DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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March 26, 2019

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Mahesh Rajan**
Docket No. DRB 19-003
District Docket No. XIV-2018-0011E

Dear Ms. Baker:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) 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 quantum of discipline for respondent's violations of RPC 1.7(a) and RPC 1.8(a).

Specifically, in 2015, respondent's law firm represented Sunil Nayak (Nayak) and his company, Innzen Hospitality, LLC (Innzen) in the purchase of commercial real estate in North Brunswick, New Jersey. Nayak/Innzen, as purchaser, intended to develop the parcel into a hotel (the Hotel Project), which would be integrated into a larger, mixed-use transit village under development by the seller. On November 18, 2015, Nayak executed an agreement, on behalf of Innzen, to purchase the real estate from the seller. Within three days of the "effective date," as defined in that agreement, Innzen was required to place an initial deposit of $200,000 into escrow. Innzen also was required to provide the escrow agent with a $1 million letter of credit, in favor of the seller, by a date certain. Prior to the closing date for the purchase, Nayak began soliciting investors for the Hotel Project.

On June 6, 2016, respondent formed a corporate entity, RPR Holdings, LLC (RPR), with his brother, Samir Rajan (Samir), and brother-in-law, Dharmesh Patel (Patel), to invest in the Hotel Project. Respondent and his partners intended to invest $1 million in RPR, each receiving a one-third share of RPR's interest in the Hotel Project. Each partner made initial capital contributions of $50,000 in RPR, for a total of $150,000 in corporate cash on hand.

Subsequent to its formation, RPR formally committed to invest 30% of the capital required to fund Nayak's Hotel Project. On April 30, 2018, RPR added two investors and created an Amended and Restating Operating Agreement for the company; pursuant to the amendment, respondent's ownership interest in RPR was reduced from 33.33% to 21.875%. Nayak's intent was to contribute an additional 30% of the capital required to fund the Hotel Project, and to secure the remaining 40% of the capital from additional investors. Nayak, however, was unable to secure those additional investors.

In August 2016, respondent introduced Nayak to his clients, Piyush and Kajal Viradia. The Viradias agreed to contribute 50% of the capital required to fund the Hotel Project, and Nayak agreed to fund the additional 50%. As a result, RPR voluntarily withdrew as an investor in the Hotel Project.

Nayak, however, was unable to fund his 50% contribution, and, consequently, the closing for the Hotel Project was delayed, placing Nayak's initial investment in jeopardy. RPR then agreed to provide $450,000 to Nayak, via a short-term loan, to close the transaction. Specifically, RPR members Samir and Patel agreed to convert their respective $50,000 capital contributions (totaling $100,000) into the loan, and respondent agreed to contribute the remaining $350,000. On October 25, 2016, the $450,000 loan was made, secured by a commercial note from Innzen; Nayak also executed a personal guaranty of payment of the loan. Pursuant to the note, Innzen was required to repay the loan, in full, within three months. In respect of the loan transaction, respondent, as a principal of RPR, "acquired a security and pecuniary interest adverse to [his clients] Innzen and Nayak," and his position also became potentially adverse to the Viradias. Yet, respondent neither instructed his clients to seek the advice of independent counsel, nor obtained written, informed consent of his clients regarding the loan transaction.

On October 26, 2016, the Hotel Project transaction closed. Respondent's law firm served as counsel to Nayak and Innzen for the Hotel Project, and, thus, was paid $32,500 in legal fees outside of the closing of that transaction. Respondent stipulated that "[t]here existed a significant risk that [his] representation of Innzen and Nayak would be materially limited by his personal interest in RPR." He also stipulated that "[t]here existed a significant risk that [his] representation of the Viradias would be materially limited by his personal interest in RPR." The Board found that respondent's conduct violated RPC 1.7(a) and RPC 1.8(a) in respect of Nayak, Innzen, and the Viradias.

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is appropriate discipline for a conflict of interest. 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); and 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, violations of RPC 1.7(a) and RPC 1.7(b); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business).

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).

Here, the Board considered respondent's unblemished disciplinary record since his 2003 admission to the New Jersey bar. He has shown remorse, and the record contains no evidence of economic harm to his clients. Moreover, he promptly accepted responsibility for his misconduct by entering into the stipulation and consenting to discipline. Finally, as noted by the OAE, respondent's prior service as a member of a District Ethics Committee can be viewed as both an aggravating and mitigating factor. On the one hand, he has demonstrated voluntary service to the bar; on the other hand, he, more than other lawyers, should have known better than to have exercised such poor judgment, mixing business and clients without observing proper safeguards.

The Board determined that, on balance, a reprimand is a sufficient quantum of discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 28, 2018.

2. Stipulation of discipline by consent, dated December 28, 2018.

3. Affidavit of consent, dated December 18, 2018.

4. Ethics history, dated March 26, 2019.

Very truly yours,

Ellen A. Brodsky
Chief Counsel

Encls.

c: (w/o enclosures)
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Disciplinary Review Board (e-mail)
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