

William C. Mack, Esq., Presenter  
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		: SUPREME COURT OF NEW JERSEY
		: District XA Ethics Committee
District XA Ethics Committee,		: Docket No. XA-15-0010E
		: :
Complainant		: :
		: <u>Disciplinary Action</u>
v.		: :
		: COMPLAINT
Robert J, Nish	:	
		: :
Respondent.		: :

District XA Ethics Committee by way of complaint against respondent, says:

1. Robert J. Nish (Respondent) was admitted to the Bar of this State in 1975.
2. Respondent maintains law offices at 163 Washington Street, Morristown, Morris County, New Jersey.
3. John and Jane Petrillo (hereafter, the "Petrillos") signed a Contract of Sale dated April 6, 2013 with Kurien Chacko (hereafter "Chacko") in which Chacko agreed to purchase the Petrillo's primary residence, located at 84-1 Meeker Road, Bernardsville, NJ, for \$2,500,000. The Petrillos have an address at P.O. Box 307, Bay Head, NJ 08742.
4. Chacko was represented in the transaction by Respondent. The Petrillos were represented by Eric S. Wasser, Esq., of Somerville.

GENERAL ALLEGATIONS

5. The terms of the Contract indicated that it would be a cash purchase, with a closing date of May 15, 2013. The Contract required Chacko to make two deposits, each of \$50,000, the first upon signing the Contract and the second on or before April 15, 2013. The deal was to be in cash, with no mortgage contingency and with a relatively tight schedule for closing.

6. Chacko gave Respondent a personal check made out to Respondent's firm in the amount of \$50,000, dated April 6, 2013. The Petrillos received a copy of the check when presented with the Contract to sign.
7. Respondent did not immediately deposit the check in his attorney trust account.
8. Approximately two weeks later, on April 19, while the Contract was in attorney review, Chacko came to Respondent's office. During that meeting, Chacko insisted that Respondent return the initial deposit, and said that he would wire funds to Respondent's attorney trust account when attorney review was completed. Respondent returned Chacko's deposit check to him.
9. By letter of April 25, Respondent sent an attorney review letter with some final items. Respondent's letter failed to mention that the initial \$50,000 deposit had been returned to Chacko and, further, failed the due date for payment of the initial deposit. Wasser countersigned the April 25 letter the same day, ending attorney review.
10. On April 26, Respondent's office sent an email to Chacko and the realtors stating that attorney review had been completed, and laying out a schedule for the purchase process. Among the items, the email included a statement: "*Additional Deposit: \$50,000 is due May 2, 2013...*" (emphasis added).
11. On May 2, 2013, Wasser's office emailed Respondent's office to inquire about whether the deposit had been received and deposited. Later that day, Respondent sent an email to Chacko requesting that the entire \$100,000 in deposits be wired to Respondent the next day. Respondent did not respond to Wasser's May 2 email.
12. On May 3 Wasser's office inquired whether Respondent's office had deposited "the second deposit in the sum of \$50,000 which was due yesterday" and on May 4 emailed to say that home inspection would only be allowed if and when the "deposit due on May 2<sup>nd</sup>" was wired into Respondent's account. Respondent did not respond to these emails.
13. Wasser's office inquired again on May 9 as to the deposit, to which Respondent replied by forwarding an email from Chacko to the effect that all funds, not just the deposit, would be wired early the following week.
14. Chacko did not send the wire as promised.

15. By letter dated May 15, Wasser declared time to be of the essence of the Contract, specified the date for closing to be May 30, and stated that if Chacko did not close on that date he would be considered in breach of the Contract.
16. On May 30, Wasser wrote Respondent to confirm that Chacko had breached the Contract. The first sentence of that letter confirmed a telephone conversation between Wasser and Respondent in which Wasser ascertained that Respondent "had not received the funds from your client for the *second* deposit nor (sic) for the closing." (emphasis added) The letter continued in part, "we are hereby notifying the holder of the initial deposit not to release the same until our damages are ascertained." Respondent failed to correct Wasser's misimpression that Respondent was holding Chacko's initial deposit.
17. Notwithstanding, the Petrillos and Chacko continued directly to discuss the possibility of purchasing the property. However, Chacko never wired funds to Respondent for the deposits or a closing.
18. In September or early October 2013, the Petrillos consulted a litigation attorney, and relisted the property. Through inquiries of Respondent by the litigation attorney the Petrillos first learned that Respondent had returned the initial deposit to Chacko in April.

#### FIRST COUNT

19. Respondent failed to inform Wasser or the Petrillos that he returned the initial deposit to Chacko and, for several months, Respondent misrepresented this to Wasser and the Petrillos by failing to correct their misimpression, of which Respondent was aware.
20. On three occasions between April 25 and May 3, 2013, Respondent communicated with Wasser and failed to inform Wasser that he returned the initial deposit and, when directly asked by Wasser whether he received the deposits, Respondent failed to respond and as a result deceived Wasser and the Petrillos.
21. Respondent's failure over six months to inform Wasser or the Petrillos that he had returned the initial deposit to Chacko or correct their misimpression that Respondent still held the deposit in his trust account was deceitful and constitutes clear and convincing evidence of a misrepresentation in violation of *RPC 8.4(c)*.

WHEREFORE, respondent should be disciplined.

DISTRICT XA ETHICS COMMITTEE

By: William C. Mack  
William C. Mack, Esq.

DATED: October 6, 2015

PETER N. GILBRETH, ESQ. #005491973  
60 Washington Street - Suite 100  
Morristown, NJ 07960  
(973) 539-9007  
Attorney for Respondent

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	:	SUPREME COURT OF NEW JERSEY
	:	District XA Ethics Committee
District XA Ethics	:	DOCKET NO.: XA-15-0010E
Committee,	:	
	:	
Complainant,	:	
	:	
-vs-	:	<u>Disciplinary Action</u>
	:	
Robert J. Nish	:	VERIFIED ANSWER
	:	
Respondent	:	

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Robert J. Nish, Esq., Respondent, by way of Verified Answer to the within Complaint, says:

1. I admit the allegations contained in Paragraph 1.
2. I admit the allegations contained in Paragraph 2.
3. I admit the allegations contained in Paragraph 3.
4. I admit the allegations contained in Paragraph 4.

GENERAL ALLEGATIONS

5. I admit the allegations contained in Paragraph 5.
6. I did not meet Kurien Chacko (hereinafter, "Chacko") until April 19, 2013. It is my recollection that the realtor involved came to my office on or about April 7, 2013, and dropped off the contract of sale signed by John and Jane Petrillo (hereinafter, "Petrillos") along with the \$50,000 deposit check signed by Chacko made payable to my law firm.

7. I admit the allegations contained in Paragraph 7. It is

not the practice of my law firm to deposit real estate deposit checks into our attorney trust account until the attorney review process is completed and the contract is reinstated. In fact, Chacko, on or about March 8, 2013, had entered into a contract of sale for a different property wherein that realtor delivered Chacko's \$100,000 deposit check to my law firm. That check was never negotiated because that contract was never reinstated during the attorney review process.

8. I admit the allegations contained in Paragraph 8.

9. The initial attorney review letter with 20 paragraphs of routine contract modifications was sent out on or about April 12, 2013. Petrillos' attorney's response was dated April 16, 2013, and that was supplemented with his letter of April 22, 2013. The final attorney review letter was sent out on or about April 25, 2013 and thereafter was signed and approved by Petrillos' attorney. These letters again were routine and pro forma in nature. Through mere inadvertence and oversight and with absolutely no intent to deceive, misrepresent or otherwise mislead the Petrillos or their attorney, there was no mention that Chacko had taken back the \$50,000 deposit check while the contract remained in attorney review. The above correspondence (and all future communications) were transmitted with a clear understanding and belief that Chacko wanted to purchase the Petrillos' property.

10. I admit the allegations contained in Paragraph 10. However, while acknowledging my role as the principal attorney in

my law office, the following transpired. When the attorney review process was completed, my paralegal sent out our standard correspondence concluding attorney review and scheduling the remaining issues. The paralegal would have looked at the contract and attorney review letters to determine the schedule of contingency dates contained in the email. Unfortunately, the entire file was not properly reviewed by the paralegal to confirm the retention of the initial deposit. Again, this oversight was not a calculated intent to deceive, misrepresent or otherwise mislead the Petrillos or their attorney, but was an error of omission.

11. I admit the allegations contained in Paragraph 11.

12. The allegations contained in Paragraph 12 are admitted in part and denied in part. My paralegal and Eric Wasser's paralegal were in communication with each other during this time period regarding the deposit money issue. As an example, Eric Wasser's paralegal emailed my paralegal on Saturday, May 4, 2013, acknowledging that the initial deposit had not been paid. My paralegal responded two days later on May 6, 2013 that wiring instructions had been sent to Chacko with the understanding and belief that Chacko would wire the full amount of the purchase price on May 9, 2013. It should be noted that most of the communications in this transaction occurred between the paralegals and not the attorneys. This is a common practice in real estate transactions especially when the attorney review process is completed.

13. I admit the allegations contained in Paragraph 13.

14. I admit the allegations contained in Paragraph 14.

15. I admit the allegations contained in Paragraph 15.

16. I admit the allegations contained in Paragraph 16 regarding the contents of the May 30, 2013 letter. However, I spoke to Eric Wasser on or about May 15, 2013 and then I forwarded to Mr. Wasser an email I received from Chacko which contained an update of his, Chacko's, wife's medical condition. Chacko's email indicated his intention to close on the property on either May 23 or May 24, 2013. The email also indicated his intention to transfer the entire purchase price for closing as soon as possible.

17. I admit the allegations contained in Paragraph 17. These parties continued their negotiations between themselves or the realtors as late as October 28, 2013.

18. It is my recollection that I received a telephone call from the Petrillos' litigation attorney on or about March 2014. He inquired about the initial deposit. I told him that the deposit check had been returned to Chacko during the attorney review period.

#### FIRST COUNT

19. I deny the allegations contained in Paragraph 19.

20. I deny the allegations contained in Paragraph 20.

21. I deny the allegations contained in Paragraph 21. In addition to the above formal responses to the allegations raised in the Complaint, I include the following information:

a) My three (3) page letter to Presenter William C. Mack, Esq., dated April 14, 2015.

b) My two (2) page letter to Presenter William C. Mack, Esq., dated May 4, 2015.

c) The following additional mitigating factors:

As noted above, there was absolutely no intention to misrepresent, deceive or mislead Mr. Wasser or his clients. My office has conducted over 10,000 closings over the past 30 years, and we never had or would have had an issue like this, but for my oversight in this case. Notwithstanding Mr. Wasser's breach of contract letter, which I may or may not have seen for reasons set forth below, had anyone asked directly about the initial deposit, I would have, as I did in 2014, immediately and truthfully responded to same.

The emails from my files which I have provided to Presenter William C. Mack, Esq. reflect the scheduling of a meeting with Chacko on April 19, 2013. I could not do it earlier because my wife had recurrent cancer surgery on April 16, 2013, and was at Mount Sinai in New York. The following weeks were difficult and I, as noted above, did not check the pro forma letter that went out confirming the scheduling dates. Additionally, in the middle and end of May 2013, I was actively involved in arranging for my wife's chemotherapy at Morristown Memorial Hospital.

In addition to me frequently being out of the office during this time period due to my wife's medical circumstances, we were very busy at the office. I have checked our "new file book" for 2013, and we opened 51 files in April and 38 files in May, mostly

real estate files. I acknowledge that under ordinary circumstances it would have been proper to advise Mr. Wasser about the deposit. However, not doing so was an oversight, not intended to mislead and which was directly related to the foregoing distractions.

When Mr. Wasser called about not showing up for the closing, I, of course, told him he did not have to appear. The issue of the deposit never came up because it never crossed my mind. There would be no reason for me not to disclose this information. In retrospect, I was not making a conscious distinction between the "initial" and "additional" deposit monies, only acknowledging that the deposit monies remained unpaid. Chacko's response to our inquiries were consistently that he would wire all funds for the closing, so that is what I passed on to Mr. Wasser's office. I further note the ongoing negotiations between the parties for six or seven months thereafter.

In any event, I have never in my entire career made an intentional misrepresentation, whether in litigation cases, estate matters, or real estate transactions. Therefore, I again deny the allegations in the First Count that I violated the provisions of RPC 8.4(c) by engaging in conduct involving deceit or misrepresentation.

**REQUEST FOR HEARING**

Pursuant to R. 1:20-4(e), I hereby request a hearing on the charges and mitigating circumstances.

**VERIFICATION OF ANSWER**

I, Robert J. Nish, Esq., am the Respondent in the within

Disciplinary Action and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements herein are true and based on my personal knowledge.

2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date:

Dec 7 2015



ROBERT J. NISH, ESQ.

## NISH & NISH

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ROBERT J. NISH  
NOËLLE K. NISH

April 14, 2015

William C. Mack, Esq.  
Law Office of William C. Mack  
5 Bowling Green Parkway, A102  
Lake Hopatcong, NJ 07849

*Re: John & Jane Petrillo v Robert J. Nish, Esq.  
Docket No. XA-2015-0010E*

Dear Mr. Mack:

Thank you for your courtesies with regard to my response to Mr. and Mrs. Petrillo's complaint. As I indicated to you, my complete file is available for your inspection and review.

Mr. Kurien Chacko indicated that he was referred to my partner on March 5, 2013 by the Coldwell Banker Mendham real estate office. He signed a Contract for the purchase of 271 Mine Brook Road, Bernardsville, NJ wherein the Seller was Ellen Dembrowski. Michael Bisk of Coldwell Banker, 7 Mount Bethel Road, Warren, NJ 07059 was the dual agent on the file. The purchase price was \$3,100,000.00 with a proposed closing date was July 1, 2013. The Contract was disapproved on March 8, 2013 and never reinstated. It was officially terminated by the Seller's attorney on April 5, 2013. Mr. Chacko had apparently written a check for \$100,000 payable to Nish & Nish, LLC Attorney Trust Account representing the deposit for this transaction which was never negotiated presumably due to the fact that the Contract was never reinstated. I was asked to assist on the file to investigate a subdivision which was raised by Mr. Chacko who was contemplating constructing two additional houses on the property for the benefit of his daughters.

The second Contract was for the purchase of the Petrillo property through the same agent as I previously gave to you, Michael Bisk of Coldwell Banker (908-451-4400). The Contract was technically "disapproved" by me on April 10, 2013 by letter to Eric Wasser, Esq., the Sellers' attorney with appropriate copies to all parties and agents. The closing date was scheduled for May 15, 2013. After the Contract was negotiated in attorney review, the Contract was formally reinstated with a sale price of \$2,500,000.00 on April 25, 2013.

Prior thereto, Mr. Chacko wanted to meet to discuss the attorney review correspondence. He came to my office on April 19, 2013, at which time I met with him for approximately one half-hour. He requested the return of the \$100,000 check on the prior Contract and the \$50,000 deposit check on the Petrillo Contract indicating that he would have to wire me the funds to my attorney trust account, if, and when, the Contract was reinstated. I do know if there were funds in his out of state bank account or not, but he insisted on the checks being returned. Negotiations

## NISH & NISH

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continued through April 25, 2013 when attorney review was finally complete and the Contract was reinstated. Mr. Chacko indicated that he wished to wire the deposit and all funds necessary to complete the transaction at the same time. On May 2, 2013, I emailed him indicating that the estimated amount required for closing was \$2,565,000.00. We provided him with our wiring instructions.

On May 4, 2013, the Sellers' attorney's paralegal advised that she knew that the deposit had not been paid. We wrote to her on May 6, 2013 indicating that we expected the full amount of the purchase price to be wired on May 9, 2013. On May 10, 2013, we inquired of the client about the deposit and proceeds and Mr. Chacko responded that his wife was in an acute medical situation and that he needed to go to Manhattan to sign some papers in order to transfer the money. He authorized that email to be forwarded to Mr. Wasser's paralegal, which it was on May 10, 2013.

On May 15, 2013, the Sellers' attorney made Time of the Essence for closing. In the interim, Mr. Chacko had waived the home inspection. Mr. Chacko informed us by email that he intended to conclude the purchase even though his wife's condition was grave. He was advised of the consequences of being declared in default of the Contract with regard to possible damage claims from the Sellers as well as from the realtors. As a courtesy, and upon Mr. Wasser's request, I did not require that he or his clients appear at the closing on May 30, 2013.

On or about June 10, 2013 Mr. Chacko informed me by email that he had had a lengthy conversation with the Seller, Mr. Petrillo, and that a June 28, 2013 closing date was possible.

On August 13, 2013, Mr. Wasser confirmed that the parties had spoken directly and that they would be relisting the property for sale. Subsequently Mr. Wasser indicated that the respective clients had been talking of a possible August 28, 2013 closing to be rescheduled. On August 26, 2013, upon Mr. Chacko's email to Mr. Wasser regarding his spouse's critical situation and the hospitalization of his daughter with labor. He again agreed to wire the entire purchase price and offered to allow a significant portion of it to be given to Mr. Petrillo pending closing. He even agreed to make a significant additional payment at closing of \$15,000 regarding ongoing taxes paid by the Petrillos.

We prepared and filed a Notice of Settlement in anticipation of a closing in August. I had repeated follow up calls from Michael Bisk regarding the status of reinstating the Contract. Mr. Chacko's wife died in July of 2013. Mr. Chacko wrote in January of 2014 that there were some serious estate issues regarding his wife's death and estate but that when he returned to the U.S. from India, he would transfer the money. As late as March of 2014 he was indicating that he would still be transferring the money and wanted to close. Subsequently, he apparently disappeared.

## NISH & NISH

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It is easy to understand the frustration of everyone involved in this transaction, including the inability to collect any money judgment against Mr. Chacko, either for the loss on sale, broker's commission or our legal fees. At the time, however, that Mr. Chacko demanded the return of his deposit checks, there was no Contract. And in the span of 20 days, the Sellers and Sellers' attorney were aware that there was a potential breach of Contract which resulted in the Time of the Essence letter being sent on May 15, 2013. Our firm handled over 300 closings in 2014, the majority of which involved our corporate relocation clients for whom we hold Contract deposits when representing Sellers. Occasionally, for one reason or another, checks deposited by prospective Buyers are not paid and in most instances are rejected for some technical reason and are replaced by bank checks or wired funds. I had absolutely no reason to suspect that Mr. Chacko would not make good on his deposit.

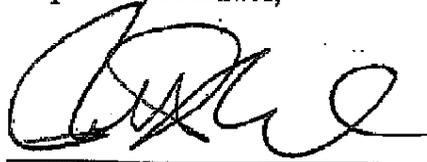
As Mr. Wasser surely knows (he was not the attorney who called me) and after many years of working together, had a deposit been received it would not have been released if objected to by any Sellers' attorney except to deposit same with the Court.

As I have participated in over ten thousand closings in the past 30 years and have not experienced anything like this, I do not believe that I have committed any ethical violation. I do, however, regret that I had a client who apparently duped everyone.

Please let me know if you need any additional information and when you would like to review our file.

Thank you.

Respectfully submitted,



By:

Robert J. Nish

RJN/nkn

## NISH & NISH

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ROBERT J. NISH  
NOËLLE K. NISH

May 4, 2015

### VIA EMAIL AND REGULAR MAIL

William C. Mack, Esq.  
Law Office of William C. Mack  
5 Bowling Green Parkway, A102  
Lake Hopatcong, NJ 07849

*Re: John & Jane Petrillo v. Robert J. Nish, Esq.  
Docket No. XA-2015-0010E*

Dear Mr. Mack:

This acknowledges receipt of the Petrillos' letter of April 21, 2015. While I greatly appreciate the Petrillos' frustration with Mr. Chacko and their inability to collect any money damages from him, I respectfully disagree with their assessment of what transpired. As previously offered, my file is available for your review and discussion with me. I have practiced law for 40 years and have been on the bench for 16 years without a single ethical violation. I have known Mr. Wasser, who confided in me that the Petrillos were personal friends of his, and have done business with him for many years. I certainly did not do anything to mislead him or his clients in any way.

Unfortunately, after the Contract was disapproved and after Mr. Chacko directed the action that occurred, I should have simply amended the attorney review letter to reflect a \$100,000.00 down payment within ten (10) days of completion of attorney review. The original letter should/could have been completely redrafted but the focus was on the modifications and the deposit issue was simply overlooked and not intentional. As is customary, that initial deposit would not have been made in any event until attorney review was complete and the Contract reinstated. The most likely outcome would have been a default by Mr. Chacko

To be clear, there was no obfuscation or attempt to deceive Mr. Wasser or his client because, as noted previously, we were expecting first the \$100,000.00 wire and then the full closing proceeds plus closing costs to be wired. This transaction was effectively terminated within 20 days of the end of attorney review and it is unfortunate that the Petrillos were not able to remarket and sell the property quickly.

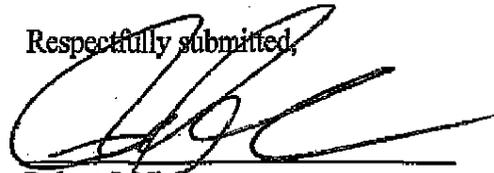
**NISH & NISH**  
ATTORNEYS AT LAW

William C. Mack, Esq.  
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Please let me know when we can meet to bring this matter to its proper conclusion. I will address the balance of the Petrillos comments at that time. Thank you.

Respectfully submitted,

By:



Robert J. Nish

RJN/dw