SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-413
District Docket Nos. XIV-2000-0021E and XIV-2000-0102E

IN THE MATTER OF

THOMAS A. DECLEMENTE

AN ATTORNEY AT LAW

Decision

Argued: June 18, 2009

Decided: August 25, 2009

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Michael Perle appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline (a three-month suspension) filed by Special Master Kenneth R. Stein, J.S.C. (Ret). The complaint charged respondent

with having violated RPC 1.7(a)(2) (conflict of interest), RPC 1.8(a) (business transaction with a client), RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1971. He has no disciplinary history.

Count one of the complaint (District Docket No. XIV-2000-0102E) stems from the purchase of two office condominiums by respondent and three physicians. In those transactions, respondent represented the buyers of both condominiums as well as the seller of one of the condominiums. He was also the lender. The Office of Attorney Ethics ("OAE") alleged that respondent concealed from the doctors his role as lender, engaged in numerous misrepresentations to mislead the doctors to believe that Bridge View Bank had issued the mortgage commitment, engaged in multiple conflicts of interest, and forged a bank officer's signature on a power of attorney.

In turn, respondent claimed that he had disclosed to the doctors his role as lender. He explained, however, that he had

prepared documents identifying his bank account (Bridge View Bank account number 8026106) as the lender to impress upon the doctors the business nature of the agreement. According to respondent, he was concerned that, by identifying himself individually as the lender, the doctors would not take seriously their obligation to pay the mortgage. He further alleged that, although he had instructed his secretary to list his bank account number on all documents, she had not consistently followed his direction, resulting in the inadvertent identification of the bank as the lender. Respondent also maintained that he had engaged another attorney to handle the closing, that he had relied on her to prepare the documents, and that he was forced to handle the matter himself when she advised him, at the last minute, that she could not attend the closing. Respondent denied engaging in a conflict of interest or forging a signature.

Count two of the complaint (District Docket No. XIV-2000-0021E) arises from respondent's appearance in two related lawsuits on behalf of his own business entity, First England Funding, LLC, before a Superior Court judge who, at that time, was indebted on three loans made to him by relatives of respondent's wife. Respondent had arranged those loans to the judge through First England Funding, LLC. Neither respondent nor

the judge had disclosed the loans to respondent's adversaries in the litigation.

Count One of the Complaint (District Docket No. XIV-2000-0102E)

On April 11, 2000, the Bergen County Prosecutor's Office notified the OAE of a criminal investigation involving respondent. Respondent was indicted on two counts of fourth-degree deceptive business practices, two counts of third-degree forgery, one count of third-degree falsifying records, and one count of fourth-degree falsifying records. On January 18, 2001, the two counts of deceptive business practices were dismissed. On October 26, 2001, respondent was admitted into the pre-trial intervention program.

The criminal charges arose from the following facts.

In 1995, respondent and three physicians, Eugene Graziano, Michael Ortiz, and Manmohan Patel agreed to buy two condominium units in an office building located at 1265 Paterson Plank Road, in Secaucus, New Jersey. All of the doctors maintained medical practices in that office building. Patel owned eight of the twelve condominium units in the building. Ortiz rented one of those units from Patel. Graziano was a tenant in the building.

Respondent had represented Graziano in two litigation matters that were concluded in 1993 or 1994.

The condominiums had been owned by Plaza Professional Group, Inc ("PPG"). The two principals of PPG were Perry Chevestick and Patricia Simone. In 1994, respondent represented Chevestick in the dissolution of PPG. Pursuant to a dissolution agreement, Chevestick became the owner of Unit 3D. PPG remained the nominal owner of Unit 3A; however, Simone was the equitable owner of that condominium, which was rented to Graziano. Respondent's legal fees for representing Chevestick in the dissolution of PPG were to be paid upon the sale of Unit 3D.

Without entering into a formal partnership agreement, respondent and the three physicians decided to buy Unit 3A from PPG for $251,700 and Unit 3D from Chevestick for $165,000. In addition to the purchase price, the estimate for renovation costs for Unit 3D was $30,000. Graziano, who was renting Unit 3A, was to occupy that space and Ortiz was to occupy Unit 3D. The parties agreed that the partnership would lease Unit 3A and Unit 3D to Graziano and Ortiz, respectively.

Respondent negotiated the purchase price of Unit 3D between Chevestick and the buyers. As he testified:

> I was trying to construct the whole deal, get the price for the units, get the terms that they wanted for the mortgage. Get the conditions that they wanted, make sure that the deal was what they needed to have done in order to consummate the [purchase] of these two units . . .
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> [20T215-9 to 15.][1]

By letter dated May 1, 1995 on page one, but dated June 27, 1995 on pages two and three, respondent advised the doctors of the terms of the agreement to buy the two condominium units. The letter, identified in the record as the "conflicts letter," further provided:

> I have also obtained the mortgage financing utilizing Bridge View Bank as the conduit/lender. As you know, I have personally guaranteed, along with all of you and agreed to utilize funds which I have control over for this mortgage. This allows us to get a mortgage without a down-payment, without points, and at a reasonable interest rate. . . .
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> As I have told you, I am both the attorney for Perry Chevestick (the Seller of the Ortiz Unit), the attorney closing the mortgage on behalf of the Bridge View Bank conduit (and those funds which I have control over), and also a partner of all of you in the transaction.

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[1] 20T refers to the transcript of the December 14, 2007 hearing before the special master.

> Because of the delicate nature of an attorney's ethical responsibilities, and possible conflicts, I have advised all of you to secure independent counsel, as it is in your best interest to do so. Failure to do so will result in a waiver of you to benefit from that independent counsel as well as a waiver and release as to me, since I have advised you as such. I welcome any and all assistance that may be given, and any and all suggestions which might prove fruitful. . . .
>
> The entire deal is premised around the fact that the owners of the Units (Drs. Graziano, Ortiz and Patel and Thomas A. DeClemente) will be responsible for the mortgage and other payments, share and share alike. The primary responsibility in the Ortiz Unit will be Dr. Ortiz, coupled with Dr. Sayed,[2] and Dr. Graziano in the Graziano Unit. It is not anticipated that either Mr. DeClemente or Dr. Patel will have any out-of-pocket costs towards the payment of the mortgage, and/or maintenance/taxes. Both Drs. Ortiz and Graziano will cover any shortages that might exist. . . .
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> Also, it is Thomas A. DeClemente's securing and guarantee of funds which will be utilized for the closing with Bridge View Bank acting as the conduit institution, and that all mortgages, notes, affidavits and other closing instruments will be signed by all the parties pursuant to the terms and conditions of the mortgage commitment.
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> [Exhibit OJ-2A-17.]

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[2] The parties anticipated that Dr. Ortiz would obtain a sub-tenant, Dr. Rahman Sayed.

Arnold Reiter, Esq., represented Simone in the sale of Unit 3A to the doctors and respondent. Although Reiter did not represent Ortiz, he and Ortiz were friends. On June 20, 2005, before respondent issued the conflicts letter to the doctors, he "faxed" a draft to Reiter, with a cover page asking Reiter to review the draft on behalf of Ortiz.

Reiter had suggested to respondent that, because of the conflict of interest resulting from the representation of multiple parties, respondent either arrange for another attorney to handle the closing or advise the doctors, in writing, to seek independent counsel. Reiter agreed to review the conflicts letter as a courtesy to respondent, "lawyer to lawyer." He told respondent that the conflicts letter was important because respondent was wearing "a lot of hats" and was involved "on the seller's side, the buyer's side, you are a partner, you are representing the bank."[3] Reiter wanted to make sure that his friend, Ortiz, had the benefit of independent counsel.

Reiter returned the draft of the conflicts letter to respondent, with his hand-written changes. Respondent incorporated

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[3] As seen below, Reiter believed that Bridge View Bank, not respondent, was the lender.

almost all of Reiter's suggestions in the conflicts letter, which the doctors and respondent signed.

Respondent provided to each of the doctors a blank loan application form obtained from Bridge View Bank. On the form, the word "residential" was deleted and the word "commercial" was inserted. Each doctor returned a completed loan application form to respondent.

On his attorney letterhead, respondent prepared and issued a June 1, 1995 letter addressed to himself and the doctors, bearing the caption "Re: Mortgage Commitment." That letter provides: "[w]e are pleased to advise you that your application for a Conventional Fixed Rate Mortgage has been approved based on the following terms and conditions . . . ."

The mortgage commitment contained the following terms:

1. The loan amount was $460,000;

2. The interest rate was twelve percent;

3. No "points" were charged;

4. The rate and points were "locked in" until June 20, 1995; thereafter, the "interest rates and points will be set by Bridge View Bank 3 business days prior to the closing;"

5. The commitment contained an expiration date of June 30, 1995;

6. Hazard insurance was required, showing Bridge View Bank as the mortgagee;

7. The title insurance binder was to be issued to Bridge View Bank Account #8026106 at the address of Bridge View Bank;

8. Respondent was named as the bank's counsel;

9. Bridge View Bank retained the right to revoke the commitment for stated reasons;

10. The borrowers were required to cooperate with Bridge View Bank to furnish or correct documents;

11. Bridge View Bank could extend the commitment under certain circumstances;

12. The commitment could be modified only by a writing executed by Bridge View Bank.

On June 1, 1995, the doctors and respondent signed the mortgage commitment letter. Respondent signed "on behalf of Bridge View Bank Account #8026106."

Respondent also prepared two mortgages, one for each condominium unit, naming Bridge View Bank as the lender. He inadvertently placed on the Unit 3A mortgage the information applicable to Unit 3D, and placed on the Unit 3D mortgage the information applicable to Unit 3A. Although both documents were dated June 1, 1995, the doctors and respondent signed them on July 5, 1995. Nevertheless, respondent's secretary, Seta Chandran, notarized the mortgages, certifying that the parties had signed them on June 1, 1995. Both mortgage instruments were recorded on July 19, 1995, at the Hudson County Clerk's Office.

On June 21, 1995, respondent signed a Notice of Settlement naming Bridge View Bank as the mortgage lender.

The condominium closing took place on July 5, 1995. Respondent obtained a $460,000 Bridge View Bank treasurer's check, using funds that he had maintained in two personal accounts at that bank. Reiter prepared a deed, dated July 5, 1995, by which PPG conveyed Unit 3A to respondent and the doctors for $251,700. Respondent prepared a deed, dated July 5, 1995, transferring title to Unit 3D from Chevestick to respondent and the doctors for $165,000. Both deeds were recorded at the Hudson County Clerk's Office on July 19, 1995.

Respondent's answer to the formal ethics complaint alleged that, at the closing, Reiter was aware that (1) Bridge View Bank account number 8026106 referred to funds controlled by respondent, as distinct from Bridge View Bank; (2) respondent's funds or funds under his control were the source of the loan; and (3) the bank never held the mortgage. In addition, respondent's answer asserted that, at the July 1995 closing, Reiter specifically represented the interests of Dr. Ortiz and effectively represented the interests of the remaining doctors. Reiter denied all of these allegations.

Patel, Graziano, and Ortiz testified that, when they bought the condominiums in July 1995, they believed that Bridge View Bank, not respondent, had provided the mortgage loan. According to the doctors, respondent told them that he would secure the mortgage from Bridge View Bank and represented that, because he had a relationship with the bank, they could obtain a mortgage with no down payment and no points, although the interest rate would be higher than the prevailing rate.[4] Each of the doctors had received from respondent a loan application identifying Bridge View Bank as the lender and believed that they were applying to the bank for a mortgage. In addition, Ortiz believed that respondent was representing the doctors' interests. Patel, too, testified that, during the transaction, he believed that respondent had represented both the bank and the doctors at the closing.

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[4] Although a March 10, 1998 order entered by the special master provided that the OAE would not contend that the mortgage interest rate was unfair, the OAE later pointed out that the prevailing interest rate for commercial loans at the time of the real estate transactions was 9⅛% to 10⅛%. Respondent, thus, presented the testimony of Mohammad Hadla, a mortgage loan officer, who opined that the loan from respondent to the doctors was "more than fair" and that an institutional lender would not have offered a mortgage with no down payment, no points, no personal guaranties, and no pre-payment penalty.

Shortly after the closing, Graziano and Ortiz failed to tender the full amount of the monthly mortgage payment. Respondent then sent a letter to Graziano and Ortiz, dated September 15, 1995, in which he stated that "I wish to repeat again that the bank has absolutely no concern about our private internal difficulties" and "I would have serious business difficulties with the bank that I have a long-standing relationship with." Graziano understood respondent's letter to refer to Bridge View Bank. When respondent was asked to identify the bank mentioned in the September 15, 1995 letter, he asserted that it referred to his bank account number 8026106. He, thus, admitted that the reference was, ultimately, to himself.

During the ethics hearing, Patel was shown an undated document purporting to be an affidavit bearing his signature.[5] In the affidavit, Patel acknowledged that respondent had explained to the doctors that he was providing the funds for the mortgage and had advised the doctors to obtain independent counsel. The affidavit further provided that the transaction was fair and reasonable and denied that respondent had taken advantage of Patel. The document twice misspelled Patel's first name.

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[5] Although the document is titled "Affidavit," it does not contain a jurat.

Patel denied signing the affidavit, testifying that he had first seen it several weeks before the hearing, when the presenter had shown it to him. He denied making the statements contained in the affidavit.

At the hearing, respondent pointed out to Patel that the affidavit contained Patel's office "fax" number at the top, suggesting that it had been sent from Patel's office and that Patel had signed it, but did not recall it. Patel insisted that he would have remembered if he had signed the affidavit and would have corrected his misspelled name. The markings on the affidavit indicate that it had been "faxed" on November 27, 2000.

In turn, respondent testified that he had prepared the affidavit for Patel to sign for respondent's use in a motion to dismiss the criminal charges pending against him at that time. He asserted that he had sent the affidavit to Patel with the explanation that Patel could change the document as he saw fit.

Robert Flaminio, a retired law enforcement officer, testified that, in accordance with instructions from respondent, he had delivered to Patel an envelope, ostensibly containing the affidavit. Respondent alleged that he had received the signed affidavit by "fax" from Patel.

Patel acknowledged that the purchase price of the two condominium units was about $90 per square foot less than the amount that he had paid when he had purchased his eight units. He further acknowledged that commercial lenders always require a down payment of twenty-five to thirty percent and that it is "unheard of" to obtain commercial property without a down payment. Graziano, too, agreed that the condominium purchase had been a "good deal" for respondent and the doctors.

Patel asserted that neither he nor respondent had derived any benefit from the condominium purchases. After the closing, Patel learned that Ortiz and Graziano had poor credit. In hindsight, he speculated that they asked him to participate in the transaction because he had good credit.

After the closing, dissension arose. Ortiz and Graziano did not pay the amounts required by the parties' agreement. As a result, Patel contributed about $10,000 toward the shortfall and stated his desire to be released from the partnership. Respondent asserted that, although Patel had absorbed some of the shortfall, respondent had absorbed the bulk of it, losing $60,000 on Unit 3A.

Based on Graziano's failure to pay the rent for Unit 3A, respondent filed a tenancy dispossess action. Graziano then

determined to buy Unit 3A from his partners. His attorney, Vincent LaPaglia, contacted Bridge View Bank to obtain information about the mortgage. He learned that the bank had never held a mortgage encumbering Unit 3A and had never authorized respondent to act on its behalf. The bank then contacted the Bergen County Prosecutor's Office, alleging that the signature of the bank president had been forged. After Graziano decided that he did not want to buy Unit 3A, respondent bought that condominium from the doctors.

Ortiz, too, became dissatisfied with the terms of the deal and wanted to be the sole owner of Unit 3D, the condominium that he was occupying. He retained Reiter to negotiate with the three partners to buy it. In September 1996, the parties agreed to sell Unit 3D to Ortiz.

In a September 30, 1996 letter to respondent, Reiter confirmed the terms of the agreement, including the purchase price of $191,350. Reiter prepared a signature line for respondent to sign "for Bridgeview [sic] Bank, and the Graziano, Ortiz, Patel and Declemente [sic] Partnership."

The title report that Reiter obtained named Bridge View Bank as the mortgagee of Unit 3D. Based on that report, as well as the mortgage commitment and mortgage instruments, Reiter

believed that Bridge View Bank held the mortgage on the condominium. According to Reiter, respondent indicated that he was the attorney for Bridge View Bank and was authorized to execute documents on behalf of the bank for the Ortiz purchase.

On November 11, 1996, Patel and Graziano signed a power of attorney granting respondent the authority to act on their behalf to execute documents for the sale of Unit 3D. Although respondent acknowledged their signatures on the power of attorney, Graziano testified that he had not signed the document in respondent's presence, but had received it by "fax" and returned it to respondent by "fax."

On November 12, 1996, the day before the closing on Unit 3D, Reiter "faxed" a notice to respondent, requiring (1) written proof from the bank of respondent's authority to execute a mortgage discharge, or (2) a signed bank discharge, or (3) a letter from the bank authorizing the payoff.

Respondent gave Reiter a power of attorney dated November 13, 1996, bearing the signature of Albert Buzzetti, president and chief executive officer of Bridge View Bank. The power of attorney granted respondent the authority, on behalf of Bridge View Bank, to sign a satisfaction of a mortgage. Although the

subject matter of the closing was Unit 3D, the power of attorney referred to the mortgage encumbering Unit 3A.

At the closing, respondent executed a Release of Part of Mortgaged Property, as attorney-in-fact "for Albert F. Buzzetti, President Bridgeview [sic] Bank for account #8026106 only." Respondent also prepared and recorded an assignment of mortgage, dated November 23, 1996, assigning the mortgage from "Bridgeview [sic] Bank, Account # 8026106" to himself. Respondent signed Buzzetti's name on the assignment of mortgage and witnessed the signature. One of respondent's secretaries, Kristy Miller, acknowledged Buzzetti's signature.

The authenticity of the power of attorney was a subject of controversy at the ethics hearing. One of respondent's secretaries, Seta Chandran, signed the acknowledgement, stating that Buzzetti had appeared before her and had acknowledged that he had executed the document. During the closing, Reiter telephoned Bridge View Bank and talked to an unnamed person, who confirmed that the power of attorney had been executed in favor of respondent.

Buzzetti had been president and chief executive officer of Bridge View Bank during its entire thirteen years of existence, from 1990 to 2003. Buzzetti denied that (1) he had signed the

power of attorney or the assignment of the mortgage; (2) he or anyone at Bridge View Bank had authorized respondent to act on the bank's behalf; (3) respondent had ever served as attorney for the bank; and (4) he had authorized respondent to execute a partial release of mortgage on his behalf, or had knowledge that respondent had done so.

Buzzetti testified that he first saw the power of attorney when the Bergen County Prosecutor's Office "faxed" it to him. He further testified that the power of attorney contained a copy of his signature and that he had not authorized the use of his signature. He denied having appeared before Chandran, who had notarized the signature on the power of attorney, or Kristy Miller, who had notarized the signature on the assignment of the mortgage. Buzzetti pointed out that the release of the mortgage and the assignment of the mortgage incorrectly spelled Bridge View Bank as "Bridgeview Bank."

In an interview with Detective Michael Visconti, who had investigated the criminal charges against respondent, Chandran related that she did not recall seeing the power of attorney or going to the bank to notarize it. She also stated that she did not know Buzzetti. She admitted that she did not always check the identification of people whose signatures she acknowledged.

She further admitted that, if respondent had asked her to notarize Buzzetti's signature, she would have done so, even if Buzzetti had not signed the document in her presence.

Miller testified that respondent had signed Buzzetti's name on the assignment of the mortgage, that respondent had witnessed Buzzetti's signature, and that respondent had told her that he had a power of attorney permitting him to sign Buzzetti's name. Because Miller thought it strange that respondent had a power of attorney from a bank president, she asked respondent to show it to her. Miller then retrieved the power of attorney from the file and was satisfied that respondent was authorized to sign Buzzetti's name.

Buzzetti recalled that, on April 3, 1992, he had sent to respondent, at his request, a letter on Bridge View Bank stationery, listing the balances of respondent's four accounts at the bank. According to Buzzetti, the signatures on the April 3, 1992 letter and the November 13, 1996 power of attorney were identical. He suggested that respondent had "cut and paste[d]" the documents to create the appearance that Buzzetti had signed the power of attorney. He believed that the text from the April 3, 1992 letter had somehow been eliminated and the text from the power of attorney had been substituted in its place.

Noting that the power of attorney authorized respondent to satisfy a mortgage executed by respondent and the doctors, Buzzetti denied that Bridge View Bank had extended a mortgage to those individuals. He further denied that Bridge View Bank had received a mortgage application from any of the doctors. He added that Bridge View Bank would not have used a residential loan application for a commercial mortgage.

At the hearing, Buzzetti was shown respondent's first answer to the complaint[6], which referred to Bridge View Bank as a "conduit lender" and to discussions with the bank to act as a "payment agent/mortgage servicer." Buzzetti asserted that, during his thirty-five years in banking, he had never heard the term "conduit lender" and did not know what it meant. He denied that the bank had ever discussed acting, or having served, as a payment agent or mortgage servicer.

Respondent's answer also claimed that Buzzetti had approved an arrangement whereby Bridge View Bank would assume the role of a "pass-through limited to receiving the mortgage payments." Buzzetti denied having approved that arrangement.

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[6] Respondent filed an answer, dated July 11, 2006, a "corrected answer," dated January 18, 2007, and an "amended answer," dated April 4, 2007.

Buzzetti asserted that, in 1995, he had a facsimile signature stamp and that one of his secretaries had access to the stamp. According to Buzzetti, the facsimile stamp was used only on payroll checks and was stored in his locked desk. During cross-examination, on July 11, 2007, the following exchange took place between respondent and Buzzetti:

> Q. Where was [the signature stamp] kept?
> A. My desk, locked.
> Q. It was only used –
> A. ADP had a copy.[7]
>
> [6T202-8 to 12.][8]

No further mention was made of the ADP stamp, during the July 11, 2007 hearing.

On January 3, 2008, Buzzetti testified that, after the July 11, 2007 hearing, he had located the signature stamp. At that time, Bridge View Bank had been acquired by another bank. According to Buzzetti, after his current secretary had reminded him that he had retained a box containing items from Bridge View Bank, he had found the signature stamp in that box. At the hearing, Buzzetti used the stamp to create an impression of his

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[7] Presumably, Buzzetti referred to Automatic Data Processing, Inc., a provider of payroll services.

[8] 6T refers to the transcript of the July 11, 2007 hearing before the special master.

signature. Both the stamp and the signature impression were admitted into evidence.

At the January 3, 2008 hearing, Buzzetti denied that ADP had a copy of the signature stamp and further denied that he had so testified.[9]

In turn, respondent recalled that, on November 12, 1996, Reiter had sent him a "fax," indicating that his title company required a power of attorney to prove that the bank had authorized him to discharge the mortgage. Respondent alleged that he contacted Buzzetti's secretary and told her that, because the mortgage had inadvertently identified the bank as the lender, he needed to correct the mistake and he required a document that would be acceptable to Reiter. According to respondent, Buzzetti's secretary replied that she would take care of it.

Respondent asserted that, after learning from Reiter that the document would be available at the bank, he instructed his secretary, Chandran, to retrieve the document, which she did. During the closing, Reiter informed respondent that the power of

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[9] During the December 21, 2007 hearing, the special master and all counsel expressed concern about discrepancies in the hearing transcripts. It is possible that the portion of Buzzetti's testimony concerning ADP was inaccurately transcribed.

attorney had to be notarized. At respondent's direction, Chandran notarized the power of attorney. Because Chandran did not object, respondent assumed that she had seen Buzzetti sign the power of attorney.

Respondent presented John Osborn, a forensic document examiner, as an expert witness. On September 21, 2001, while at the Bergen County Prosecutor's Office, Osborn examined the power of attorney and the April 3, 1992 letter from Buzzetti to respondent. Osborn opined that Buzzetti's signature on the power of attorney was the product of a "stamp mechanism or stamper," was not a handwritten signature, and was not a photocopy. He further concluded that the power of attorney could not have been created by a "cut and paste" operation, because the signature was not the product of a photocopy and because the resolution of the signature on the power of attorney was superior to the resolution of the signature on the April 3, 1992 letter. Osborn determined that the April 3, 1992 letter was not used in the creation of the power of attorney. He asserted that, because the signatures on the power of attorney and on the April 3, 1992 letter were identical, they were the product of either reproduction or a stamp.

For his part, respondent asserted that the criminal prosecution against him was motivated by a desire for revenge on the part of the assistant prosecutor. According to respondent, several years before his indictment, he had obtained the dismissal of sex assault charges for a client, in a case handled by the same assistant prosecutor. Respondent suggested that the assistant prosecutor had held a grudge against him. According to respondent, the assistant prosecutor had admitted that no one in his office would have indicted respondent and no one in his office was willing to try the case.

Respondent claimed that he had agreed to enter the pre-trial intervention program only after the criminal charges had been pending for almost two years and he had spent more than $110,000 in legal fees to defend them. He noted that none of the doctors had filed an ethics grievance against him.

Respondent alleged that Ortiz and Graziano were not able to obtain financing for the condominiums on their own. He asserted that they wanted Patel to participate in the transaction because he had "economic clout" and because he could refer patients to their practices. He also claimed that they wanted respondent included in the transaction to protect them from "doing bad deals, not as an attorney but more as a businessman." According

to respondent, the parties agreed that, although respondent and Patel would not contribute any funds, whenever the properties were sold, they would share in the profits equally.

As for his reasons for participating in the real estate purchase, respondent claimed that the purchase price was $90 per square foot less than the price of other condominiums in the building that had sold only eighteen months earlier. He wanted the doctors, whom he considered friends, to be able to benefit from a favorable deal. Although he considered the doctors to be his friends, he decided to "use the Bridge View Bank account number as a d/b/a" because he wanted to maintain an "arms [sic] length distance" and to impress upon the doctors that the transaction was a business deal.

Respondent told the doctors that he would try to obtain financing for them. He discussed the transaction with Buzzetti, who sent him about five copies of the loan application. Respondent claimed that he submitted to Bridge View Bank the loan applications that the doctors had completed. According to respondent, Buzzetti told him that, because the doctors' credit reports were negative, the bank would not extend the loan. Respondent proposed a transaction whereby he would guarantee the mortgage and Bridge View Bank would service it, that is, collect

the payments and pay the taxes. After Buzzetti pointed out that any late payments would negatively affect respondent's credit, respondent determined to lend the funds himself and obtained from Buzzetti the bank's forms used for mortgage commitments, mortgages, and mortgage notes.

Respondent testified that, because he represented the seller, Chevestick, and was a partner of the doctors in the deal, he had drafted the conflicts letter. At that time, he did not anticipate representing the doctors at the closing. He claimed that he "begged" them to get their own attorneys because he recognized the inherent danger arising from an attorney's involvement in a business transaction with a client.

Based on his conflict of interest concerns, in early to mid-June 1995, respondent had contacted an attorney, Maureen Sogluizzo,[10] to represent the doctors and himself in the purchase of the condominiums. At the hearing, Sogluizzo recalled that, in June 1995, respondent, a former employer, had asked her to represent him and the doctors in the condominium purchase. On June 20, 1995, she had spent between sixty and ninety minutes at respondent's office, reviewing the documents for the closing.

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[10] The record erroneously refers to Sogluizzo as Sogliuzzo.

Sogluizzo clearly believed that Bridge View Bank was the mortgagee. Her notes, taken during her review of the documents, indicate that "lender is Bridgeview [sic]." She also testified that, based on the documents, she "knew the lender was Bridge View Bank." In addition, as part of her review of the mortgage instrument, Sogluizzo inserted Bridge View Bank's name and address on the portion identifying the lender.

Moreover, at the hearing, the following exchange took place between respondent and Sogluizzo:

> Sogluizzo: I didn't know Bridge View Bank and I asked you who is Bridge View Bank and you said I am the bank.
>
> Respondent: What did you take that to mean?
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> Sogluizzo: I said to myself JUA did pretty well because he bought a piece of a bank.[11]
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> [16T163-14 to 19.][12]

With respect to the mortgage commitment's use of the term "Bridge View Bank account number 8026106," Sogluizzo asserted that she understood the account number to refer to the mortgage

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[11] JUA Funding was a business that respondent previously owned and operated.

[12] 16T refers to the October 24, 2007 hearing before the special master.

or loan number assigned by the bank. She did not form the impression that respondent was the lender.

While at respondent's office, Sogluizzo told him that the mortgage commitment made no sense and that she could not make "head or tails" of it. Specifically, Sogluizzo questioned why the loan amount exceeded the purchase price, why there was only one deed for two condominium units, how the purchase price was divided between the two condominium units, why the commitment date had expired, why there were no insurance binders, and why there were no title searches.

After Sogluizzo's June 20, 1995 review of the closing documents, Reiter informed respondent that the closing had to take place by July 5, 1995. Respondent alleged that, on June 28 or June 29, 1995, Sogluizzo told him that she could not handle the real estate closing due to other commitments. Sogluizzo testified that she "probably pulled every reason out of the hat that I could because the paperwork was a mess."[13]

Respondent, in turn, stated that, before Sogluizzo had come to his office, he had drafted the documents so that she could "have a jump start." He claimed that, although he had instructed

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[13] On March 29, 1996, Sogluizzo became a Superior Court judge.

his secretary to use his account number designation throughout the forms that he had obtained from Bridge View Bank, such as the mortgage commitment, she had not do so. Thus, in numerous places, those documents, pre-printed with Bridge View Bank's name, referred to the bank without the account number designation. Respondent admitted that he had not reviewed the documents carefully because he believed that Sogluizzo had done so. He claimed that, when he drafted the mortgage commitment letter, he believed that Bridge View Bank would be servicing the loan.

As to the June 1, 1995 date on the closing documents, respondent testified that the wrong date was the product of his "inattention;" he had not studied the documents and he had counted on Sogluizzo "to do the job that she always did."

Respondent claimed that, due to Sogluizzo's last-minute unavailability, he was required to handle the closing, despite the fact that he "hated" real estate closings and did not have the patience or the aptitude for them. According to respondent, Sogluizzo had given his secretary instructions about the preparation of the documents.

As to the conflict of interest charge, respondent explained that he had not intended to handle the closing, but was "forced

to" because Sogluizzo was unable to do so. He further alleged that the only services that he had provided to the doctors were "ministerial" tasks, such as those performed by nonlawyer title agency employees who act as closing agents.

On February 12, 1996, however, respondent sent to Ortiz and Graziano a bill in the amount of $13,852, which was never paid. Respondent asserted that his bill was not for legal services, but for business services, such as structuring the deal. He explained that he submitted a bill for legal services, at Graziano's request, so that Graziano could get the benefit of a tax deduction.

Additionally, although respondent claimed that he had represented Graziano in two matters that had concluded in 1993, on June 13, 1995, he sent a letter to Reiter stating, "I am representing [Graziano] on two other matters." In that letter, respondent referred to the doctors as his "clients."

The OAE contended that respondent's pecuniary benefit should be considered an aggravating factor. The judge in the criminal proceedings found that respondent had received a pecuniary advantage, based on his receipt of a twelve percent interest rate on the mortgage loan. Before removing the funds

from his bank account, respondent was earning interest at a rate between 2.3% and 3%.

On July 5, 1995, respondent handled the mortgage closing with the doctors. Later that same day, he participated in the closing of the condominiums with Reiter, who represented Simone.

As previously indicated, respondent claimed that the doctors knew that Bridge View Bank was not providing the mortgage for the purchase of the condominiums and that he was the lender. He insisted that his use of the terms "Bridge View Bank Account 8026106" and "funds that I have control over" made it clear to the doctors that he was the source of the mortgage.

As to the September 15, 1995 letter from respondent to Ortiz and Graziano that stated "I wish to repeat again that the bank has absolutely no concern about our private internal difficulties," respondent testified that the words "the bank" referred to himself and that he "used the term bank with the intention of trying to make [the doctors] understand their obligations." Respondent obtained part of the loan funds from his wife's mother, Ada Cati[14], and his wife's uncle, Sergio Cati.

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[14] The record also refers to Ada Cati as Aida Cati.

An issue developed at the hearing concerning the whereabouts of the original power of attorney purporting to give respondent authority to execute documents on Buzzetti's behalf. Respondent accused the OAE of spoliation of evidence, alleging that the OAE was responsible for the loss or destruction of the original power of attorney.

Detective Visconti testified that his office never had the original document. However, on December 1, 1998, Visconti signed a receipt indicating that he had received from Reiter the original power of attorney and original release of mortgage. When confronted with the receipt, Visconti admitted that his earlier testimony that he had never seen the original power of attorney was incorrect. Moreover, Osborn, respondent's expert, testified that he had examined the original power of attorney at the Bergen County Prosecutor's Office. No evidence established that the OAE ever possessed the original document. Although the OAE requested the original power of attorney, the Bergen County Prosecutor's Office could not produce it.

Count Two of the Complaint (District Docket No. XIV-2000-0021E)

Respondent did not dispute the facts alleged in count two of the complaint; however, he contended that his conduct was not

unethical. He and the OAE entered into the following stipulation of facts:

> 1. At all times relevant to this matter, respondent maintained an interest in or a relationship with a financial institution known as First England Funding, LLC.
>
> 2. Anthony J. Sciuto is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1968. At all times relevant to this matter, Sciuto served as a Judge of the Superior Court in Bergen County. Judge Sciuto has since retired from the bench.
>
> 3. In 1995, Judge Sciuto asked respondent, whom he knew to be involved in a financial business, for help in obtaining a loan.
>
> 4. Respondent did arrange a $20,000 loan for Judge Sciuto.
>
> 5. The lender was Aida Cati, a relative of respondent's wife.
>
> 6. Judge Sciuto made the checks for the first few payments payable to First England Funding, rather than Aida Cati.
>
> 7. At the request of respondent, however, subsequent payments were made by check to Ada (sic) Cati.
>
> 8. In December 1998, Judge Sciuto asked respondent for help in obtaining a second loan of $10,000.00.
>
> 9. Respondent then arranged a loan from Sergio Cati, an Italian citizen who is a relative of respondent's wife, to Judge Sciuto.

10. On January 11, 1999, Judge Sciuto and his wife executed a promissory note agreeing to pay "Sergio Cati c/o First England Funding, LLC" $10,000 at an interest rate of 11.5% per year.

11. Thereafter, on June 3, 1999, Sciuto and his wife executed a second promissory note agreeing to repay $10,000.00 to "Sergio Cati c/o First England Funding, LLC" at an interest rate of 11.5% a year.

12. On June 24, 1999, respondent filed complaints and Orders to Show Cause in three civil matters. One case settled. The remaining two matters were docketed and entitled First England Funding v. Traveler's Indemnity Company, Docket No. BER-L-5608-99 and First England Funding LLC v. Hartford Life Insurance Company, Docket No. BER-L-5609-99.

13. Both cases were assigned to Judge Sciuto who executed the Orders to Show Cause. A return date was set for July 22, 1999.

14. On that day, Sciuto heard both matters and entered judgment in favor of First England Funding in each case.

15. The loans to Judge Sciuto were still outstanding at the time of the hearing. Neither the Judge nor respondent informed opposing counsel of the loans.

16. At the time respondent appeared before Judge Sciuto and received favorable decisions for First England Funding, Judge Sciuto had made interest payments only to Aida and Sergio Cati. At all times, loan

payments were made through respondent or First England Funding.

17. By letter of November 1, 2000, Sciuto and his wife made a request of Sergio Cati, through respondent, to extend the two $10,000.00 loans for an additional eighteen months.

18. This request was granted by way of letter dated November 6, 2000, written by respondent on behalf of Sergio Cati.

19. At the time respondent appeared before Judge Sciuto representing First England Funding, Sciuto was still indebted to Aida and Sergio Cati.

20. By the time of the hearings, Sciuto had made interest payments only and owed $20,000 to each of the Catis on the loans arranged by respondent and made payable through him or First England Funding.

[Exhibit J-1.]

First England Funding, LLC ("FEF"), owned by respondent, purchased legal receivables. In the litigation involving FEF, the plaintiffs in two personal injury matters had assigned to FEF their structured settlements. According to respondent, the insurance companies, however, had refused to honor the assignments, contending that, because the insurance companies were headquartered in Connecticut, the litigation was required to be filed in Connecticut. FEF would not make payment to the plaintiffs until the insurance companies agreed to acknowledge

the validity of the assignments. Respondent proceeded by way of orders to show cause because, he claimed, one of the plaintiffs had no health insurance and had a child who needed surgery, while the other plaintiff was facing foreclosure. Respondent, thus, wanted to obtain a decision on an emergent basis.

Respondent alleged that he had not told Judge Sciuto that respondent's wife's relatives were the source of the loans. Therefore, he contended, he was not required to disclose to his adversaries in the litigation that Ada and Sergio Cati were his wife's relatives.

Moreover, respondent asserted, a former law partner, Sherry Foley, and her husband, Timothy Foley, a former associate in their law firm, had filed the loan ethics grievance against him, motivated by ill-will. Respondent had sued the Foleys in New York, alleging theft; he contended that the Foleys were biased against him and, knowing about the loans to the judge, had reported his conduct out of malice.

The presenter, however, noted that the Advisory Committee on Judicial Conduct had referred the matter to the OAE. Furthermore, the presented pointed out that, pursuant to RPC 8.3, the Foleys had a duty to report unethical conduct, and

that, once the OAE receives information about potential unethical conduct, it must conduct an investigation.

The record reveals that, on August 30, 1999, Timothy Foley wrote to the Advisory Committee on Professional Ethics ("ACPE"), explained the respondent/Judge Sciuto matter without identifying either by name, and asked whether he was required to report the judge or the attorney to ethics authorities. On November 22, 1999, the ACPE replied that he was required to report both the judge and the attorney. Foley reported the matter to the Advisory Committee on Judicial Conduct, which, in turn, referred the matter to the OAE.[15]

The OAE urged a six-month suspension for respondent's conduct in both counts, while respondent argued that no more than a reprimand was required.

As to count one of the complaint, the special master found that respondent violated RPC 1.7(a)(2), RPC 1.8(a), and RPC

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[15] By order dated September 16, 2003, the Supreme Court censured Judge Sciuto, who, by that time had retired. The Court found that, among other things, Judge Sciuto had engaged in "conduct prejudicial to the administration of justice that brings the judicial office into disrepute (Rule 2:15-8(a)(6)) by presiding over two cases in which he had a conflict of interest because of his ongoing involvement in financial dealings with a party and the party's attorney in both cases." In re Sciuto, 2003 N.J. Lexis 1132 (2003).

8.4(c). Although the complaint did not charge respondent with having violated RPC 1.7(b) (a lawyer shall not represent a client if the representation may be materially limited by the lawyer's own interests), or RPC 5.3 (failure to supervise a nonlawyer employee), the special master found that respondent had violated those rules. Because the special master did not find that respondent was guilty of a crime, he dismissed the RPC 8.4(b) charge.

The special master found that, by representing the doctors at the closing, and by representing himself as the mortgagee, respondent violated RPC 1.7(a)(2), which prohibits a lawyer from representing clients with adverse interests (the doctors and himself). Although recognizing that respondent was not charged with a violation of RPC 1.7(b), the special master found that respondent had represented a client when that representation was materially limited by his own interests.

The special master also found that respondent entered into a business relationship with clients and knowingly acquired an ownership, security, or other pecuniary interest adverse to those clients, without complying with the disclosure requirements, in violation of RPC 1.8(a). He noted that, by not disclosing that he was the lender, respondent failed to reveal

his security interest in the two condominiums and failed to reveal that, despite the provision in the conflicts letter that the parties would be responsible for the mortgage "share and share alike," he had the right to institute foreclosure proceedings if the mortgage were not paid. Moreover, the special master found that respondent failed to disclose that he could have a role adverse to Ortiz and Graziano as tenants, noting that respondent ultimately brought a tenancy dispossess action against Graziano. The special master observed that respondent became the sole owner of the unit that Graziano had been renting.

Although the special master remarked that respondent had advised the doctors to seek independent counsel, he found that, because respondent failed to disclose, in writing, his role in the transaction, his advice to the doctors did not comply with RPC 1.8(a). While noting that the doctors expressed satisfaction with the terms of the mortgage loan and the real estate purchase, the special master found that, because they did not understand the undisclosed conflicts of interest, the terms of the transaction were not fair and reasonable.

The special master concluded that respondent had not only failed to disclose his role as mortgagee, but had also

fraudulently and deceitfully misled the doctors to believe that Bridge View Bank was the mortgage lender. He found that respondent made misrepresentations in the conflicts letter, the mortgage commitment letter, the mortgages and mortgage notes, and in letters written after the closing. He further found that respondent's use of the term "Bridge View Bank Account #8026106" demonstrated his intention to conceal his role as mortgagee.

The special master also found that respondent violated RPC 8.4(c) by witnessing Buzzetti's signature on the assignment of mortgage and by permitting his secretary to take the acknowledgement, which stated that Buzzetti had appeared before her. The special master further found that respondent violated RPC 5.3 in this regard.

However, the special master determined that the evidence did not clearly and convincingly establish that respondent knew or should have known that Buzzetti's signature on the power of attorney was forged. The special master, thus, dismissed the charged violation of RPC 8.4(b).

As to count two, the special master found that respondent violated RPC 8.4(c) and (d). He determined that respondent's failure to disclose to his adversaries the loans that he had arranged for Judge Sciuto was a misrepresentation by silence

that deprived opposing counsel of the option of seeking the judge's recusal or taking other appropriate action.

In addition, the special master concluded that respondent should have informed Judge Sciuto that the individuals funding the loan were family members of an attorney appearing before him. The special master found that respondent engaged in conduct prejudicial to the administration of justice by permitting litigation to proceed despite the obvious conflict, thereby, impairing the integrity of the judicial process.

The special master found that, although a reprimand is usually issued in conflict of interest cases, in this matter, egregious circumstances existed. He also referred to respondent's "active and ongoing misrepresentations" about his role as mortgagee.

The special master found, as aggravating factors, that respondent's secretary took the acknowledgement of the two mortgages on June 1, 1995, although they were not signed until July 5, 1995, and that the acknowledgement on Buzzetti's power of attorney was not properly taken.

Taking into account respondent's unblemished career of thirty-seven years, the special master recommended a three-month suspension.

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

Because the misconduct in both matters occurred between 1995 and 1999, the RPCs in effect at that time are applicable. Both RPC 1.7 and RPC 1.8 have been substantially revised since the time period involved in this case. At the time of the relevant events, those RPCs provided as follows:

> RPC 1.7 Conflict of Interest: General Rule
>
> (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless: (1) the lawyer reasonably believes that representation will not adversely affect the relationship with the other client; and (2) each client consents after a full disclosure of the circumstances and consultation with the client, except that a public entity cannot consent to any such representation.
>
> RPC 1.8 Conflict of Interest: Prohibited Transactions
>
> (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire 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 manner and terms that should have reasonably been understood by the client, (2) the client is advised of

> the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

Respondent engaged in a conflict of interest, a violation of RPC 1.7(a), in connection with the purchase of Chevestick's condominium. Despite respondent's argument that he was pressed into service at the last minute by Sogluizzi's decision not to handle the closing, he clearly provided extensive legal services to the doctors, such as, preparing a notice of settlement, mortgages, and mortgage notes; attending the closing; receiving and disbursing the mortgage proceeds; and sending documents to the clerk's office to be recorded. After the closing, he gave the doctors a bill for his services. In addition, the doctors believed that respondent was representing their interests in the transaction.

We find, thus, that respondent represented the buyers (the doctors and himself) as well as Chevestick, the seller of one of the condominiums. Although the parties to a residential real estate transaction may consent to multiple representation after full disclosure, an attorney may not represent both buyer and seller in a complex commercial real estate transaction, even if

they consent. Baldasarre v. Butler, 132 N.J. 278 (1993). In that case, the Court held:

> This case graphically demonstrates the conflicts that arise when an attorney, even with both clients' consent, undertakes the representation of the buyer and the seller in a complex commercial real estate transaction. The disastrous consequences of Butler's dual representation convinces us that a new bright-line rule prohibiting dual representation is necessary in commercial real estate transactions where large sums of money are at stake, where contracts contain complex contingencies, or where options are numerous. The potential for conflict in that type of complex real estate transaction is too great to permit even consensual dual representation of buyer and seller. Therefore, we hold that an attorney may not represent both the buyer and the seller in a complex commercial real estate transaction even if both give their informed consent.
>
> [Id. at 296.]

Whether the condominium purchase constituted a complex commercial real estate transaction is not critical to a finding that respondent engaged in a conflict of interest situation in this case. It is undisputed that he negotiated the terms of the condominium purchase. An attorney may not undertake the negotiations of a real estate contract on behalf of both a buyer and seller. Advisory Committee on Professional Ethics Opinion 243, 95 N.J.L.J. 1145 (November 9, 1972).

Furthermore, because respondent's legal fee for representing Chevestick in the PPG dissolution was to be paid from Chevestick's proceeds from the sale of his condominium unit, it was in respondent's interest that the transaction be consummated. If, for whatever reason, Chevestick wanted to proceed with the transaction, but the doctors did not, respondent would have been more likely to side with Chevestick, to the doctors' detriment.

Based on the foregoing, we find that respondent violated RPC 1.7(a). Although RPC 1.7(b) was also implicated because respondent's representation of the doctors was materially limited by his own interests, he was not charged with violating that rule. R. 1:20-4(b) requires ethics complaints to specify the ethics rules alleged to have been violated.

We find that respondent also violated RPC 1.8(a) by engaging in a business transaction with clients. He became a partner of his clients and bought two condominium units with them, without fully disclosing his role in the transaction. And even if, arguably, the doctors had consented to respondent's dual representation, his failure to disclose material facts nullified the doctors' consent. We note that the conflicts letter is internally inconsistent: it provides that all four

parties will be responsible for the mortgage "share and share alike," but also provides that Ortiz and Graziano shall solely be responsible for the mortgage and that Patel and respondent will not contribute.

More importantly, respondent failed to disclose to the doctors his role as lender and landlord. The doctors were not aware that, if they failed to comply with the terms of the mortgage, their lawyer and "partner" could file foreclosure proceedings against them. Ortiz and Graziano were also not aware that, if they failed to comply with the terms of the lease, their lawyer and "partner" could file eviction proceedings against them. As it turned out, respondent filed a tenancy dispossess action against Graziano. Ultimately, respondent became the owner of the condominium unit that Graziano had rented from his partners.

In addition, overall, the terms of the transaction were not fair and reasonable to the doctors. Without contributing any funds to the purchase, respondent stood to receive twenty-five percent of any increase in the value of the condominiums. It is true that some aspects of the transaction were fair and reasonable: the mortgages provided for no down payment, no points, no pre-payment penalty, and no personal guarantee. As

both Patel and respondent's expert, Hadla, testified, almost all commercial lenders would have required all of the above terms. Nevertheless, the overall transaction was not fair and reasonable.

By entering into a business transaction with clients with terms that were not fair or reasonable to his clients and without making a full disclosure to them, respondent violated RPC 1.8(a).

Unquestionably, too, respondent made multiple misrepresentations to his clients. He failed to disclose to the doctors that he was providing the mortgage loan for the condominium units. All three doctors were not aware that respondent, not a bank, was the lender for the condominium purchase. This lack of disclosure amounted to a misrepresentation by silence. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). In another context, in a discussion concerning RPC 3.3, the Court recently affirmed the proposition that a failure to disclose may constitute a misrepresentation:

> It bears repeating that, as a general proposition, the prohibitions set forth in these RPCs are not limited to affirmative misstatements of fact or law by an attorney. Indeed, we have recognized that, depending upon the circumstances, "silence can be no less a misrepresentation than words."

> Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347, 476 A.2d 250 (1984). Therefore, our evaluation of the attorney's discharge of his or her obligation is not simply a matter of considering the affirmative statements and misstatements of counsel. Rather, if an attorney has an obligation to speak in order to comply with his or her duty of candor to the tribunal, then silence also may also be a violation of the RPC.
>
> [Brundage v. Estate of Carambio, 195 N.J. 575, 591-92 (2008).]

Respondent's conduct, however, went far beyond failing to reveal his role in the transaction. He actively and continuously took steps to mislead the doctors to believe that Bridge View Bank was the mortgagee. Respondent's explanation for using the term "Bridge View Bank account number 8026106" to refer to himself was unconvincing. He clearly did not want the doctors to know that he was the mortgagee and went to great lengths to lead them to believe that the lender was Bridge View Bank. Virtually every document that respondent prepared was designed to conceal his role as mortgagee:

- The conflicts letter

> I have also obtained the mortgage financing utilizing Bridge View Bank as the conduit/lender. As you know, I have personally guaranteed, along with all of you and agreed to utilize funds which I have control over for this mortgage. This allows us to get a mortgage without a down-payment,

> without points, and at a reasonable interest rate. . . .
>
> As I have told you, I am both the attorney for Perry Chevestick (the Seller of the Ortiz Unit), the attorney closing the mortgage on behalf of the Bridge View Bank conduit (and those funds which I have control over), and also a partner of all of you in the transaction.

By asserting that he "obtained the mortgage financing" and that "[t]his allows us to get a mortgage," respondent implied that someone other than himself was providing the loan. The terms "Bridge View Bank as the conduit/lender" and "the Bridge View Bank conduit" were intended to encourage the doctors to believe that Bridge View Bank was the lender.

- The mortgage commitment

> We are pleased to advise you that your application for a Conventional Fixed Rate Mortgage has been approved.

Respondent, thus, implied that a financial institution, such as a bank or mortgage company, was the mortgagee, when he told the doctors that the mortgage "application" had been approved. Moreover, the June 1, 1995 mortgage commitment letter is replete with references to Bridge View Bank, without the account number designation.

- The notice of settlement

  This document referred to Bridge View Bank as the lender.

- The mortgages and mortgage notes

  These documents also identified Bridge View Bank as the lender.

- Post-closing letter

> I wish to repeat again that the bank has absolutely no concern about our private internal difficulties . . . I would have serious business difficulties with the bank that I have a long-standing relationship with.

Finally, by referring to "the bank" in a September 15, 1995 letter to Ortiz and Graziano, respondent misled the doctors to believe that Bridge View Bank was the lender.

The extent of respondent's misrepresentations is best illustrated by the fact that, after Reiter and Sogluizzo independently reviewed the closing documents, both concluded that Bridge View Bank was the lender. Reiter testified that, upon reviewing the mortgage commitment and mortgage documents, he believed that Bridge View Bank had extended the loan. Furthermore, when he represented Ortiz in the purchase of Unit 3D, he concluded from his review of the title report that Bridge View Bank held the mortgage. Sogluizzo, an experienced real

estate attorney, also reviewed the documents and understood that Bridge View Bank was the lender. As for the designation "Bridge View Bank Account number 8026106," Sogluizzo believed that it referred to the loan number, not respondent's personal bank account.

Thus, if two experienced lawyers concluded, after reviewing the documents that respondent prepared, that Bridge View Bank was the lender, it would be virtually impossible for respondent's clients to have understood that he was the mortgagee.

We find, thus, that respondent repeatedly made misrepresentations to his clients, a violation of RPC 8.4(c).

Unlike the special master, however, we do not find that respondent's participation in his secretary's improper acknowledgement of signatures on documents violated RPC 5.3 and RPC 8.4(c). The complaint did not give respondent notice that this conduct would be the basis for an ethics violation. Nevertheless, nothing prevents us from considering such conduct as an aggravating factor. See In re Pena, In re Rocca, In re Ahl, 164 N.J. 222, 231-32 (2000).

As to the RPC 8.4(b) charge, we find that the special master properly dismissed it. Respondent's acceptance into the

pre-trial intervention program did not constitute an admission or finding of guilt. The presenter alleged that respondent created a power of attorney with a forged or unauthorized signature of Buzzetti. It is clear that Buzzetti had not signed his name on the power of attorney or authorized another to do so. However, the record, although extensive on this issue, does not contain clear and convincing that respondent either created Buzzetti's signature or used the power of attorney knowing that Buzzetti's signature was not authorized.

As to count two of the complaint, the stipulation provides a sufficient basis to find that respondent violated RPC 8.4(c) and (d). Although respondent stipulated to the facts, he contended that his conduct was not unethical. We disagree.

Respondent arranged for three loans to Judge Sciuto in connection with respondent's business, First England Funding. The judge made the first few checks payable to First England Funding, before changing the payee to Ada Cati. Yet, when the orders to show cause filed on behalf of First England Funding were assigned to Judge Sciuto, respondent failed to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself. Respondent argued that, because Judge Sciuto was not aware that Ada Cati was respondent's

mother-in-law, the judge could not have been influenced by the relationship; therefore, he claimed, he was not required to make any disclosure to his adversary. This argument, however, overlooks the fact that Judge Sciuto was aware that First England Funding, a business not only owned by respondent, but also the plaintiff in the litigation, was involved in the loans to him.

The facts in this matter are similar to those in DeNike v. Cupo, 196 N.J. 502 (2008). In that case, while a trial was pending before Judge Gerald Escala, the law firm representing the plaintiff offered Judge Escala a position with the law firm upon his imminent retirement. Id. at 509. Shortly thereafter, both sides submitted competing forms of order to Judge Escala, who entered the form of order that the plaintiff's counsel had submitted. Id. at 510. After the adversary learned of the judge's employment with the plaintiff's law firm, he moved to vacate the final judgment and to obtain a new trial. Id. at 511. Although both the assignment judge and the Appellate Division denied relief, the Supreme Court granted a new trial, holding that

> [j]udges must avoid actual conflicts as well as the appearance of impropriety to promote confidence in the integrity and impartiality of the Judiciary. Unfortunately, the negotiations between trial judge and lawyer

> in this case created an appearance of impropriety. Stated simply, the conduct here fell short of the high standards demanded of judges and fellow members of the legal profession and had the capacity to erode the public's trust.
>
> [Id. at 507.]

In analyzing the issues, the Court noted that the standard was whether a reasonable person, with full knowledge of the facts, would have doubts about the judge's partiality. Id. at 517. In answering that question, the Court determined that "an objective observer might reasonably wonder whether Judge Escala favored the plaintiff's firm either consciously or unconsciously. Significantly, the Court further stated:

> A judge simply cannot have a prospective financial relationship with one party and expect to persuade the other, or the public, that the court can nevertheless fairly assess the case.
>
> [Id. at 517.]

Here, respondent's financial relationship with Judge Sciuto was not prospective, but current. Therefore, it was arguably more serious. In our view, respondent's failure to notify opposing counsel of the loans or to seek Judge Sciuto's recusal violated RPC 8.4(c) and (d).

In sum, we find respondent guilty of engaging in a conflict of interest, engaging in a prohibited business transaction with clients, and making multiple misrepresentations to clients in one matter. We also find him guilty of failing to disclose to opposing counsel his financial relationship with a judge, thereby engaging in conduct prejudicial to the administration of justice in a second matter.

As to the quantum of discipline, since 1994, it has been a well-established principle that a reprimand is the measure of discipline imposed on an attorney who engages in a conflict of interest. In re Berkowitz, 136 N.J. 148 (1994).

If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," then discipline greater than a reprimand is warranted. Berkowitz, supra, 136 N.J. at 148. See also In re Guidone, 139 N.J. 272, 277 (1994) (reiterating Berkowitz and noting that, when an attorney's conflict of interest causes economic injury, discipline greater than a reprimand is imposed; the attorney, who was a member of the Lions Club and represented the Club in the sale of a tract of land, engaged in a conflict of interest when he acquired, but failed to disclose to the Club, a financial interest in the entity that purchased the land, and

then failed to (1) fully explain to the Club the various risks involved with the representation and (2) obtain the Club's consent to the representation; the attorney received a three-month suspension because the conflict of interest "was both pecuniary and undisclosed").

Several years ago, the Court confirmed the standard that a reprimand is the presumptive sanction in conflict of interest cases and that egregious circumstances or harm to the client may result in increased discipline. In In re Fitchett, 184 N.J. 289 (2005), the attorney (1) continued to represent a public entity in litigation with the defendant, Kemi Laboratories, Inc. (Kemi), after he had become employed by Kemi's law firm, and (2) filed a suit on behalf of Kemi against the public entity. In imposing a three-month suspension, the Court cited Berkowitz. The Court noted that "a suspension has been required when a conflict of interest visits serious economic injury on the client or when the circumstances are egregious," and it ruled that the suspension was required because the "circumstances of [his] conflict of interest [were] egregious" and his misconduct was "blatant and gross." Id. at 290-91.

Misrepresentations to clients, too, usually require the imposition of at least a reprimand. In re Kasdan, 115 N.J. 472,

488 (1989). In more serious situations, suspensions have been imposed. See, e.g., In re Nowak, 159 N.J. 520 (1999) (three-month suspension for attorney who prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of interest by representing both the second mortgage holders and the buyers); In re Fink, 141 N.J. 231 (1995) (six-month suspension for attorney who failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false HUD-1 statements, affidavits of title, and Fannie Mae affidavits and agreements, lied to prosecuting authorities, and failed to witness a power of attorney); In re Newton, 157 N.J. 526 (1999) (one-year suspension for preparing false and misleading HUD-1 statements, taking a false jurat, and engaging in multiple conflicts of interest in real estate transactions; a major factor in the imposition of a one-year suspension was the attorney's participation in the scheme to defraud the lenders); and In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney also breached an escrow

agreement and failed to honor closing instructions; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension).

As to respondent's failure to disclose to his adversary his financial relationship with the judge, a similar set of circumstances resulted in a three-month suspension. In re Welaj, 170 N.J. 408 (2002). In that case, the attorney represented more than 120 criminal defendants in Somerset County, when his former law partner, Nicholas Bissell, was the prosecutor of Somerset County. In the Matter of William P. Welaj, DRB 00-374 (July 29, 2001) (slip op. at 4). At the same time, Welaj engaged in several business ventures with the prosecutor. Id. at 4-7. We rejected Welaj's excuse that he had relied on Bissell to resolve the conflicts of interest. Id. at 12. We found violations of RPC 1.7(b) and (c) and RPC 8.4(d). Id. at 12 and 14. In addition, we found that Welaj violated RPC 8.4(a) by assisting Bissell's violations of the conflict of interest rules. Id. at 13.

Here, there are substantial aggravating and mitigating factors to consider. In aggravation, respondent's numerous misrepresentations that Bridge View Bank was the lender constituted a pattern of deceit. He also either permitted or directed his clerical staff to take improper jurats. Moreover,

respondent submitted an affidavit, allegedly executed by Patel, that supported respondent's version of events. At worst, respondent created and offered that affidavit without Patel's knowledge; at best, he induced Patel to sign it as support for respondent's position, without explaining its contents.

Respondent also blamed others, such as Sogluizzo, for his own shortcomings. It was unreasonable for respondent to have relied on Sogluizzo's notes or drafts of documents, when she had been in his office for, at most, one and one-half hours, and had not agreed to handle the closing. Yet, on several occasions, respondent testified that he did not complete his "due diligence" because he relied on Sogluizzo to do the job that she usually did. Moreover, despite his knowledge that Reiter represented only Simone at the July 5, 1995 closing, respondent claimed that Reiter "specifically" represented Ortiz and "effectively" represented all of the doctors. Respondent also ascribed ill-motives to the assistant prosecutor, to the Foleys, who had reported Judge Sciuto's conduct, and to the OAE.

Also in aggravation, respondent refused to acknowledge that his failure to disclose his financial dealings with Judge Sciuto was unethical. Furthermore, in that matter, not only was his own conduct unethical, but he also assisted the judge in the

violation of the judicial canons, resulting in the imposition of a censure on Judge Sciuto.

In mitigation, respondent has been admitted to the practice of law since 1971 and has no disciplinary history. Additionally, the passage of time since the events in this matter took place is significant. The real estate transactions took place in 1995 and 1996. Respondent's loans to Judge Sciuto were arranged in 1995 and 1999; his appearances before Judge Sciuto while the loans were outstanding occurred in 1999.

The Court has discussed the effect of the passage of time occurring between the ethics infractions and the imposition of discipline:

> [I]n this case we are impelled to consider the efficacy of any sanction in light of the amount of time that has passed since the ethics violations occurred. If the ethics transgressions are remote in time, intervening developments and current circumstances may require an assessment of whether usual sanctions, otherwise appropriate, will effectively serve the purposes of discipline.
>
> [In re Kotok, 108 N.J. 314, 330 (1987).]

See also In re Verdiramo, 96 N.J. 183, 187 (1984).

In our view, respondent's conduct would warrant at least a six-month suspension. Because of his unblemished thirty-eight

year career and the passage of time, however, we unanimously determine that a three-month suspension should be imposed.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel