Supreme Count of New Jersey
Disciplinary Review Board
Docket No. DRB 19-343
District Docket No. XIV-2012-0664E

In the Matter of

Craig R. Mitnick

An Attorney at Law

Decision

Argued: February 20, 2020

Decided: May 19, 2020

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to 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 1987 and to the Pennsylvania bar in 1989. At the relevant times, he maintained an office for the practice of law in Haddonfield, New Jersey.

On November 13, 2017, respondent received a reprimand for misconduct that occurred in 2015, including negligent misappropriation, commingling, and recordkeeping deficiencies. In re Mitnick, 231 N.J. 133 (2017).

Respondent and the OAE entered into a disciplinary stipulation, dated September 12, 2019, which sets forth the following facts in support of respondent's admitted ethics violation.

Respondent and Firas Emachah, the grievant, had an ongoing attorney-client relationship that began in June 2002. In December 2006, respondent represented Emachah in respect of a traffic summons. When they met at the courthouse for the traffic matter, respondent told Emachah about an idea he had for an internet-based business, initially called "Rockstar." Emachah expressed an interest in investing in the venture, which ultimately became known as "Nixle." In early 2007, respondent and Emachah met in Philadelphia, at the offices of another attorney, to finalize the Nixle joint business venture.

Respondent and Emachah became its co-founders, with Emachah investing almost $1.29 million in the company.

Through a series of events that are set out, not in the stipulation, but in respondent's May 21, 2018 reply to the grievance and its exhibits, he and Emachah lost all their ownership interest in Nixle. According to respondent, as Nixle's co-founders and its only managing members, he and Emachah had identical corporate voting rights, with respondent serving as Nixle's CEO. In 2010, Emachah, Emachah's attorney, and several others had respondent involuntarily removed as CEO and forced out of the company. Shortly thereafter, Nixle defaulted on a loan secured by respondent's and Emachah's stock, and the lender took the stock. Emachah also was forced out of Nixle and resigned from his position as a member of its board of directors.

Emachah alleged that respondent failed to advise him to consult independent counsel prior to investing in respondent's venture.[1] Respondent initially denied that allegation and provided the OAE with a one-paragraph,

[1] Emachah raised similar claims against respondent and others in litigation venued in the Superior Court of New Jersey, Law Division, Camden County. The plaintiffs, including Emachah, released respondent, on February 24, 2016, upon his payment of $600,000, with no admission or finding of wrongdoing by respondent. On May 23, 2016, the parties executed a stipulation of dismissal, with prejudice, of all claims against respondent.

undated, unsigned document, on respondent's attorney letterhead, purporting to inform Emachah to consult independent counsel about the investment and the potential conflict of interest regarding a joint venture in Nixle. That document stated as follows:

> Firas
> Just a reminder that we have an appointment with [two attorneys at a law firm] at 10:00 am tomorrow morning. Let's drive together and then you can speak with Steve alone first regarding the investment and our partnership in Rockstar. Remember to write down any questions you might have with regard to moving forward, including asking him about any conflicts of investing in the business with me since I represented you in the past and may continue to represent you against Cardo. Then we can both sit down and talk to Steve about the best way to structure the company, operating agreement, etc. How about you pick me up around 9:00 am at my house and then we can get something to eat afterward. I'll talk to you later[.] Craig
>
> [Ex.3.][2]

The document did not indicate how or when respondent sent it to Emachah. Respondent, thus, stipulated that he failed to advise his client, in writing, to consult independent counsel regarding the business transaction with respondent. He further admitted having failed to obtain Emachah's informed,

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[2] "Ex.3" refers to Exhibit 3 attached to the stipulation between the OAE and respondent.

written consent to the essential terms of the transaction and to respondent's role in the transaction, including whether he represented Emachah in it. Respondent, thus, admitted having violated RPC 1.8(a).

The OAE recommended the imposition of a reprimand, noting that respondent's prior reprimand should not be considered as an aggravating factor, because the misconduct under scrutiny here occurred in 2006 and, thus, predated the misconduct in the prior disciplinary matter, which occurred in 2015. Furthermore, the parties stipulated that Emachah had been provided with Nixle's operating agreement, which contained a warning of the "substantial risk" involved in an investment with Nixle.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.8(a).

Respondent had an ongoing attorney-client relationship with Emachah when, in late 2006, they co-founded Nixle, an internet-based company of respondent's invention, that ultimately cost them their entire investments. Emachah's investment totaled almost $1.29 million. The stipulation does not disclose the details of respondent's investment.

Emachah's grievance alleged that respondent failed to take the precautions required of attorneys who engage in business transactions with clients, as RPC 1.8(a) requires. Although respondent initially asserted that he had informed Emachah, in writing, of his conflict situation, he was unable to prove that assertion. In the end, respondent stipulated to having failed to advise Emachah, in writing, to consult independent counsel in respect of the Nixle venture. Respondent also admitted having failed to obtain Emachah's informed, written consent to the essential terms of the transaction, including respondent's role in the venture, and having failed to disclose whether he represented Emachah for the transaction.

In sum, we find that, in a single client matter, respondent violated RPC 1.8(a). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

When an attorney enters into an improper business 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 a note and mortgage from the client on his share of the marital home, but the mortgage turned out to be invalid; 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)); In the Matter of John W. Hargrave, DRB 12-227 (October 25, 2012) (attorney obtained from his clients a promissory note in his favor secured by a mortgage on the clients' house, in the amount of $137,000, representing the amount of legal fees owed to him; the attorney did not advise his clients to consult with independent counsel before they signed the promissory note and mortgage in his favor); and In the Matter of April L. Katz, DRB 06-190 (October 5, 2006) (attorney solicited and received a loan from a matrimonial client; the attorney did not comply with the mandates of RPC 1.8(a)).

Improper business transactions involving large sums of money, however, have yielded reprimands. 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 Amato, 231 N.J. 167 (2017) (reprimand imposed on attorney who 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 Botcheos, 217 N.J. 147 (2014) (reprimand imposed on attorney whose client had loaned him $1,175,000 for the purchase of two properties, without first advising the client, in writing, to consult independent counsel and obtaining the client's written consent to the transactions, the terms of which, the parties stipulated, were fair and reasonable to the client; violation of RPC 1.8(a); the attorney had prepared mortgages, but failed to record them, and defaulted on one of them, resulting in a foreclosure action against him; a reprimand was imposed because the attorney had exposed his client to a $1,175,000 risk of loss by failing to record the mortgages and because the client did not get the benefit of his bargain in respect of the property in foreclosure).

Here, although Emachah's $1.29 million investment was not a loan to respondent, the funds likely were essential to respondent's startup company, Nixle. Moreover, that sum falls squarely in line with the reprimand case above, Botcheos, which involved a $1.175 million loan from a client.

In respect of aggravating and mitigating factors, respondent and Emachah had identical voting rights in Nixle until 2010, when Emachah and others forced respondent out of the company. Although Emachah thereafter lost his

investment in Nixle, the stipulation does not directly fault respondent for that loss – respondent having similarly suffered a loss of stock. Moreover, it appears from the exhibits that Emachah was made partially whole by a $600,000 payment to settle the litigation, with no admission of financial wrongdoing by respondent.

Additionally, respondent's explanation of events in reply to the grievance raised the possibility that Nixle's demise may have been accelerated by respondent's ouster from the company and its subsequent default on a loan secured by his and Emachah's stock. Under all these circumstances, when fashioning the appropriate sanction, we gave weight to the large sum involved in the improper transaction ($1.29 million), but do not fault respondent for Emachah's loss of some of those funds. Finally, we did not consider respondent's prior reprimand as an aggravating factor, because the misconduct here took place in 2006, well before the misconduct in 2015 for which he received a 2017 reprimand.

On balance, we determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Joseph and Petrou 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
Bruce W. Clark, Chair

By: _____
For: 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:	6	0	3

For: Ellen A. Brodsky
Chief Counsel