Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-325
District Docket No. XIV-2018-0562E

In the Matter of Markis Miguel Abraham An Attorney at Law	:

Decision

Argued: April 15, 2021

Decided: July 29, 2021

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 (the OAE) and respondent. Respondent stipulated to having

violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.8(a) (improper business transaction with a client); and RPC 1.15(a) (commingling).

For the reasons set forth below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2008 and to the New York bar in 2010. At the relevant times, he maintained an office for the practice of law in Jersey City, New Jersey. He has no prior discipline in New Jersey.

Effective November 16, 2020, the Court declared respondent ineligible to practice law in New Jersey for failure to comply with continuing legal education requirements.

Respondent and the OAE entered into a disciplinary stipulation, dated November 17, 2020, in which respondent admitted the following facts in support of his misconduct.

On April 13, 2018, following a random audit of respondent's attorney bank accounts, the OAE wrote a letter to him outlining various recordkeeping deficiencies, including: (1) failure to maintain a separate ledger sheet for each client, in violation of R. 1:21-6(c)(1)(B); (2) trust funds on deposit were in excess of total trust obligations, in violation of R. 1:21-6(d); (3) his attorney trust account (ATA) was being used to account for funds unrelated to legal practice, in violation of R. 1:21-6(a)(1) and RPC 1.15(a); (4) personal funds

were commingled with client trust funds, in violation of RPC 1.15(a); (5) improper designation of his attorney business account (ABA), in violation of R. 1:21-6(a)(2); (6) failure to prepare a schedule of clients' ledger accounts and reconcile monthly to his ATA, in violation of R. 1:21-6(c)(1)(H); (7) ABA funds frequently overdrawn, in violation of R. 1:21-6(d); (8) failure to maintain records for seven years, in violation of R. 1:21-6(c)(1); and (9) failure to comply with transfer procedures on electronic transfers from his ATA, in violation of R. 1:21-6(c)(1)(A).

The OAE's letter also noted that, on January 30, 2017, respondent had accepted a $140,000 personal loan from an eighty-year-old client, Bernice Perkins, which he deposited in his ATA. The OAE's letter required that respondent reply in writing, within forty-five days, to provide proof that each deficiency had been corrected and to explain the circumstances of the personal loan. The OAE also informed respondent that the matter would be investigated in connection with the apparent commingling and conflict of interest.

On May 29, 2018, respondent replied to the OAE's letter, certifying that he had corrected the deficiencies in his ATA. Further, respondent claimed that Perkins was a former client at the time of the loan, and that he had orally advised her to seek independent legal counsel regarding the loan. On October 12, 2018, the OAE commenced its disciplinary investigation.

Perkins owned three adjacent parcels of real estate in Jersey City. She resided in one, operated the second as a parking lot with four garages, and operated the third as a rooming house with a ground-floor bar. In mid-2015, Perkins was referred to respondent to represent her in the sale of the two lots on which she did not reside, plus the sale of the liquor license for the bar. Respondent also prepared a power of attorney, will, and living will for Perkins, and assisted her in the defense of two personal injury lawsuits that stemmed from her ownership of the bar. Perkins paid him legal fees in connection with these matters.

During his representation of Perkins, they became friends. At some point, respondent told Perkins that he and his wife hoped to invest in real estate. In late 2016, Perkins offered respondent $140,000 to begin the couple's investment efforts. Respondent had not asked for a loan or gift from Perkins. Initially, he refused to take her money and, instead, attempted to convince Perkins to form a limited liability company (LLC) seeded with the $140,000 in investment money. Perkins declined to form the LLC. Respondent eventually accepted the money from her, stating that it only became a loan because he "did not feel comfortable accepting a gift." Although respondent sought to formulate a formal plan to repay Perkins, she refused such an arrangement.

Respondent failed to advise Perkins, in writing, to seek independent

counsel, failed to obtain written informed consent from Perkins regarding the essential terms of the loan, and failed to execute a loan agreement countersigned by Perkins in the presence of a witness.

On January 30, 2017, respondent deposited the $140,000 personal loan in his ATA, commingling it with entrusted client funds with the intent to eventually create an LLC. After Perkins refused to create the LLC, respondent transferred the funds to a personal account.

Respondent provided to the OAE a promissory note outlining the terms of the loan. However, the note was signed by respondent only. The promissory note was dated January 30, 2017, but respondent indicated that he provided the document to Perkins after he received the loan. The promissory note provided that the loan would be repaid in full by January 31, 2018. That repayment did not occur.

On May 18, 2019, Perkins passed away, at the age of 82. In 2018, prior to her death, Perkins was incapacitated, and under the care of Peace Care St. Joseph's, in Jersey City. Sandip Pandya, Esq., from the Law Office of Sharon Rivenson Mark, P.C., was appointed by a court as her temporary guardian. Pandya did not file for Medicaid for Perkins, because the application would have been denied as a result of Perkins's $140,000 loan to respondent, which constituted a large depletion of Perkins's assets a short time prior to a potential

Medicaid application. Due to her inability to receive Medicaid, Perkins's estate incurred a large bill for her care by Peace Care St. Joseph's, which remained outstanding at the time of the stipulation.

During his June 12, 2019 demand interview, respondent claimed that he intended to repay Perkins, but had not yet been able to do so. Respondent was unaware that Perkins had passed away. In September 2019, respondent paid approximately $5,000 back to Perkins's estate.

As noted above, respondent also defended two personal injury matters for Perkins, which stemmed from her ownership of the bar. Respondent initially contacted Pandya to determine if he would handle the matters. However, he failed to follow through and both matters entered default.

Specifically, in the first lawsuit, which was filed in Hudson County and captioned Nowicka v. Perkins, et al., respondent failed to reply to answers to interrogatories. Consequently, on September 13, 2019, the court entered an order of default judgment against Perkins. In the second lawsuit, which was filed in Essex County and captioned Gordon v. Candle Lite Lounge and Restaurant, respondent failed to appear at a mandatory arbitration. Consequently, on November 19, 2018, the court entered an order of default judgment against Perkins.

Based on the foregoing, respondent stipulated to having violated RPC

1.1(a) and RPC 1.3 by failing to perform the legal services for which he was retained in the two personal injury matters, resulting in default judgments; RPC 1.8(a) by entering into an improper business transaction with Perkins, his client; and RPC 1.15(a) by commingling the personal loan with entrusted funds in his ATA.

The OAE recommended that, based on the totality of respondent's misconduct, we impose a three or six-month suspension, or such lesser discipline as we deem appropriate. Moreover, the OAE urged that, as a condition, respondent be required to repay the loan to the Estate of Perkins "or other such action regarding repayment of the loan that Respondent and the estate agree upon."

In aggravation, the OAE cited In re Uffelman, 200 N.J. 260 (2009) (reprimand, despite no disciplinary record, for gross neglect, lack of diligence, and failure to communicate, premised on the extensive harm caused to client, who was forced to close his business for three months due to Uffelman's misconduct) and In re Burstein, 214 N.J. 46 (2013) (reprimand for failing to properly serve appropriate parties in his client's lawsuit and failed to correct the error, premised on extensive harm to the client, who collected only $35,000 for extensive injuries due to Burstein's misconduct). Specifically, the OAE argued that respondent caused extensive harm to Perkins, emphasizing the adverse

impact to her Medicaid entitlement. The OAE additionally cited In re Seymour, 230 N.J. 339 (2017) (censure for charging unreasonable fees and conflict of interest regarding a 92-year-old nursing home resident), arguing that Perkins was a vulnerable person to whom respondent owed a greater duty of care.

In mitigation, the OAE noted that respondent cooperated in the investigation and had no prior discipline.

At oral argument, respondent candidly admitted that the promissory note was executed by him after Perkins made the loan, but emphasized that the money was only briefly in his ATA. He also informed us that, as of the date of the hearing, he had spent the entirety of the loan proceeds, but had repaid $7,000 of the loan to Perkins's estate, and had signed a consent order with the Estate of Perkins, about eighteen months prior, to repay more than $190,000, including interest. Respondent noted that, despite his personal financial difficulties, he did not file for bankruptcy protection, because he was fully committed to repaying the full amount of the consent order.

Respondent also explained to us that he had originally deposited the loan funds in his ATA because he expected to proceed with the LLC with Perkins, and that it was his understanding that, if they entered such a joint venture, the funds would remain hers. However, because Perkins declined to create the LLC, and insisted that he accept the funds outright, respondent transferred the funds

from the ATA to a personal account a few days later.

On April 28, 2021, respondent supplemented the record with a filed copy of the signed consent order with the estate, executed August 7, 2020, entering judgment against respondent for $195,060 plus interest.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent committed misconduct.

Specifically, the OAE random audit revealed that respondent took a personal loan from an elderly client, Perkins, without advising her, in writing, that she should seek independent counsel, without laying out the essential terms of the loan in writing, and without procuring Perkins' informed consent.

RPC 1.8(a) prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security or other pecuniary interest adverse to a client unless:

> (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
>
> (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.

Although respondent ultimately provided to Perkins a promissory note for the loan, the note was neither contemporaneous with the loan nor evidence of Perkins's informed consent to the loan. Respondent's asserted oral direction to Perkins prior to accepting the funds that she should seek outside independent counsel fell far short of the written, informed consent RPC 1.8(a)(2) and (a)(3) requires. Although respondent appears determined to repay the loan, his actions in procuring the loan clearly violated RPC 1.8(a).

After accepting the loan from Perkins, respondent deposited the funds in his ATA. By doing so, respondent improperly commingled the loan proceeds with his clients' trust funds and, thus, violated RPC 1.15(a).

Finally, respondent represented Perkins in two ongoing personal injury matters resulting from claims against the bar she owned. However, respondent failed to comply with discovery demands in one case and failed to appear for a mandatory arbitration in the other. As a result of his inaction, default judgments were entered against Perkins's estate in both cases. Respondent's utter failure to advance Perkins's interests concerning the ongoing litigation subjected the Perkins estate to judgments it may not have otherwise incurred, and constituted gross neglect and a lack of diligence, in violation of RPC 1.1(a) and RPC 1.3.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.8(a); and RPC 1.15(a). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Conduct involving gross neglect and lack of diligence ordinarily results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a);

RPC 1.3; RPC 1.4(b); and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a personal injury case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a $300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

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, and the lawyer fails to invoke the safeguards of RPC 1.8(a)(1)-(3), 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).

We have imposed reprimands 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 failed to advise his clients to consult independent counsel, and he failed to 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).

Ordinarily, we address an attorney's commingling of funds with an admonition. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189

(October 1, 2018) (commingling of personal loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found; the commingling did not impact client funds in the trust account); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of $1,801.67; because the attorney maintained more than $10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements); and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (an OAE audit revealed that, during a two-year period, the attorney had commingled personal and client funds in his trust account, in violation of RPC 1.15(a), by routinely using the account for business and personal transactions; recordkeeping deficiencies also found, violations of RPC 1.15(d) and R. 1:21-6).

Standing alone, each of respondent's violations would have merited less than a term of suspension. However, considering respondent's diverse misconduct in the aggregate, and taking into account the mitigating and aggravating factors, a short-term suspension is warranted.

In mitigation, respondent has no disciplinary history, was cooperative, and candidly admitted his misconduct. He also has repaid $7,000 toward the loan and signed a consent order to pay back to the Perkins estate the remainder of the

owed funds, plus interest.

However, in aggravation, as the OAE noted, respondent's misconduct caused Perkins and her estate significant financial harm. Moreover, we accord significant weight to the fact that Perkins was a vulnerable member of the population. Our Court has commented upon "the serious and growing problem of elder abuse." In re Torre, 223 N.J. 538, 548 (2015). In Torre, the Court imposed discipline on the attorney to "foster continued faith in the legal profession as a whole." The Court increased the discipline to a one-year suspension for an inappropriate transaction between Torre and his client, because it "resulted in substantial harm to a vulnerable, elderly victim." Id. at 549. We harbor the same concerns here when considering respondent's acceptance of Perkins's large loan in the absence of her informed consent, a loan which he has proven unable to promptly repay pursuant to the claimed terms.

On balance, considering the legal precedent as well as the mitigating and aggravating factors presented, a three-month suspension is the appropriate level of discipline for the totality of respondent's misconduct, and is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Singer and Member Petrou voted to impose a censure.

Member Joseph voted to impose a one-year suspension.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli (Ret.), Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

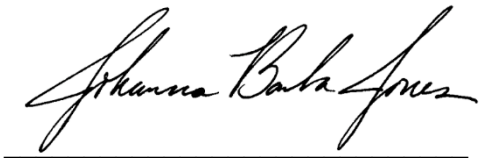
In the Matter of Markis Miguel Abraham
Docket No. DRB 20-325

Argued: April 15, 2021

Decided: July 29, 2021

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Censure	One-Year Suspension	Absent
Gallipoli	X			
Singer		X		
Boyer	X			
Campelo				X
Hoberman	X			
Joseph			X	
Menaker	X			
Petrou		X		
Rivera	X			
Total:	5	2	1	1



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