauds issued an $850 check to Pepe, which represented the legal fee Rampersaud owed to Perez. Respondent could not explain why the check was issued to Pepe, but she turned the funds over to Perez.

On April 15, 2009, respondent issued a $25,000 trust account check to Cassanello, which represented the difference between the $30,000 that Rampersaud paid, and the $5,000 escrow. As stated previously, the $30,000 essentially belonged to Cassanello, irrespective of whether Rampersaud obtained financing.

Even though respondent had not recorded the quitclaim deed, he steadfastly maintained that it was valid. Thus, he claimed, as of April 15, 2009, Rampersaud had title to the property, subject to obtaining a mortgage.

On June 2, 2009, a foreclosure mediation took place. Respondent attended the proceeding, but he did not charge a fee. Cassanello's lender refused to modify the loan. Neither Rampersaud nor his relatives ever obtained a mortgage commitment

On July 22, 2009, respondent filed a voluntary Chapter 13 bankruptcy petition in Cassanello's behalf. The filing fee was $274. The purpose of the bankruptcy filing was to forestall a sheriff's sale. To save Cassanello money,

respondent's staff helped her prepare the petition, identifying her as pro se, and filed the petition for her after she had signed it.

On November 24, 2009, the bankruptcy court dismissed Cassanello's case for failure to file certain documents. On December 18, 2009, the case was closed.

On June 9, 2010, Cassanello, Ruiz, and Villamar entered into a "real estate agreement" with Habibullah and the Rampersauds, in which the latter would continue to seek financing. Again, to avoid a sheriff's sale, Cassanello agreed to file another bankruptcy petition. She sought respondent's assistance, and, on September 14, 2010, he filed a voluntary Chapter 7 bankruptcy petition in Cassanello's behalf. The filing fee was $299.

Respondent testified that Cassanello never intended to prosecute the bankruptcy petitions. "We" simply wanted to delay the sheriff's sale to obtain more time to negotiate a short sale with the lender.[2]

According to respondent, both petitions were handled by staff and submitted in behalf of Cassanello, pro se, because she wanted to pursue the bankruptcy matters in the most economical way possible. Respondent pointed

[2] In this regard, we note that respondent was not charged with having violated RPC 3.1 (instituting a frivolous proceeding) or RPC 8.4(d) (conduct prejudicial to the administration of justice).

out that, under 11 U.S.C. § 110, an attorney may prepare a bankruptcy petition, even though he or she is not identified on the petition as counsel for the petitioner.

After the Chapter 7 bankruptcy petition was filed, respondent did no further work on the matter, and, thus, it ultimately was dismissed.

Meanwhile, on May 4, 2010, Latchmin Rampersaud had issued a $1,000 check to respondent with the following notation on the memo line: "bankruptcy retainer fee." Respondent testified that the check represented the filing fee for both bankruptcy petitions, which Rampersaud had agreed to pay. Respondent retained the $427 difference between the $1,000 and the filing fees.

On August 13, 2010, respondent released to Cassanello the $5,000 in escrow funds because no outstanding bills existed. He attributed the delay, in issuing the check, to the utility company, which was slow in getting the numbers to respondent.

Sometime in 2012, Cassanello sued Rampersaud in the Superior Court of New Jersey, Hudson County, Law Division, for five years' unpaid rent. Rampersaud joined respondent, Pepe, and Perez as third party defendants.

On June 5, 2014, the jury awarded Cassanello $60,000 on her claim against Rampersaud, who had breached the lease agreement by failing to pay

rent. The jury also found that Pepe had engaged in "unconscionable commercial practices in connection with the transfer or lease of the [North Bergen] property" and that both she and respondent had made "material misrepresentations of fact in [their] dealings with [Mr.] Rampersaud," who relied on those misrepresentations to his detriment, thus causing "loss to him." The facts supporting the jury's determination are not present in the record.

The jury awarded $51,350 to Rampersaud on his claims against respondent, Pepe, and Perez. Of that amount, respondent and Pepe were each responsible for forty-nine percent of the sum, which amounted to a total of $50,323. Perez was responsible for the remaining two percent.

Respondent and Pepe never paid the funds to Rampersaud. Instead, Rampersaud and Cassanello exchanged "discharges," Rampersaud assigned his $50,323 judgment against respondent (and, presumably, Pepe) to Cassanello, and respondent paid Cassanello "a certain amount of money so that the judgment against [respondent and his wife] would be paid off." According to respondent, his payment satisfied the $60,000 judgment entered against Rampersaud.

Prior to the failed Cassanello-to-Rampersaud transaction, respondent had represented Cassanello, as landlord, in respect of a landlord-tenant issue at a Union City property. Respondent testified that he had no written fee agreement

with Cassanello in any of the matters in which he had represented her because he did not know he had such an obligation to his clients.

The formal ethics complaint alleged that the $600 that respondent received for the two bankruptcy petitions was an unreasonable fee because he neither filed the petitions nor pursued the proceedings as counsel for Cassanello. The complaint also alleged that respondent violated RPC 1.7(a)(2) because he "engaged in a concurrent conflict of interest where [sic] was a significant risk that the representation of Cassanello was materially limited by a personal interest of the lawyer as the interest of respondent's wife, Sonnia Pepe, as the sales agent was imputed to respondent" and violated Opinion 312 of the Advisory Committee on Professional Ethics, 1998 N.J.L.J. 646 (July 24, 1975) (Opinion 312), and Opinion 518 of the Advisory Committee on Professional Ethics, 111 N.J.L.J. 513 (May 19, 1983) (Opinion 518). Finally, respondent allegedly violated RPC 8.4(c) in two respects: first, when he assisted Cassanello in a sham real estate transaction with Rampersaud and his family and, second, when he allowed Rampersaud to pay a $17,000 commission to Pepe, even though no closing had taken place.

The special master concluded that respondent had violated only RPC 1.7(a)(2). He recommended dismissal of the RPC 1.5(a) charge because, at most, respondent had received only $427 for the bankruptcy work, which was

"substantially less than he charged for similar filings," and, thus, was "reasonable."

The special master also recommended dismissal of the RPC 8.4(c) charge because the presenter had not produced clear and convincing evidence that the transaction was a sham, as the OAE had alleged. According to the special master, once it became clear that Rampersaud could not obtain financing, respondent protected his client by preparing a lease that governed the parties' relationship until the sale could be consummated. Moreover, although the special master found it "curious" that Rampersaud wanted to pay a $17,000 commission for which he was not obligated, Rampersaud's action was voluntary and was made contrary to his lawyer's advice.

The special master determined that respondent had engaged in a conflict of interest by participating in a real estate transaction in which he represented the seller, while respondent's wife served as the buyer's agent and received a commission. He found that, in so doing, respondent had violated both RPC 1.7(a)(2) and Opinion 696 of the Advisory Committee on Professional Ethics, 180 N.J.L.J. 486 (May 9, 20015) (Opinion 969).

Opinion 696 involved an attorney for an estate executor, who wanted to list the decedent's real estate for sale with an agency that employed the attorney's spouse. The spouse would receive no direct financial benefit from

the sale. The Advisory Committee on Professional Ethics (ACPE) analyzed the inquiry under RPC 1.8 (business transaction) and noted that, in cases pre-dating the adoption of the RPCs in 1984, such a referral would not result in a conflict of interest because the spouse would receive no financial benefit from the referral by way of commission, salary, or otherwise. However, a conflict would exist if the spouse derived a pecuniary benefit, and the conflict could not be cured by consent of the client. See Opinion 312, Opinion 341 of the Advisory Committee on Professional Ethics, 99 N.J.L.J 610 (1976) (Opinion 341), and Opinion 518.

The special master explained his conclusion as follows:

> Here, the spouse was apparently approached independent of the husband and upon her retention might well have independent and ethical obligations to her client. I, therefore, disagree with the OAE that one spouse could direct or order the other spouse to withdraw from representation. I do agree, however, that Respondent should have withdrawn from the transaction if his wife and her agency represented an adverse party, especially where his wife had a financial interest and received a payment from Rampersaud, whether incident to the sale, lease or both. Here, the spouses' relationship with their respective clients developed independently and Respondent represented Ms. Cassanello for some time and in other transactions. As a result, I find that while there may have been no willful violation of the RPCs, and that Respondent could not direct his wife to withdraw from the matter, there was nevertheless a violation of an opinion (696) of the ACPE (see R.

1:19-6 regarding the binding nature of cited ACPE opinions), and a violation of RPC 1.7.

[SMR8-SMR9.][3]

Finding that Cassanello had not suffered injury as a result of the conflict, the special master recommended the imposition of a reprimand for respondent's violation of RPC 1.7(a)(2).

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent engaged in an impermissible conflict of interest by representing the seller in a real estate transaction in which Pepe, his spouse, stood to receive a portion of the commission, paid by the seller, if the deal had been finalized. By representing Cassanello in the transaction, respondent engaged in an impermissible conflict of interest, under Opinion 312, Opinion 341, and Opinion 518. Regardless of whether disclosure, consultation, and written consent could have "cured" the conflict, there was no such document in the record. Thus, respondent violated RPC 1.7(a)(2).

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[3] SMR refers to the special ethics master's April 17, 2018 findings of fact and conclusions of law.

As noted earlier, prior to the September 1984 adoption of the RPCs, the ACPE had issued three opinions on the subject of an attorney's ability to represent a party to a real estate transaction in which the attorney's spouse is a realtor whose agency is involved in the transaction. In Opinion 312, 1998 N.J.L.J. 646 (July 24, 1975), the ACPE held, among other things, that an attorney may not represent a party to a real estate transaction in which the attorney's spouse is employed by the selling agency, and is the listing or selling agent, even if the spouse is compensated by salary instead of commission. This type of conflict cannot be waived. If, however, the spouse "has merely been the listing broker and has no connection otherwise with the ultimate sale," the attorney may proceed with the representation.

As applied to this case, Opinion 312 barred respondent from representing Cassanello because Pepe, his spouse, was the selling agent, and she was employed by Gallery, the selling agency.

In Opinion 341, 99 N.J.L.J. 610 (July 8, 1976), the ACPE determined that an attorney's partners or associates could represent a party to a real estate transaction involving an agency that employed the attorney's spouse, when the spouse was neither the listing agent nor the selling agent, and, thus, received no financial benefit. The ACPE explained that, even though the real estate agency would benefit from the completion of the transaction, and the

continued viability of the agency would benefit the spouse, "these results are too indirect and too remote where the wife has had no connection with the transaction and receives no financial benefit."

As applied to this case, Opinion 341 would bar respondent from representing Cassanello in the transaction because Pepe was very much connected to the transaction, as she stood to share in the commission.

In Opinion 518, 111 N.J.L.J. 513 (May 19, 1983), the ACPE held that, even when the attorney has a longstanding relationship with a client/seller, the attorney may not represent the client in a real estate transaction in which the attorney's spouse "stands to win or lose in the performance of that attorney's duty to a client." The ACPE referred to Opinion 312 and Opinion 341 in stating that the attorney's longstanding prior relationship with the client made no difference. The representation was not ethical.

Like Opinion 312 and Opinion 341, Opinion 518 prohibited respondent from representing Cassanello in the transaction, despite their alleged longstanding relationship, because Pepe stood to "win or lose" in the transaction. Respondent's counsel emphasizes that Opinion 518 refers to a listing or selling "broker," and posits that Pepe was merely the buyer's agent, not a broker. In the end, however, the above Opinions, as a whole, demonstrate that the spouse's standing as broker or agent is not dispositive. Rather, the

determining factor is whether the spouse has a financial interest in the transaction. In this case, Pepe most assuredly had such an interest because she was entitled to a portion of the commission, upon consummation of the transaction.

Respondent clearly violated Opinion 312, Opinion 341, Opinion 518, and, thus, RPC 1.7(a)(2). That Rule provides, in pertinent part:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> . . . .
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.

Here, by representing Cassanello, the seller, respondent was embroiled in a conflict of interest because Pepe, his spouse, would receive a portion of the commission, upon consummation of the transaction. This created a significant risk that respondent's representation of Cassanello would be materially limited by his interest in Pepe's receipt of a commission. Indeed, one wonders why, after Rampersaud had failed to obtain financing, time after time, respondent continued his attempts to make the deal work when

Cassanello could have been looking for another buyer and, possibly, listing the property with a different agency.

Despite the existence of such a conflict of interest, under RPC 1.7(b), a lawyer may undertake the representation if (1) the client gives informed consent, confirmed in writing, after full disclosure and consultation; (2) the lawyer reasonably believes that he or she will be able to provide competent and diligent representation to the client; (3) the representation is not prohibited by law; and (4) the representation does not involve a claim by one client against another client in the same litigation or other proceeding before a tribunal. In our view, the ACPE's determination that this type of conflict cannot be waived falls within RPC 1.7(b)(3), which precluded the representation as prohibited by law. Thus, informed written consent would have made no difference.[4]

Moreover, even if this conflict were waivable pursuant to RPC 1.7(b), the record contains no evidence that respondent fully disclosed the conflict to

[4] Opinions 312, 341, and 518 all pre-dated the RPCs. Although the relevant Disciplinary Rules (DRs) were not specifically cited in these ACPE opinions, those DRs that now correspond to RPC 1.7 and RPC 1.8 all contained provisions for client consent. Thus, the ACPE determined, apparently as a matter of law, that the types of conflict involved in those cases could not be cured by client consent. Therefore, respondent's representation of Cassanello violated RPC 1.7(b)(3).

Cassanello or provided her with the opportunity to seek consultation on the issue. Further, the record contains no writing establishing her informed consent to the representation.

Respondent's and Pepe's claim that Cassanello knew that they were married is irrelevant. Also irrelevant, and unsupported in the record, is Pepe's claim that she had provided Cassanello with a waiver.

In our view, because there is clear and direct evidence of a financial benefit to Pepe in this case, respondent's conduct violated the principles set forth in the ACPE Opinions and RPC 1.7(a). He, thus, engaged in a clear conflict of interest that was not curable by client consent, had he even attempted to obtain that consent.

To summarize, where there is a clear, identifiable financial benefit to the spouse, a conflict exists, which cannot be waived, under Opinions 312 and 518 and RPC 1.7(b). Where there is no financial benefit, however, because the matter is a referral and, thus, a business transaction, under RPC 1.8(a), the conflict requires, among other things, "informed consent, in a writing signed by the client. . . ." Because, in this case, Pepe stood to benefit from the transaction, RPC 1.7(b)(3) precluded respondent from representing Cassanello.

We agree with the special master's determination that the RPC 1.5(a) charge should be dismissed. The complaint alleged that respondent's $600 fee

(which was actually $427) for Cassanello's bankruptcy filing was unreasonable because he neither filed the petition nor prosecuted the bankruptcy as her attorney. Although RPC 1.5(a) prohibits an attorney from charging an unreasonable fee, the Rule lists eight factors that must be considered in determining the reasonableness of a fee. Those factors include, but are not limited to, "the fee customarily charged in the locality for similar legal services," and "the nature and length of the professional relationship with the client." RPC 1.5(a)(3) and (a)(6). None of these factors were addressed at the disciplinary hearing. Moreover, as the special master observed, the $427 respondent received can hardly be considered unreasonable, given that respondent ordinarily charged thousands of dollars for bankruptcy matters.

We also agree with the special master's determination that the RPC 8.4(c) charge should be dismissed. That Rule prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. According to the ethics complaint, respondent violated the Rule by assisting Cassanello "in a sham real estate transaction" with Rampersaud and his family and by allowing Rampersaud to pay Pepe a $17,000 commission, even though the transaction was not completed.

We disagree with the OAE's claim that the unrecorded deed rendered this a sham transaction. Rampersaud was unable to obtain financing. Thus, the

parties agreed to abandon the sale and take another route, that is, a lease with the option to purchase. In our view, it would have been a sham if respondent had recorded the deed in the absence of a closing. We, thus, dismiss the RPC 8.4(c) charge.

Finally, as the special master noted, Rampersaud's counsel had advised Rampersaud not to make the cash payment to Pepe, but he chose to do so anyway. Respondent had no authority and no power to stop Rampersaud from reaching into his pocket and, essentially, gifting $17,000 to Pepe. Thus, there is no basis for holding respondent accountable for the payment in the context of RPC 8.4(c).

To conclude, the record contains clear and convincing evidence that respondent violated RPC 1.7(a)(2). The record lacks clear and convincing evidence that he violated either RPC 1.5(a) or RPC 8.4(c).

We now address the quantum of discipline to impose on respondent for his ethics infractions.

Since 1994, it has been a well-established principle that a reprimand is the measure of discipline imposed on an attorney who engages in a conflict of interest. In re Berkowitz, 136 N.J. 134 (1994). Accord In re Mott, 186 N.J. 367 (2006) (reprimand for conflict of interest imposed on attorney who prepared, on behalf of buyers, real estate agreements that provided for the purchase of

title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise the buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them).

If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," then discipline greater than a reprimand is warranted. Berkowitz, 136 N.J. at 148. See also In re Guidone, 139 N.J. 272, 277 (1994) (reiterating Berkowitz and noting that, when an attorney's conflict of interest causes economic injury, discipline greater than a reprimand is imposed; the attorney, who was a member of the Lions Club and represented the Club in the sale of a tract of land, engaged in a conflict of interest when he acquired, but failed to disclose to the Club, a financial interest in the entity that purchased the land, and then failed to (1) fully explain to the Club the various risks involved with the representation and (2) obtain the Club's consent to the representation; the attorney received a three-month suspension because the conflict of interest "was both pecuniary and undisclosed").

In our view, a reprimand is sufficient for respondent's violation of RPC 1.7(a)(2). The conflict did not result in serious economic injury to Cassanello.

Although Rampersaud agreed to a five-year lease with rent totaling $60,000, prior to her lawsuit, resulting in an award of $60,000, Cassanello already had received the $30,000 that Rampersaud had paid to respondent. Moreover, respondent and Pepe apparently entered into an agreement to satisfy the entire amount of the judgment entered against Rampersaud in Cassanello's favor. Thus, it appears that Cassanello has been made whole.

We note as well that respondent has been a member of the bar for forty-four years. When the conduct at issue in this case occurred, between October 2008 and August 2010, he had been a member for more than thirty years. Although respondent received a reprimand, in 1998, for his conduct in a real estate transaction, we view that matter as too remote to justify enhancing the reprimand to a censure.

To conclude, we determine to impose a reprimand on respondent for his violation of RPC 1.7(a)(2).

Member Zmirich voted to impose a reprimand but would have found that respondent also violated RPC 8.4(c). Member Gallipoli was recused. Member 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony F. Sarsano
Docket No. DRB 18-154

Argued: September 20, 2018

Decided: November 5, 2018

Disposition: Reprimand

| ***Members*** | Reprimand | Recused | Did Not Participate |
|---|---|---|---|
| Frost | X | | |
| Clark | X | | |
| Boyer | X | | |
| Gallipoli | | X | |
| Hoberman | | | X |
| Joseph | X | | |
| Rivera | X | | |
| Singer | X | | |
| Zmirich | X | | |
| Total: | 7 | 1 | 1 |

Ellen A. Brodsky
Chief Counsel