

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-215
District Docket No. XIV-2016-0730E

In The Matter of :
: Evan R. Drachman :
: :
An Attorney At Law :
:

Decision

Argued: September 20, 2018

Decided: December 10, 2018

Reid A. Adler appeared on behalf of the Office of Attorney Ethics.

Barry A. Kozyra 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 pursuant to R. 1:20-6(c)(1). That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present

aggravating circumstances. The Office of Attorney Ethics (OAE) charged respondent with violating RPC 1.7(a)(2) (conflict of interest) and RPC 5.5(a)(1) (practicing law while ineligible). In his verified answer to the complaint, respondent admitted having violated those RPCs.

For the reasons expressed below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey and the New York bars in 2004. During the relevant time frame, he was a partner at the law firm Dollinger, Drachman, LLC, in Livingston, Essex County, and subsequently engaged in the solo practice of law, also in Livingston. He has no disciplinary history.

Respondent was continuously ineligible to practice law, from November 14, 2014 through January 11, 2017, due to his repeated failures to comply with Continuing Legal Education (CLE) requirements. Consequently, on November 14, 2016, the Honorable Patrick DeAlmeida, P.J.T.C., informed the OAE that respondent had practiced law while ineligible in a New Jersey Tax Court matter captioned Michael Boches v. Township of Millburn.

During the same period of CLE ineligibility, the Court declared respondent ineligible to practice law, on multiple occasions, for his failure to comply with his New Jersey Lawyers' Fund for Client Protection (CPF) obligations. Respondent was aware, as of March 15, 2013, that failure to meet

his CPF obligations would result in his ineligibility to practice law. Nevertheless, in 2014, 2015, and 2016, respondent repeatedly became ineligible to practice law for failure to comply with CPF obligations, but rectified his CPF status on each occasion. Respondent admitted to the OAE that, despite his continuous ineligible status for both CLE and CPF non-compliance during that period, he actively practiced law, representing parties in tax appeals and in real estate transactions.

In respect of his transactional real estate practice during the relevant time frame, respondent frequently recommended Acres Title Insurance (Acres) for his clients' title insurance needs. In November 2016, Acres offered to "hire the entire law firm of Dollinger, Drachman & Tolstoi."¹ Respondent and Tolstoi accepted that offer, but Dollinger declined, and the law partnership dissolved.

In January 2017, respondent, Tolstoi, and their law firm staff became employees of Acres. Respondent was employed by Acres as a closing agent, and received a flat, bi-weekly salary, with no hours or closing quota requirements. Respondent and Tolstoi also maintained law practices, separate and apart from

¹ After Dollinger, Drachman, LLC, added Mark Tolstoi as a partner, in January 2016, the law firm was renamed Dollinger, Drachman & Tolstoi, LLC.

their employment arrangement with Acres, and without the assistance of the prior law firm staff.

While employed by Acres, respondent continued to recommend that his real estate clients purchase their title insurance through Acres. To induce his clients to use Acres, he "conveyed his long-term, positive dealings" with the agency, but would neither "specifically disclose" his employment arrangement with Acres, nor obtain the written, informed consent of clients to properly waive his conflict of interest, as RPC 1.7(a)(2) requires. Respondent admits that he engaged in such improper conflicts of interest in the Breckenridge/Olazagasti, Burstein/205 Talmadge, Charles/Lopez, Traskunov, Sheldon, Najm, Klein/Shafraan-Klein, and Simanovsky real estate transactions.

Respondent, thus, admitted that his conduct violated RPC 1.7(a)(2) and RPC 5.5(a)(1).

Following our review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. In respect of the RPC 1.7(a)(2) charge, in connection with his transactional real estate practice during the relevant time frame, respondent frequently recommended Acres for his clients' title insurance needs. In January 2017, respondent accepted employment, as a salaried closing agent, with Acres. He

also maintained a law practice, separate and apart from his employment arrangement with Acres.

Despite his employment by Acres, respondent continued to recommend that his real estate clients purchase their title insurance through Acres, even vouching for Acres in an effort to induce that business relationship. He admits that he would neither "specifically disclose" his employment arrangement with Acres, nor obtain the written, informed consent of clients to properly waive his conflict of interest, as required. He admits that he engaged in such improper conflicts of interest in eight real estate transactions. Respondent, thus, violated RPC 1.7(a)(2).

In respect of the RPC 5.5(a)(1) charge, respondent was ineligible to practice law from November 14, 2014, through January 11, 2017, due to his repeated failure to comply with CLE requirements. Moreover, he also was periodically ineligible to practice law, during the same time frame, for his failure to meet his CPF obligations.

Respondent admits that, despite knowing of his ineligible status, both for CLE and CPF non-compliance during that period, he actively practiced law. He, thus, violated RPC 5.5(a)(1).

Cases involving conflict of interest, absent egregious circumstances or serious economic injury to the clients, ordinarily result in a reprimand. In re

Guidone, 139 N.J. 272, 277 (1994), and In re Berkowitz, 136 N.J. 134, 148 (1994). See, also, In re Simon, 206 N.J. 306 (2011) (the attorney engaged in a conflict of interest by suing an existing client for the payment of his legal fees); In re Pellegrino, 209 N.J. 511 (2010) and In re Feldstein, 209 N.J. 512 (2010) (companion cases; the attorneys simultaneously represented a business that purchased tax-lien certificates from individuals and entities for whom the attorneys prosecuted tax-lien foreclosures, a violation of RPC 1.7(a); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business); In re Ford, 200 N.J. 262 (2009) (the attorney filed an answer to a civil complaint against him and his client, and then tried to negotiate separate settlements of the claim against him, to the client's detriment; prior admonition and reprimand); In re Mott, 186 N.J. 367 (2006) (on behalf of buyers, attorney prepared 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 them 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); and In re Poling, 184 N.J. 297 (2005) (the attorney engaged in a conflict of interest when he prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company

that he owned – a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere).

Here, respondent also practiced law, despite knowing that he was ineligible to do so. A reprimand or greater discipline may be imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has committed other ethics improprieties, or is aware of the ineligibility and practices law nevertheless. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (reprimand; attorney practiced law knowing that he was ineligible to do so); In re Jay, 210 N.J. 214 (2012) (reprimand; attorney was aware of ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); In re (Queen) Payton, 207 N.J. 31 (2011) (reprimand; attorney who practiced law while ineligible was aware of her ineligibility and had received an admonition for the same violation); In re D'Arienzo, 217 N.J. 151 (2014) (censure for attorney whose recklessness in not ensuring that payment was sent to the CPF was deemed "akin to knowledge on his part;" in aggravation, the attorney had an extensive disciplinary history, which included a 2013 reprimand for practicing while ineligible); In re Macchiaverna, 214 N.J. 517 (2013) (attorney censured for practicing law while ineligible, knowing that he was ineligible, and for recordkeeping violations; an aggravating factor was the attorney's prior reprimand for recordkeeping

violations that led to the negligent misappropriation of client funds; the attorney also did not appear on the return date of the Court's Order to Show Cause); In re Lynch, 186 N.J. 246 (2006) (censure for attorney who, aware of his ineligibility, practiced law during that period; the attorney had a prior admonition and a reprimand); In re Horowitz, 180 N.J. 520 (2004) (three-month suspension for attorney who practiced law while ineligible and failed to cooperate with disciplinary authorities during the investigation of the matter; the attorney also lacked diligence in the representation of the client and did not inform the client of the dismissal of the complaint; default matter); and In re Raines, 176 N.J. 424 (2003) (in a default case, three-month suspension for attorney who practiced law while ineligible and failed to cooperate with disciplinary authorities in the investigative stage of the matter; the attorney also lacked diligence in the client's case and failed to properly communicate with the client).

Here, respondent engaged in a conflict of interest in respect of eight real estate transactions. He should have disclosed to his clients his employment arrangement with Acres, and sought their written, informed consent in order to waive that conflict. The record, however, is devoid of any evidence of egregious circumstances or serious economic injuries to the clients. Standing alone, a reprimand, thus, is the appropriate quantum of discipline for those infractions.

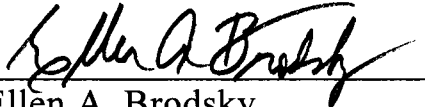
Respondent also knowingly practiced law while ineligible to do so. For this misconduct, standing alone, a reprimand is also the appropriate quantum of discipline. Respondent does not have prior discipline or any of the other serious aggravating factors present in disciplinary cases where attorneys received more severe discipline for their knowing practice of law while ineligible.

In crafting the appropriate discipline, we must also consider aggravating and mitigating factors. There is no aggravation to consider. In mitigation, respondent has no prior discipline, and readily admitted his guilt via his verified answer to the complaint. On balance, we determine that a reprimand is warranted to protect the public and preserve confidence in the bar.

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

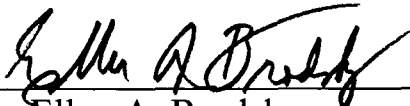
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Disposition: Reprimand

<i>Members</i>	Reprimand	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1


Ellen A. Brodsky
Chief Counsel