

Office of Attorney Ethics
Post Office Box 963
Trenton, New Jersey 08625
(609) 530-4008
Thomas D. Carver, Jr.
Deputy Ethics Counsel

OFFICE OF ATTORNEY ETHICS, :
Complainant :
 :
 :
 vs. :
 :
 :
THOMAS A. DE CLEMENTE :
Respondent :
 :
 :

SUPREME COURT OF NEW JERSEY
Office of Attorney Ethics
Docket No. XIV-2000-0021E and
XIV-2000-0102E

COMPLAINT

Complainant, Office of Attorney Ethics of the New Jersey Supreme Court (“OAE”), P.O. Box 963, Trenton, New Jersey 08625, by way of complaint against respondent Thomas A. DeClemente, Esq., says:

GENERAL ALLEGATIONS

1. Thomas A. DeClemente, Esq., hereinafter “respondent”, was admitted to the New Jersey Bar in 1971.
2. During the relevant time period, respondent maintained two offices for the practice of law in the State of New Jersey. The first, operated until 1996, was located at 1050 Wall Street West, Suite 330, Lyndhurst, New Jersey 07071. After 1996, respondent maintained an office at 65 Harristown Road, Glen Rock, New Jersey, 07452. Both offices were located in Bergen County.

3. In connection with his law practice, respondent maintained the following bank accounts:

A) Attorney Trust Account No. 132012456 at United Jersey Bank, later Fleet Bank;

B) Attorney Business Account No. 132012448 at United Jersey Bank, later Fleet Bank.

4. On April 11, 2000, the Bergen County Prosecutor's Office advised the Office of Attorney Ethics (hereinafter "OAE") that respondent was under investigation for allegations arising out of a business investment real estate transaction.

5. This investigation culminated in the filing of Bergen County Indictment 00-05-01059, charging respondent with two counts of fourth degree deceptive business practices in violation of N.J.S.A. 2C: 21-7, two counts of third degree forgery, in violation of 2C:21-1 and single counts of third and fourth degree falsifying records, in violation of 2C: 21-4 (Exhibits 1 and 2).

6. On October 26, 2001, respondent was accepted into the Pre-Trial Intervention Program by order of the Honorable Donald R. Venezia, J.S.C. (Exhibit 3).

COUNT ONE

Conflict of Interest/Misrepresentation

1. In 1994, respondent handled the dissolution of a business partnership, Plaza Professional Group, Inc. on behalf of his client, Perry Chevestick (Exhibit 4).

2. This partnership owned an office building located at 1265 Paterson Plank Road, Secaucus, New Jersey.

3. As part of the dissolution agreement, Chevestick received ownership of Unit 3D at 1265 Paterson Plank Road (Exhibit 4).

4. Once the negotiations for dissolution were concluded, respondent asked Patricia Simone, a principal in the Plaza Professional Group, to sell him Unit 3A. At the time, Unit 3A was rented by Dr. Eugene Graziano, a former client of respondent's. Simone agreed to sell the condo to respondent.

5. Thereafter, in 1995, respondent approached three physicians who had office space in 1265 Paterson Plank Road with a proposal that the group buy Units 3A and 3D from Simone and Chevestick. The three doctors were: Dr. Graziano; Dr. Manmohan Patel, an acquaintance of the respondent who owned office space in the building; and Dr. Michael Ortiz, who rented space from Patel (**Exhibits 5, 5a, 5b, 6, 6a, 6b and 7**).

6. The three doctors agreed with respondent to buy Unit 3A from Plaza Professional Group for \$251,700.00 and Unit 3D from Chevestick for \$165,000.00. Respondent detailed the terms of the agreement in a letter dated May 1, 1995 (**Exhibit 8**).

7. In the May 1, 1995 letter, respondent identified himself as the attorney for seller Chevestick as well as the attorney closing the mortgage on behalf of Bridge View Bank.

8. Respondent was also a partner with the three doctors in the purchase of the properties. Although respondent suggested to the doctors to obtain independent counsel, each of the doctors, waived the right to hire his own attorney for the transaction.

9. Respondent also indicated in the letter that the aggregate mortgage amount would be \$460,000 which would cover the purchase price and closing costs for the two units as well as renovation costs for Unit 3D.

10. Respondent further indicated that he had obtained a mortgage and identified Bridge View Bank as the "conduit/lender".

11. Respondent also stated, however, that he had agreed to utilize funds over which he had control for the mortgage which allowed respondent and his partners to obtain the mortgage for a reasonable interest rate without down payment or points. As part of their agreement, only Ortiz and Graziano were to make mortgage and tax payments. All four partners were responsible for overhead and any additional expenses.

12. On June 1, 1995, respondent sent a mortgage commitment letter on his legal letterhead to the three doctors. Respondent began the letter by stating, "we are pleased to advise you that your application for a Conventional Fixed Rate Mortgage has been approved..." (**Exhibit 9**).

13. In a number of paragraphs, respondent identified Bridge View Bank as the mortgage lender. That statement by respondent was false.

14. This commitment letter also stated that the title insurance binder must be issued to Bridge View Bank, Account #8026106.

15. In fact, Bridge View Bank account #8026106 was solely in the name of respondent.

16. Respondent also identified himself as counsel for Bridge View Bank. That statement by respondent was false.

17. In fact, respondent did not represent Bridge View Bank. Neither had Bridge View Bank agreed to lend money for mortgage on the two properties.

18. In fact, no mortgage application had been submitted to Bridge View Bank or to any other mortgage lender with regard to these two properties.

19. Also on June 1, 1995, respondent prepared mortgage documents for each of the two properties identifying Bridge View Bank as the lender (**Exhibits 10 and 11**).

20. These documents were signed by respondent and the doctors and later recorded on July 19, 1995 at the Hudson County Clerk's Office with Bridge View Bank named as the mortgagee.

21. The mortgage documents were also incorrect in that the mortgage amounts for the two units were transposed. According to the May 1, 1995 letter, Unit 3A was to be mortgaged for \$260,000 and Unit 3D for \$200,000. The mortgage documents, however, indicate that the mortgage for Unit 3A was \$200,000 and for Unit 3D \$260,000.

22. Both mortgage documents reflect an interest rate of 12%. At the time of the closing, however, the official interest rate of Bridge View Bank for commercial loans was 9 ½ % to 10 ½ %.

23. On June 21, 1995, respondent prepared a Notice of Settlement in connection with the closing on the two properties. In it, respondent identified Bridge View Bank as the lender (Exhibit 12). That statement by respondent was false.

24. In fact, respondent was the mortgagee.

25. Although the mortgage commitment letter referenced Bridge View Bank account #8026106, that account was not used to fund the mortgage. In fact, from January 9, 1994, the date the account was opened, to July 31, 1995, the balance of that account never rose above \$61,153.68 (Exhibits 13 and 14).

26. Respondent provided the mortgage funds from his money market account, number 2009668 and from another account, number 8005982, that he maintained jointly with Aida Cati. He used those funds to obtain Bridge View Bank Treasurer's Check number 10642 dated July 5, 1995 in the amount of \$460,000 (Exhibits 15, 16, and 17).

27. The check was made payable to respondent and the three doctors and contained the notation "Unites (sic)3A/3D" (Exhibit 17).

28. Upon obtaining endorsements from each of the payees, respondent deposited the check into his attorney trust account on July 6, 1995 as proceeds from the two closings (Exhibit 18).

29. In September 1996, Dr. Ortiz decided to leave the partnership and buy Unit 3D outright. To that end, he retained Arnold Reiter, Esq., and provided him with his Power of Attorney **(Exhibits 19 and 20)**.

30. On September 30, 1996, Reiter wrote to respondent confirming the purchase price of \$191,350. Included in this letter was a space for respondent to sign on behalf of Bridge View Bank and for the partnership **(Exhibit 21)**.

31. To purchase Unit 3D, Dr. Ortiz obtained a mortgage for \$160,000 from the Bank of New York **(Exhibit 22)**. The closing date was scheduled for November 12, 1996.

32. In anticipation of the closing, Reiter asked respondent for written proof from Bridge View Bank establishing that respondent had authority to act on behalf of the bank **(Exhibit 23)**.

33. In response, respondent gave Reiter a Power of Attorney dated November 13, 1996 on Bridge View Bank stationery. The document, allegedly signed by bank president Albert Buzzetti, authorized respondent to handle the release of a portion of the June 1, 1995 mortgage and take care of all transactions on behalf of the bank pertaining to the partial satisfaction of that mortgage **(Exhibits 24 and 25)**.

34. The Power of Attorney is incorrect, however, in that it referenced the mortgage prepared and recorded for Unit 3A, not Unit 3D, the one that Ortiz was buying **(Exhibits 10 and 24)**.

35. Albert Buzzetti denied signing the Power of Attorney presented to Reiter by respondent. According to Buzzetti, Bridge View Bank never authorized respondent to act on behalf of the bank in any capacity.

36. On November 13, 1996, respondent signed a Release of Part of Mortgaged Property. In the Release, Bridge View Bank was identified as the lender and holder of a mortgage on the property. Respondent signed the Release as attorney in fact for "Albert Buzzetti, President of

Bridgeview Bank (sic), for account no. 8026106 only” (**Exhibit 26**).

37. On November 23, 1996, respondent prepared an Assignment of Mortgage, wherein the remaining \$260,000.00 mortgage was assigned from Bridgeview (sic) Bank Account no. 8026106 to himself. Consideration for the transfer was \$1.00 (**Exhibits 11 and 27**). The Assignment incorrectly identified the property as Unit 3D, not Unit 3A, which was the subject of the assignment.

38. **The Assignment was executed in the name of Albert Buzzetti, President of Bridge View Bank, pursuant to the Power of Attorney of November 13, 1996.**

39. **Respondent directed Kristy Ray Miller, his secretary, to sign the jurat to affirm that Buzzetti had come before her when he had not** (**Exhibits 28 and 29**).

40. In 1998, Dr. Graziano decided to buy out his partnership interest in Unit 3A.

41. Graziano retained Vincent LaPaglia, Esq., who contacted Bridge View Bank to request information on the mortgage purportedly held on Unit 3A.

42. LaPaglia learned that **Bridge View Bank** had **never held or assigned the mortgage on the property nor had the bank authorized respondent to act as attorney on its behalf** (**Exhibit 30**).

43. **Respondent’s conduct** as stated in this count **constitutes the commission of a criminal act** that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in violation of **RPC 8.4(b)**, conduct **involving dishonesty, fraud misrepresentation or deceit** in violation of **RPC 8.4(c)** and conduct constituting conflict of interest in violation of **RPC 1.7 (a) (2)** and **RPC 1.8(a)**.

COUNT TWO

Candor to the Tribunal

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 late 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 (Exhibit 31).

5. The lender was Aida Cati, a relative of respondent's wife.

6. Judge Sciuto made the first few payments to respondent.

7. At the request of respondent, however, subsequent payments were made by check to Ada (sic) Cati.

8. Since December 1995, Sciuto has made payments of \$166.02 toward interest on the loan.

9. In December 1998, Judge Sciuto asked respondent for help in obtaining a second loan of \$10,000.00.

10. Respondent then arranged a loan from Sergio Cati, an Italian citizen who is a relative of respondent's wife, to Judge Sciuto.

11. On January 11, 1999, Judge Sciuto and his wife executed a promissory note agreeing to pay "Sergio Cati c/o First England Funding, LLC" \$10,000.00 at an interest rate of 11.5% per year.

12. Sciuto made and has continued to make interest payments of \$100.00 per month on that loan. The first several checks were made payable to First England Funding. Later checks, however, were made payable to Sergio Cati at the request of respondent.

13. In May 1999, Judge Sciuto asked respondent to increase the January 1999 loan an additional \$10,000.00. Respondent arranged for the loan.

14. 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.

15. Sciuto has made payments of \$100.00 per month toward interest on that loan.

16. In total, respondent arranged three loans for Sciuto totaling \$40,000.00.

17. 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.

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

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

20. Although the loans made to Sciuto were still active, neither the Judge nor respondent informed opposing counsel of the Court’s conflict of interest.

21. 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.

22. 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.

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

24. Thereafter, on November 28, 2000, Sciuto and his wife signed an addendum to the original promissory notes, agreeing to an extension under the same terms on each loan for eighteen months.

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

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

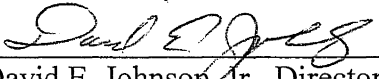
27. Despite the inherent conflict of interest, respondent did not reveal the fact that Sciuto had borrowed the money to his adversaries. Neither did respondent request that Sciuto recuse himself from the matters.

28. Respondent's conduct as stated in this count constitutes conduct involving dishonesty, fraud, misrepresentation or deceit in violation of RPC 8.4(c) and conduct prejudicial to the administration of justice in violation of RPC 8.4 (d).

WHEREFORE, respondent should be disciplined.

OFFICE OF ATTORNEY ETHICS

DATE: *March 30*, 2006

By: 
David E. Johnson, Jr., Director