DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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May 24, 2017

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Gregg Douglas Trautmann
Docket No. DRB 17-088
District Docket No. XA-2016-0012E

Dear Mr. Neary:

This matter previously was before the Disciplinary Review Board at its May 2016 session by way of a motion for discipline by consent (reprimand) filed by the District XA Ethics Committee (DEC), pursuant to R. 1:20-10(b). The Board determined to deny the motion and remand the matter for expansion of the discipline range or for further proceedings. The motion was refiled and is the subject of the instant matter.

The Board has reviewed the new motion for discipline by consent (six-month suspension or such lesser discipline as the Board deems appropriate) filed by the DEC. Following a review of the record, the Board determined to grant the motion. In the Board's view, a six-month suspension is the appropriate discipline for respondent's violations of RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the fee); RPC 1.7(a) (engaging in a conflict of interest); RPC 1.8(a) (entering into a prohibited business transaction with a client); RPC 8.4(a) (knowingly violating or attempting to violate the Rules of Professional

Conduct), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Specifically, on May 21, 2015, Tammy Jean Boyd filed an ethics grievance, alleging that respondent sold, to his wife, property belonging to the Estate of Roberta Berry for substantially less than fair market value and that he had failed to notify the remainder beneficiary, St. Mary's Church in Denville, New Jersey, of its interest in the estate. Respondent had been administering the Berry Estate as both counsel and executor.

Roberta Berry maintained her residence in Denville, New Jersey, from the 1970s until her death at age 82, on December 30, 2014. Respondent represented Berry in connection with the preparation of her Last Will and Testaments executed on July 5, 2009, May 30, 2011, and August 1, 2012, respectively. Respondent met with Berry at her home to execute each of the documents. Berry paid respondent for his legal services; however, respondent never communicated, in writing, to Berry, the rate or basis of his fee.

Respondent was named the executor in each of Berry's wills. Additionally, each will contained the following provision:

> It is my direction that upon my passing my Executor retain the services of an MAI Appraiser[1] to provide a date of death appraisal of my personal residence in the Township of Denville and that my Executor as soon as practical thereafter sell my real property to any person - including my Executor - who shall be willing to pay the MAI determined fair market value for my real property.

Respondent's detailed notes did not contain any reference regarding Berry's intent with respect to the sale of the property, to naming respondent as the Executor, or to the need to obtain the services of an MAI Appraiser. He maintained, however, that the provisions were included at Berry's request and that he had never included the above clause in any of his other clients' wills.

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[1] According to Appraisalinstitute.org, the "MAI membership designation is held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and advise clients on real estate investment decisions."

Respondent also failed to identify in the Berry wills, the person whom Berry wanted to control her funeral arrangements, pursuant to N.J.S.A. §45:27-22, and further failed to ascertain the whereabouts of Berry's closest relatives, her grandchildren. Instead, upon Berry's death, respondent filed an application and certification with the court, seeking the right to control Berry's funeral arrangements, which was granted.

Subsequently, on January 12, 2015, the Surrogate of Morris County admitted Berry's will to probate, and respondent was appointed executor of her estate. Pursuant to R. 4:80-6, within sixty days after the date of probate, the executor is required to mail to all beneficiaries under the will, and all heirs at law, a notice of probate. If a charity is a beneficiary, a copy is to be mailed to the New Jersey Attorney General. Respondent failed to timely mail a Notice of Probate to St. Mary's Church, the residuary beneficiary that was to receive the net proceeds from the sale of the decedent's property, for almost six months after the date of probate. It was not until June 1, 2015 – well beyond the sixty-day notice period prescribed in the Rule – that the notice of probate was delivered to the church. The notice was, however, timely delivered to the Attorney General.

Respondent obtained three appraisals on Berry's residence as follows: (1) from David Bossart in the amount of $90,000, (2) from Timothy Piso in the amount of $175,000, and (3) from Stuart Appraisal Company in the amount of $275,000. David Bossart was not an MAI appraiser, as was required by the will.

Respondent averaged the three appraisals[2] to arrive at $180,000 as the purchase price, and then sold the property, for that amount, to his wife, by deed dated February 11, 2015. Respondent was familiar with the property, having grown up in the area. He also was aware that the tax-assessed value of the property was $407,800 and the ratio of assessed to true value was less than 100%. Respondent never conferred with the residuary beneficiary,

[2] Respondent reduced two of the three appraisals by $20,000 and $25,000, respectively, to allow for demolition of the buildings, which was not a requirement under the will but, rather, was respondent's preference. The Board noted that, by doing so, respondent further reduced two of the appraisals that he averaged with the third appraisal to reach his purchase price.

St. Mary's Church, regarding the sales price. Respondent had previously informed neither Berry of his interest in purchasing the property, nor the residuary beneficiary of his interest, after Berry's death. Prior to Berry's death, however, he had expressed to third parties his interest in purchasing the property.

Respondent returned the property to the Berry estate only after St. Mary's Church learned of the sale to respondent's wife and after Boyd filed a grievance. On September 28, 2015, he transferred the property to St. Mary's Church, which entered into a contract of sale for $569,000, several weeks later, following a bidding war.

The Board determined to dismiss the alleged violations of RPC 1.7(b) and RPC 1.8(c). In the Board's view, RPC 1.7(b) does not establish an ethics violation but, rather, simply provides safe-harbor provisions to avoid violation of RPC 1.7(a). The Board dismissed the alleged violation of RPC 1.8(c) as inapplicable in as much as the stipulated facts do not support the conclusion that respondent or his wife received a "gift" as a result of respondent's preparation of Berry's will and his subsequent sale of the property to his wife.

The stipulation in support of the motion recited both aggravating and mitigating factors. In aggravation, respondent conceded that he is a former deputy surrogate for Morris County responsible for overseeing estate administrations and that he litigated matters with respect to estates and guardianships in the Superior Court. Thus, he has specialized knowledge in the area of estate administration.

In mitigation, the DEC acknowledged that this is respondent's first brush with the disciplinary system in twenty years at the bar; he showed contrition for his conduct; no emotional or financial injury befell Berry during her lifetime; the residuary beneficiary only potentially incurred financial harm because respondent returned the property upon the filing of the grievance; and respondent cooperated with the investigation in this matter by entering into a stipulation admitting his misconduct and agreeing to proceed by way of a motion for discipline by consent.

It is well settled that, absent circumstances or serious economic injury, a reprimand is appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994).

In some situations, a reprimand may result even if the attorney commits other ethics improprieties. See, e.g., In re Hunt, 215 N.J. 300 (2013) (attorney found guilty of a concurrent conflict of interest by agreeing to represent Essex County at a time when he had been retained to pursue a claim against the County on behalf of a client; he was also guilty of engaging in gross neglect and lack of diligence, failing to keep the client informed about the status of the matter, failing to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, recordkeeping violations, and making misrepresentations to disciplinary authorities and to a client; mitigating factors included the attorney's lack of a disciplinary history in his twenty-eight years at the bar and his acknowledgement of wrongdoing by stipulating to the misconduct).

Where an attorney's conflict of interest has caused serious economic injury or the circumstances are more egregious, the Court has imposed a period of suspension. See, e.g., In re Wildstein, 169 N.J. 220 (2001) (three-month suspension for attorney who engaged in a conflict by acting as executor and trustee to an estate that held an interest adverse to another estate of which the same attorney was the executor and beneficiary; the attorney had added himself as a residuary beneficiary to the second estate creating an improper testamentary gift; attorney also failed to disclose material facts to the beneficiaries of either estate and made misrepresentations to disciplinary authorities during the investigation into those matters; the attorney was also found guilty of gross neglect, lack of diligence, and failure to communicate with his clients in regard to the two estates); In re Hurd, 69 N.J. 316 (1976) (three-month suspension for attorney who arranged a loan transaction in which his friend, who was unsophisticated in business transactions, transferred property to Hurd's sister for approximately twenty percent of its value; previously unblemished twenty-two-year career was a mitigating factor); In re Feranda, 154 N.J. 4 (1998) (six-month suspension imposed where the attorney, who was both a tax attorney and a certified public accountant, engaged in a conflict of interest by simultaneously representing two parties to a real estate transaction; attorney also failed to safeguard the client's funds pending completion of the transaction; harm to the client and the attorney's denial of wrongdoing considered in aggravation); In re Dato, 130 N.J. 400 (1992) (one-year suspension where the attorney represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual

value, and resold it ten days later for a $52,500 profit); In re Humen, 123 N.J. 289 (1991) (two-year suspension where the attorney engaged in numerous sensitive business transactions with his client, in which the attorney's interests were in direct conflict with those of the client); and In re Casale, 213 N.J. 379 (2013) (three-year suspension for attorney, who at the request of his long-time friend and client, represented an elderly widow, who was in poor health and of questionable competence, in the sale of her million-dollar home to the attorney's friend; the terms of the sale and consequent mortgage loan were grossly unfavorable to the widow, who ultimately received no payments on the mortgage; the attorney also convinced the widow to include a provision in her will forgiving any outstanding mortgage on her death).

Ordinarily, a misrepresentation, whether by silence or otherwise, results in a reprimand. See, e.g., In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); the Board found that the attorney's unblemished thirty-four years at the bar was outweighed by his inaction, which left the client with no legal recourse); and In re Agrait, 171 N.J. 1 (2002) (attorney, despite being obligated to escrow a $16,000 deposit in a real estate transaction, failed to collect it but caused it to be listed on the RESPA as a deposit; the attorney also failed to disclose a prohibited second mortgage to the lender).

Finally, conduct involving failure to prepare the writing required by RPC 1.5, even if accompanied by other, non-serious ethics offenses, typically results in an admonition. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney violated RPC 1.5(b) when he agreed to draft a will, living will and power of attorney, and to process a disability claim for a new client, but failed to provide the client with a writing setting forth the basis or rate of his fee; the attorney also was guilty of failure to communicate with his client, lack of diligence, practicing while ineligible, and failure to respond to the DEC investigator's requests for information; the Board considered several mitigating factors, including the attorney's unblemished ethics history since his admission to the bar forty years earlier); and In the Matter of Osualdo Gonzalez,

DRB 14-042 (May 21, 2014) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); he also was guilty of failure to communicate with the client and failure to abide by his client's decisions regarding the scope and objectives of the representation; in mitigation, the Board considered that the attorney had a pristine record in twenty-seven years at the bar and, in addition, several letters attesting to the attorney's good moral character).

In the Board's view, respondent's misconduct was egregious. Much like Hurd, respondent manipulated a transfer, to a relative, of property that would have resulted in a significant windfall for his family at the expense of the property owner, or in this instance, the estate and its beneficiary, St. Mary's. But for Boyd's filing of a grievance, respondent's misconduct would have gone undetected, and St. Mary's would have been deprived of its intended bequest and an unfulfilled benefit of $569,000. His misrepresentation, although by silence, was no less serious than that of Hurd. Although respondent, like Hurd, has an unblemished career spanning twenty-three years, the aggravating factors, including his calculated scheme to shamelessly benefit by his representation and subsequent death of his client, outweigh that unblemished history.

Respondent is a former deputy surrogate for Morris County, responsible for overseeing estate administrations and litigated matters with respect to estates and guardianships in the Superior Court. Thus, he has specialized knowledge in the area of estate administration and certainly should have known better than to engage in such deceitful conduct. Respondent engaged in a long-term scheme to obtain his client's property. The record suggests that he coveted this property for some time. Respondent's conduct as a whole, is far more egregious than that of Hurd. Based on the totality of the circumstances, including the mitigating and aggravating factors, the Board determined that a six-month suspension is warranted for respondent's misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated February 6, 2017.
2. Stipulation of discipline by consent, dated February 14, 2017.

3. Affidavit of consent, dated January 10, 2017.

4. Ethics history, dated May 24, 2017.

Very truly yours,

Ellen A. Brodsky
Chief Counsel

EAB/alc
c: w/o enclosures
Bonnie C. Frost, Chair
Disciplinary Review Board (via e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (via e-mail and interoffice mail)
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