Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-284
District Docket No. XIV-2016-0073E

In the Matter of

John V. Carrino

An Attorney at Law

Decision

Argued: November 21, 2019

Decided: March 6, 2020

Christina Blunda appeared on behalf of the Office of Attorney Ethics.

John McGill, III appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

On July 18, 2019, this matter was before us on a recommendation for an admonition filed by the District XIII Ethics Committee (DEC). We determined to treat the matter as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4).

The formal ethics complaint charged respondent with having violated RPC 1.8(a) (improper business transaction with a client).

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

Respondent was admitted to the New Jersey bar in 2002. At the relevant times, he maintained an office for the practice of law in Nutley, New Jersey, which operated under the name Carrino Gallagher, LLC. He now maintains a solo practice in Oldwick, New Jersey. He has no history of discipline.

In addition to practicing law, respondent invested in business endeavors. This matter arises from three business ventures involving respondent and his longtime friend and sometimes client, Christopher DiMaggio, whom he had represented in a 2007 traffic court matter and real estate transactions in 2009, 2012, and 2013, contemporaneously with the timeframe underpinning the ethics charges.

The businesses at issue were C3 Holdings (C3), a computer technology company, and two Nutley restaurants, Terrazza and Franklin Steakhouse (FSH). DiMaggio invested $50,000 in C3 and at least $500,000 in Terrazza and FSH and the real estate on which they were located.

Respondent had two partners in C3, DiMaggio and Jeff Blank, who also invested $50,000. The transaction took place in either 2010 or 2011. Respondent conceded that, in respect of that transaction, he did not comply with RPC 1.8(a),

which states that a lawyer shall not enter into a business transaction with a client unless three prerequisites are satisfied. Respondent admitted that he failed to comply with the prerequisites of RPC 1.8(a) and, thus, admitted the charged RPC violation.

In respect of Terrazza and FSH, respondent stated, in his answer to the complaint, that he had advised DiMaggio verbally, in the presence of respondent's then law partner, Gabrielle Gallagher, that respondent was not acting as DiMaggio's lawyer and that DiMaggio should seek independent counsel. Further, although respondent believed that he had complied with the writing requirement of RPC 1.8(a), he did not have the document.[1]

At the disciplinary hearing, respondent testified that he was certain that he had complied with RPC 1.8(a), but, still, he could not produce any writing demonstrating that compliance. He, thus, admitted having violated RPC 1.8(a)(2) and (a)(3), and accepted responsibility for his unethical conduct. Accordingly, the OAE rested its case on respondent's admissions and the exhibits offered at the hearing.

[1] The complaint also charged respondent with having violated RPC 1.8(a)(1) in respect of transactions involved in the dissolution of respondent's and DiMaggio's business relationship. The Office of Attorney Ethics (OAE) withdrew the charge after confirming that DiMaggio had been represented by counsel in respect of the dissolution.

In respondent's brief to us in this matter, he asserted, through counsel, that he had found the writing that he could not produce at the time of the hearing. Counsel submitted a motion to supplement the record to include the recently-discovered document, in addition to other documents regarding the OAE's motion for reconsideration/amendment of the DEC's hearing panel report. Prior to our analysis of respondent's motion, we first set forth the details of respondent's and DiMaggio's partnership and the Terrazza and FSH transactions.

The purchase and operation of Terrazza and FSH involved several individual, but related, transactions. Between March and May 2012, which was prior to DiMaggio's involvement, respondent filed with the State of New Jersey a certification of formation for Terrazza, LLC; signed a lease for a building located at 507 Franklin Avenue (507 Franklin property) in Nutley; filed a certification of formation for 507 Franklin Avenue, LLC, a property holding company (507 Holding); paid $27,000 to purchase the assets of the restaurant located at 507 Franklin Avenue; and purchased three liquor licenses for $150,000. Thereafter, respondent purchased the FSH trademark and planned to relocate the restaurant to 238 Franklin Avenue in Nutley.

In June 2012, respondent and DiMaggio discussed becoming partners in both Terrazza and FSH. They valued the ventures at $1 million, and DiMaggio

acquired a fifty percent interest for $500,000. That same month, DiMaggio and respondent signed the operating agreement for 507 Holding for the Terrazza location.

On June 19, 2012, DiMaggio placed the winning bid of $745,000 at the sheriff's sale for the 507 Franklin property, and paid a $200,000 deposit. The deed was issued to 507 Holding. On July 16, 2012, respondent and DiMaggio signed an operating agreement for Terrazza, designating each of them as a fifty-percent owner.

On September 10, 2012, respondent and Di Maggio, doing business as 238 Franklin Avenue, LLC (238 Franklin), entered into a contract of sale for the purchase of a property located at 238 Franklin Avenue (the 238 Franklin property), which was to become the FSH location. The purchase price was $1,150,000, for which they had obtained an $800,000 mortgage commitment.

Five days later, respondent and DiMaggio signed an operating agreement for FSH Holdings, LLC (FSH Holdings). The purpose of the agreement was to operate and manage FSH at the 238 Franklin property.

On October 21, 2012, FSH opened at its new location, and, through a management agreement, used the prior owner's liquor license until FSH could secure its own. On November 25, 2012, respondent and DiMaggio signed an operating agreement for 238 Franklin Property LLC, for the purpose of holding

the property at 238 Franklin Avenue, where FSH was located. On December 12, 2012, respondent and DiMaggio created Carrino DiMaggio, LLC, for the purpose of holding liquor licenses.

On January 18, 2013, the closing on 238 Franklin Avenue and the liquor license took place. Five months later, Terrazza went out of business, and DiMaggio decided to buy his partners' interest in FSH.[2] The Terrazza property was sold, and DiMaggio's share of the proceeds was turned over to respondent, offsetting the balance that DiMaggio owed for the buy-out of FSH. Respondent then transferred to DiMaggio his interest in FSH Holdings and 238 Franklin.

Respondent testified that, when he and DiMaggio decided to take over Terrazza and FSH, they had been close friends for twenty years. In respect of those transactions, respondent maintained that, on June 15, 2012, he and DiMaggio executed a "Memorandum of Understanding" (the Memorandum), which purportedly memorialized the terms of their partnership. Respondent claimed that his former law partner, Gabrielle Gallagher, had witnessed the execution of the Memorandum.

Respondent testified that the Memorandum was executed prior to the June 19, 2012 sheriff's sale of 507 Franklin Avenue, the property where Terrazza was

[2] Respondent and DiMaggio had taken on two partners who held a five-percent interest, presumably in FSH.

located. Respondent asserted that the document memorialized the terms of DiMaggio's "buy-in to all the assets that we were going to acquire," and that respondent and DiMaggio "both had the opportunity to seek independent counsel."

According to respondent, the executed Memorandum was scanned into the restaurant's computer, and DiMaggio retained the original, along with the corporate books. During the ethics investigation, respondent had been unsuccessful in his attempts to retrieve the Memorandum by removing the hard drives from "all the computers." Although respondent and DiMaggio were involved in civil litigation arising from their restaurant venture, DiMaggio had not produced the Memorandum, and the restaurant where the computer was located had been closed for four years.

In respect of the civil litigation between respondent and DiMaggio, respondent testified that DiMaggio had agreed to buy the interests of respondent and the minor partners, but, because he did not have sufficient capital, had agreed to pay respondent $4,000 a month, pursuant to the terms of a $500,000 note. According to respondent, DiMaggio stopped making the $4,000 monthly payments, and, "in an attempt to try to get [respondent] to walk away from the money, . . . filed an ethics complaint against [him]," based on the false claim

that the $4,000 monthly payments represented legal fees.[3] Thereafter, respondent claimed, DiMaggio's attorney attempted to extort respondent.

In August 2018, DiMaggio changed his position in the civil matter. Despite his claim to the OAE that the $4,000 monthly payment represented legal fees, he filed a certification in the civil matter, stating that he and respondent were business partners and that respondent never was his attorney.

At the disciplinary hearing, respondent offered testimony regarding remedial measures he had taken to avoid future misconduct. Although he did not foresee entering into a future business arrangement with a client, he created a document called a "no counsel agreement," which he described as "a special contract just to make certain that it's very clear what role I play." According to respondent, the two-year ethics investigation, though fair, took its toll on him personally and professionally. He spent time and money defending himself in the investigation, which took time away from practicing law and, thus, earning income. Respondent asserted that he fully cooperated in the investigation.

Respondent submitted character letters from four individuals. Two letters were from pastors of churches; one was from the founder and president of a

[3] The hearing panel report states that, although a copy of the grievance was not provided to the DEC, "the parties testified that the grievance contained numerous allegations most of which were proven to be false." We note that only respondent testified at the hearing, and that the grievance is not a part of the record.

community organization dedicated to helping men be strong husbands and fathers; and one was from Gallagher, respondent's former law partner. All the letters attested to respondent's character and integrity. The pastors' letters spoke of respondent's dedication to families and members of the community in need to whom he had provided pro bono legal services. In one of the churches, respondent served as a mentor to middle school boys.

Respondent elaborated on the statements of the character witnesses, testifying about the pro bono services that he provided to the community, mostly to mothers. Sometimes he provided legal services; other times he simply counseled the women. He also worked with outreach organizations that feed the homeless, and he served as a youth tackle football coach and a youth pastor at his church.

In addition, respondent testified about his establishment of the John Carrino Scholarship for Perseverance at Rutgers Law School. He explained that, in his third year of law school, he had received a $1,500 stipend. To "pay it forward," he instituted the scholarship in approximately 2011, and has funded it every year since.

Finally, respondent asserted that no one was harmed by his violation of RPC 1.8(a), and that he did not benefit from his misconduct. He concluded his testimony by thanking the OAE for its thorough investigation.

The DEC found that DiMaggio was respondent's longtime friend and client, and accepted respondent's admission that, in 2011, when he entered into the C3 investment with Blank and DiMaggio, he violated RPC 1.8(a) by not including a provision in the contract informing them of the desirability of seeking the advice of independent legal counsel "or otherwise receiving informed consent signed in writing."

In respect of the Terrazza and FSH restaurants, the DEC accepted respondent's claim that he had advised DiMaggio verbally, in Gallagher's presence, that he was not DiMaggio's attorney for these business endeavors. However, the DEC noted that respondent was unable to produce the Memorandum, purportedly signed by DiMaggio, which showed that respondent had obtained his informed written consent or that respondent had informed him of the desirability of seeking the advice of independent legal counsel. Thus, the DEC concluded that respondent could not prove compliance with RPC 1.8(a).

In mitigation, the DEC observed that respondent had an unblemished disciplinary record and, further, that he had established a reputation of good character and performed substantial service to his community. In addition, respondent had acknowledged and taken responsibility for his misconduct, for which he had expressed contrition and remorse, and had cooperated with the OAE investigation. Further, respondent did not personally gain from his

unethical conduct, and his clients were not harmed. Finally, he had taken affirmative steps to prevent future violations of RPC 1.8(a).

The DEC recommended an admonition for respondent's admitted violations of RPC 1.8(a).

In respondent's counsel's brief to us, he requested that we permit respondent to supplement the record with several documents. Among them was the Memorandum, which, respondent testified, he and DiMaggio had executed but was not in respondent's possession during the ethics proceedings. The document, which is titled "MEMORANDUM OF UNDERSTANDING between JOHN CARRINO AND CHRISTOPHER DIMAGGIO" provides, in pertinent part:

> John Carrino and Christopher DiMaggio desire to enter into a business relationship together whereas both parties will be partners in accordance with the below terms for both real property as well as the current partnership Terrazza and all future restaurant and building acquisitions for restaurant purposes[.]
>
> [Ex.R-E¶1.][4]

Paragraphs two through six set forth the terms of the parties' purchase of the Terrazza property. The document contains no reference to FSH.

[4] "Ex.R-E" refers to Exhibit E of the brief in support of the motion to supplement the record submitted by respondent's counsel.

The final paragraphs, seven and eight, provide:

> John Carrino is in a business relationship with Christopher DiMaggio and not acting as or advising Christopher DiMaggio in Carrino's legal capacity. Both Carrino and DiMaggio understand they can have independent counsel review this agreement and that they have agreed to move forward without counsel;
>
> This agreement is effective as of this date, June 15, 2012.
>
> [Ex.R-E¶7-¶8.]

In reply to Office of Board Counsel's request for a certification from respondent attesting to certain information in respect of the Memorandum, respondent stated that it was executed on June 15, 2012, at Terrazza. Consistent with respondent's testimony at the disciplinary hearing, he stated that he had drafted the Memorandum, which was a Word document located on the Terrazza office computer, and that he had scanned the original into the Terrazza office computer the following day. Because the executed Memorandum was scanned, no copies had been made. When DiMaggio went to the sheriff's sale, on June 19, 2012, he took the original Memorandum with him.

In June 2014, after respondent had sold his interest in FSH to DiMaggio, and Terrazza was about to close, anything of value located in Terrazza's office and restaurant was either relocated to the FSH office or discarded. Although respondent retained all computer hardware, specifically the hard drives for all

point of sale systems, along with other computer hardware that was in storage, during the OAE investigation and up through the date of the disciplinary hearing, he claimed he had been unable to locate and retrieve the Memorandum.

On December 28, 2019, while respondent was searching for documents relevant to the civil litigation, he located the electronic version of the Memorandum and the scanned file copy on a computer. Respondent did not explain why he was able to retrieve the Memorandum then, but had been unable to do so before. He immediately notified his attorney in the civil litigation, and the documents were Bates stamped and produced to DiMaggio's counsel in that matter.

Respondent's counsel asserted that we should supplement the record with the Memorandum and impose an admonition on respondent for his violation of RPC 1.8(a), because the violation occurred only in the C3 transaction, substantial mitigating factors weighed in respondent's favor, and respondent had been "victimized by a dishonest grievant."[5]

The OAE objected to counsel's request because the Memorandum had not been authenticated, and DiMaggio denied having seen or signed it. Moreover, the presenter claimed that, during respondent's OAE interview, he denied that

[5] The DEC found that the grievance contained "unfounded allegations" and that DiMaggio was dishonest, even though the grievance is not in the record, and DiMaggio did not testify.

he had obtained a writing, "unfortunately." Thus, the presenter requested that we either exclude the Memorandum or remand the matter and grant the OAE the opportunity to investigate the document's authenticity.

We determine to grant respondent's request to supplement the record with the Memorandum and other documents. Respondent has provided us with a detailed account, via a certification, regarding the circumstances of his discovery of the Memorandum. We, thus, find that the document was not available to him during the hearing, and, further, that the document certainly could have affected the outcome of this proceeding. Cf. Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 452-53 (2007) (when an appellate court entertains a motion to supplement the record, the decision to grant or deny the motion depends on whether, at the time of the hearing, the applicant knew of the information he or she now seeks to include in the record and, if the evidence were included, whether it is likely to affect the outcome).

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

Respondent committed multiple violations of RPC 1.8(a), which prohibits a lawyer from entering into a business transaction with a client unless:

. . .

> (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 a 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.

Here, as respondent admitted, he violated RPC 1.8(a) in the C3 transaction. In respect of respondent's other business ventures, we have reviewed the Memorandum and conclude that the document governs only the purchase of Terrazza and the property upon which it was located. It does not apply to other business ventures, such as the purchase of the 238 Franklin Avenue property and the liquor licenses.

The Memorandum clearly delineates the terms of the Terrazza transaction, which was carried out as provided in the document. Thus, we determine that respondent satisfied the requirements of RPC 1.8(a) in respect of the Terrazza venture alone.

We recognize that, in addition to Terrazza, the Memorandum purports to govern "all future restaurant and building acquisitions for restaurant purposes" and provides that DiMaggio would "buy-into the current and future businesses

at any position up to 50%." Finally, the Memorandum set the value of the Terrazza and "future businesses" at $1 million. In our view, however, the Memorandum is insufficient to satisfy RPC 1.8(a) in respect of the FSH transaction. There are no terms pertaining to how that venture was to be carried out. Moreover, the FSH endeavor did not get off the ground until September 10, 2012, three months after the parties had executed the Memorandum. On that date, the parties signed a $1,150,000 contract of sale for the location, a price that exceeded the $1 million valuation "for all current and future" businesses contemplated in the Memorandum. Further, the FSH venture required the purchase of a liquor license, which did not occur until January 2013. Moreover, there were agreements pertaining to how the venture would work, such as the operating agreement for FSH Holdings; the management agreement by which respondent and DiMaggio used the prior owner's liquor license; and the operating agreement for the property and the liquor license. We do not accept the claim that the Memorandum even contemplated, let alone governed, these multiple transactions, at least in respect of respondent's obligations to DiMaggio under the Rules of Professional Conduct.

To conclude, respondent admittedly violated RPC 1.8(a) in respect of the C3 venture. Although the Memorandum satisfied respondent's RPC 1.8(a) obligation to DiMaggio in respect of the Terrazza transaction, the terms did not

apply to the FSH venture and, thus, respondent violated RPC 1.8(a) in respect of that matter, as well.

In sum, we find that respondent committed multiple violations of RPC 1.8(a). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

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). However, if the conflict of interest arises from a business transaction between a lawyer and client, the minimum measure of discipline is usually 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 lent 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).

Reprimands have been imposed when the loan involves a significant amount of money, when the attorney engages in multiple business transactions without the client's informed written consent, when the attorney is guilty of additional ethics infractions, or when aggravating factors are present. See, e.g., In re Rajan, 237 N.J. 434 (2019) (attorney, while representing his client in the purchase of a property that the client intended to develop into a hotel, introduced the client to two other clients who agreed to fund fifty percent of the hotel project; when the client could not fund his fifty percent share, a holding company formed by the attorney and his brother and brother-in-law lent $450,000 ($350,000 of which was the attorney's) to the client so that he could close the transaction; the attorney, thus, acquired a security and pecuniary interest adverse to his client and became potentially adverse to the other clients; the attorney did not advise his clients to consult independent counsel, and he did not obtain their informed, written consent to the loan transaction; the attorney also represented the client in the real estate transaction and received $32,500 in

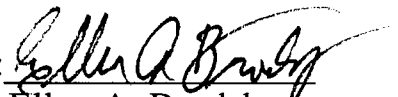
legal fees; violations of RPC 1.7(a) and RPC 1.8(a); despite the attorney's unblemished disciplinary record, the absence of harm to the client, his acceptance of responsibility, and his expression of remorse, we imposed a reprimand because he exercised such poor judgment; the attorney's prior service as a member of a district ethics committee was considered both in aggravation and in mitigation); In re Allegra, 229 N.J. 227 (2017) (attorney who represented a client in a number of matters engaged in a sexual relationship with her after her application for citizenship was denied, a violation of RPC 1.7(a)(2); he also borrowed $17,500 from her, a violation of RPC 1.8(a); despite significant mitigating factors, he received a reprimand, given both conflicts of interest); In re Amato, 231 N.J. 167 (2017) (attorney made three loans, totaling more than $528,000, to his client, and entered into a business transaction involving a currency transaction, all in violation of RPC 1.8(a); despite the attorney's lack of a disciplinary record, his admission of wrongdoing, and the lack of harm to the client, he received a reprimand, given the large amount of money involved); and In re Futterweit, 217 N.J. 362 (2014) (attorney, in lieu of legal fees, agreed to share in the profits of his client's business, 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, a 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, we 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).

In this case, respondent engaged in three business ventures with DiMaggio. He complied with RPC 1.8(a) only in the Terrazza venture. He failed to comply with the Rule in respect of the C3 venture and the FSH venture and all the agreements that the latter entailed. Notwithstanding the mitigation, we determine to impose a reprimand, given the number of ventures, the number of agreements involved, and the amount of money that DiMaggio invested.

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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

Ellen A. Brodsky
Chief Counsel