

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 20-090  
District Docket No. XIV-2015-0268E

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In the Matter of  
Bruce M. Pitman  
An Attorney at Law

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Dissent

Decided: March 3, 2021

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

We write to express our disagreement with the majority decision, and our agreement with the conclusions reached by the Special Master in this matter, who recommended dismissal of the complaint. In our view, the key facts, as determined by the Special Master, are supported by the evidence of record and are as follows:

1. The business at issue was solely owned by respondent's client, Christopher, and, as a result, he had the ability and right to effectuate a sale without the consent or knowledge of his spouse, Blanche.

2. Neither Christopher nor respondent ever agreed to notify Blanche or her counsel of an impending sale nor did either have a duty to do so. The majority infers a duty to notify from a request from Blanche's counsel to be kept informed, a request that was never agreed to.
3. After the sale had been concluded and the proceeds had been distributed, Grievant filed a civil law division complaint against Respondent, his firm and Christopher's mother (the recipient of a loan repayment from the proceeds of sale), but the court dismissed the complaint without prejudice, citing the "panoply of remedies" available in the family court. [Majority Opinion at 16.]
4. Blanche's counsel never pursued remedies in the family court.

Because the business was solely owned by Christopher at the time of the sale, Blanche had no interest in the business and no interest in the proceeds of its sale. At best, she had a potential, unlitigated claim of right to equitable distribution of a portion of the proceeds. The New Jersey Supreme Court emphasized the difference between an interest and a claim in Painter v. Painter, 65 N.J. 196, 216 n.5 (1975), stating that a potential claim to equitable distribution does not create an interest in specific marital property until a judgment of allocation of property is entered. The Painter Court stated:

[N]othing in our [No Fault Divorce] statute effects any change with respect to the ownership of property as between husband and wife prior to the entry of a judgment of allocation. Prior to that event [entry of a

judgment] neither spouse, by virtue of this statute, acquires any interest in the property of the other.

(Emphasis added).

The majority finds that respondent violated RPC 1.15(b). But the existence of a property interest is necessary for a violation of RPC 1.15(b) to be found. RPC 1.15(b) requires an attorney who holds “funds or other property in which a client or third person has an interest . . . [to] promptly notify the client or third person.” (Emphasis added). As Painter holds, unless and until a family court judge made a determination that Blanche had an interest in the business at issue or in the proceeds of sale of that business, she had no interest. No such determination was ever made in this case.

The critical mistake made by the majority here in deciding that respondent violated RPC 1.15(b) is its confusing the concept of a marital asset that may be subject to eventual distribution by a court in a divorce proceeding with an actual present interest in property.<sup>1</sup> As Painter holds, one doesn’t obtain a property interest in a spouse’s wholly-owned asset until a judgment adjudicates such interest. Without such adjudication, respondent had no duty under RPC 1.15(b)

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<sup>1</sup> This confusion is clear in the sentence at the bottom of page 26 of the majority decision, using the terms “interest” and “claim to equitable distribution” as the same thing. It is also clear in the erroneous sentence on page 32 saying that “it is beyond doubt that Blanche had such an interest in the sale proceeds” when, absent a judgment, she had no “interest.”

to notify Blanche or her attorney, the grievant, about the sale of Christopher's wholly-owned business or the fact that he was holding proceeds of that sale in his trust account. For the same reason, the majority's finding of a violation of RPC 1.15(a) must fail, as that Rule requires an attorney to safeguard property of clients or third persons in the lawyer's possession. Unless and until a determination was made that Blanche has an interest, no portion of the proceeds of sale were Blanche's property. The funds held in respondent's trust account were property of Christopher, which respondent was obligated, pursuant to RPC 1.15(b), to promptly deliver to Christopher.

Under the circumstances, we agree with the Special Master's determination that:

My task is not to determine issues of law regarding the disposition of property in a matrimonial case. The sole issue before me is whether or not the OAE has proven by clear and convincing evidence that Respondent has violated the RPCs. In this matter, I am satisfied that to prove a violation of RPC 1.15(a) and/or RPC 1.15(b) it is incumbent on the OAE to establish by clear and convincing evidence that in fact Blanche had a property interest that Respondent failed to protect (1.15(a)), and/or that Respondent received property that Blanche had an interest in and Respondent failed to notify Blanche of its receipt {1.15(b)}. I am satisfied that the OAE has failed to satisfy its burden of proof. The conflicting testimony and case law presented on the issue by the parties demonstrates that the OAE has failed to satisfy their burden that such a property interest existed.

Similarly, we agree with the Special Master that respondent made no promises to grievant<sup>2</sup> and did not falsely misrepresent any fact to grievant. The fact that grievant asked to be updated regarding the sale of the business does not, in and of itself, create a legal or ethical duty on the part of respondent to do so. To hold otherwise would be to invite attorneys to write self-serving letters making requests and demands and argue, later, that the failure to respond specifically to each and every one constitutes an enforceable agreement. That is not the law, nor should it be the law, and the Rules of Professional Conduct do not support a violation under such circumstances. Moreover, respondent had a duty of confidentiality to his client under RPC 1.6(a) to keep confidential the forthcoming sale of the business that his client asked him not to disclose. As the Special Master found, respondent was simply abiding his client's instructions to keep the sale confidential and by doing so did not violate RPC 8.4(c).

The majority suggests that by advising his client to open a new bank account to deposit the sale proceeds, respondent engaged in and/or facilitated deceptive behavior. Respondent asserted that the new account was opened to make accounting for the proceeds easier, an entirely reasonable explanation. We do not find, by clear and convincing evidence, that opening a new bank account

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<sup>2</sup> As noted in the majority opinion, the grievant was the attorney who had represented Blanche in the matrimonial proceeding at issue.

under these circumstances demonstrates an intention to engage in deceptive or fraudulent conduct -- especially when, as discussed above, respondent had no duty to disclose the sale of the business to Blanche or grievant -- and we agree with the Special Master, who heard the testimony and evaluated the credibility of the witnesses, that the proofs fell short of clear and convincing evidence on this point. Thus, we find no violation of RPC 8.4(c) with regard to the opening of a new bank account.

In short, we find no evidence that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in his dealings with the grievant, as found by the majority. To the extent there was conflicting testimony on this point, the Special Master was in the best position to consider and evaluate the credibility of the witnesses. We see no basis to disturb the Special Master's findings in this regard.

While conceding that it was not part of the complaint, the majority suggests (at page 36 of the decision) that by negotiating a release of a personal guaranty as part of the underlying business transaction, respondent's firm should have secured a conflicts waiver since the release benefited both Christopher and Blanche. The short answer to this assertion is that no conflict violation was charged or litigated at the hearing, and it is therefore not properly before us for consideration. Even if it were, the fact that the sale of the business had the

incidental benefit of releasing Blanche from a guaranty is hardly grounds for a claimed conflict of interest. Accordingly, the majority's conclusion that the failure to secure a conflict waiver was an aggravating factor (page 39) is, in our view, also improper.


In reaching these conclusions, we make no determination as to the propriety of respondent's actions as a matter of substantive matrimonial law. It may well be that a properly framed application for relief before a family court judge would have resulted in relief to Blanche.<sup>3</sup> However, that is not the issue before us. We are tasked with determining whether the evidence of record supports a finding, by clear and convincing evidence, of violations of the Rules of Professional Conduct. Like the Special Master, we conclude that the evidence presented falls short of that burden and that, as a result, no discipline is appropriate.

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<sup>3</sup> If entitlement to such relief was clear, one would have expected such an application to have been filed. However, despite the suggestion that he pursue the "panoply of remedies" available in the family court, grievant never did so.

For the foregoing reasons, we respectfully dissent from the majority's decision and recommend dismissal of the complaint.

Disciplinary Review Board  
Peter J. Boyer  
Anne C. Singer

By:   
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Johanna Barba Jones  
Chief Counsel