

Richard I. Miller, Presenter
Mandelbaum Salsburg PC
3 Becker Farm Road
Roseland, New Jersey 07068
(973) 736-4600

DISTRICT XI ETHICS COMMITTEE, :
:
Complaint :
v. :
WILLIAM J. RUSH, ESQ., :
Respondent :

SUPREME COURT OF NEW JERSEY
District XI Ethics Committee
Docket No. XI-2015-0006E

Disciplinary Action
COMPLAINT

OFFICE OF
ATTORNEY GENERAL

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RECEIVED

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

GENERAL ALLEGATIONS

1. William J. Rush, Esq. (Respondent) was admitted to the Bar of this State in 2002.
2. Respondent maintains law offices at 145 Route 46 West, Ste. 304, Wayne, New Jersey 07470.
3. In 2004, Grievant entered into a business relationship with Andrew D'Alessio ("D'Alessio"), Bruce Berberian ("Berberian") and Louis A. Capazzi, Jr. ("Capazzi") for the purpose of purchasing, improving and selling real estate properties. D'Alessio died in 2006. Berberian became ill and withdrew from the project. Grievant and Capazzi were left as the remaining partners in the real estate business known as Durie Properties.
4. In or around 2005, Respondent was asked by Capazzi to represent Durie Properties for real estate transactions involving properties purportedly owned by Durie Properties.
5. Respondent did not enter into a retainer or any type of legal service agreement with Durie Properties or any duly appointed representative of Durie Properties.

6. Respondent's first contact with Grievant was in April 2007 when Capazzi asked Respondent to represent Grievant in a lawsuit involving a real estate transaction. Respondent appeared with Grievant at a deposition on April 27, 2007. Respondent only met Grievant on one other occasion aside from the deposition.

7. Grievant is married to Virginia ("Virginia"). Respondent never met or communicated with Virginia.

8. Prior to representing Durie Properties, Respondent personally represented Capazzi, as well as East Coast Title Company, for whom Capazzi was a principal.

9. Respondent was never appointed Agent for Grievant or Virginia under a Power of Attorney or other document. Respondent was never shown, nor was he aware of, any documentation that authorized Capazzi to act on behalf of Grievant and Virginia in any capacity.

10. Respondent handled a number of real estate transactions on behalf of Durie Properties, including sales and refinances.

11. Capazzi was Respondent's sole contact on behalf of Durie Properties and all instructions and communications related to the real estate transactions were from Capazzi.

12. The pattern for the subject real estate transactions is as follows: When a contract or refinance was presented to Respondent, the owner/seller of the property would be listed as Durie Properties.

13. When the title report was ordered, Respondent discovered that the title owners would be in the individual names of Respondent, Virginia, Ann Capazzi (Louis Capazzi's wife) or a combination thereof.

14. Respondent would thereafter amend the contracts and refinance papers to reflect the true title owner(s) rather than Durie Properties. Respondent would then prepare the necessary closing documents on behalf of the individual title owner(s) despite having no communications or contact with said persons.

15. Durie Properties was not listed as the title owner of any property for which Respondent acted as closing attorney.

16. Respondent did not attend any of the closings for the subject real estate transactions; nor did he communicate or interact with Grievant or Virginia with regard to any of the real estate transactions.

17. Respondent utilized the services of an "independent notary"/messenger service to have the closing documents executed and delivered to the closing. Respondent never independently verified the signature of Grievant or Virginia on any of the closing documents, nor did Respondent confirm that the notary/messenger actually met with Grievant or Virginia.

18. Respondent had no personal knowledge whether Grievant or Virginia actually saw or signed the documents.

19. Acting exclusively on verbal instructions from Capazzi, Respondent prepared documents for the sale or refinance of properties for which Grievant and/or Virginia were the title owners.

20. The proceeds from the subject real estate transactions were payable to Grievant and/or Virginia, who were listed as payees on one more checks.

21. Despite being the named payees, Respondent did not deliver the proceeds to Grievant or Virginia. Instead, Respondent forwarded or caused the proceeds from the subject real estate transactions to be delivered to Capazzi. Respondent sent the bank instruments to Capazzi without prior consultation with, or notification to, the Grievant or Virginia.

Sale of 62 Columbus Road, Demarest, NJ

22. Prior to its sale on March 30, 2007, Virginia was the title owner of the property. The original contract of sale listed the seller as Durie Properties.

23. Prior to the closing, Respondent prepared, reviewed and executed an amendment to the contract of sale naming Virginia as the seller. Respondent reviewed and approved the HUD-1 Settlement Agreement that listed Virginia as the seller. The HUD-1 was signed by Aknit Duggal (the independent notary) as a seller on behalf of Respondent.

24. Prior to the closing, Respondent and his staff prepared a Deed dated March 30, 2007 that transferred title to the property from Virginia to third-party buyers.

25. Respondent had no discussions or communications with Virginia concerning the sale of the property or any relevant documents. Respondent did not obtain authorization from Virginia regarding the sale of the property.

26. Included in the seller's closing papers was a document entitled "Closing Authorization" which authorized the sale of the property as well as the release of the proceeds to Rush's representative. The Closing Authorization dated March 30, 2017 was prepared by Respondent's firm on Respondent's letterhead. This document was required by the title company to close. A signature bearing Virginia's name appears on this document. Respondent did not witness the signature, nor did he discuss this document with Virginia.

27. Respondent did not attend the closing. Respondent entrusted the closing documents to Mr. Duggal. Respondent did not witness Virginia sign any of the closing documents nor did he have any communications with Virginia regarding the closing.

28. A check for the net proceeds of sale was made payable to Virginia in the amount of \$608,840.40.

29. Respondent did not disburse the proceeds to Virginia nor did he have any communications with her regarding the receipt or disposition of the proceeds.

30. After closing, Respondent received a check in the amount of \$3,500.00 payable to Virginia for the release of escrow funds.

31. Respondent did not disburse the proceeds to Virginia nor did he have any communications with her regarding the receipt or disposition of the proceeds. The net proceeds from sale along with the escrow money were delivered to Capazzi by Respondent. A copy of the documents related to this real estate transaction is annexed as **Exhibit "A"**.

Refinancing and Sale of 67 Highland Avenue, Demarest, NJ

32. Virginia was the title holder of the property. On August 22, 2006, a Deed was prepared by Respondent conveying title from Virginia, individually, to Grievant and Virginia for the purpose of obtaining financing.

33. The property was refinanced with Wachovia Bank and settlement proceeds in the amount of \$251,875.00 were realized.

34. Respondent did not provide Grievant or Virginia with the HUD-1, escrow statement, ledger or any other document demonstrating where or how the financing proceeds payable to Virginia were disbursed. Respondent had no communications with the Grievant or Virginia about the refinance or disbursement of the proceeds.

35. The proceeds were disbursed by Respondent to Capazzi without written authorization or consent by Grievant or Virginia.

36. Prior to the sale of the property in July 2007, Grievant and Virginia were the title owners of the property. The original contract of sale named Durie Properties as the seller.

37. On or about February 9, 2007, Respondent drafted an addendum to the contract of sale that removed Durie Properties as seller and added Grievant and Virginia as sellers.

38. Respondent did not correspond, communicate or in any manner discuss the sale of the property with Grievant or Virginia. Grievant and Virginia were listed as sellers on the HUD-1 dated July 20, 2007.

39. Respondent did not attend the closing for the property. Respondent entrusted the closing documents to an independent notary to obtain the signatures of Grievant and Virginia and bring the documents to the closing. Respondent did not witness Grievant or Virginia sign the closing documents nor did he have any communications with Grievant or Virginia regarding the closing.

40. The alleged signature of Virginia on the HUD-1 for the sale of this property is completely different in form and style than the alleged signature of Virginia in connection with the sale of 62 Columbus Road, Demarest. The signatures do not remotely resemble one another, which would be noticeable even with a cursory review.

41. A check for the net proceeds of sale was made payable to Grievant and Virginia in the amount of \$250,156.10. Respondent also was issued a check payable to Grievant and Virginia in the amount of \$130,000.00 for the deposit monies.

42. Respondent did not disburse the proceeds to Grievant or Virginia nor did Respondent have any discussion with them regarding the closing or the disbursement of funds.

43. The proceeds from the sale were delivered to Capazzi by Respondent. A copy of the documents related to these real estate transactions is annexed as **Exhibit "B"**.

Refinance and Sale of 89 Columbus Avenue, Closter, NJ

44. Grievant and Virginia were title owners of the property which was refinanced on July 24, 2006. Respondent prepared the HUD-1. Respondent did not have any discussions with the Grievant or Virginia regarding the refinance of the property.

45. The settlement proceeds from the refinance totaled \$541,315.00. Without any prior discussion with the Grievant or Virginia, Respondent disbursed the funds to Capazzi.

46. From the closing proceeds, Respondent received the sum of \$1,900 for attorney's fees for work done by Respondent directly for Capazzi which was unrelated to the refinance of the property.

47. In or about February 2007, Respondent was entrusted with funds from the sale of the property in the amount of \$129,000.00 that was deposited into Respondent's trust account.

48. Without discussion with, or authorization from, Grievant or Virginia, Respondent disbursed the proceeds to Durie Properties – care of Capazzi. A copy of the documents related to these real estate transactions is annexed as **Exhibit "C"**.

Sale of 666 Closter Dock Road, Closter, NJ

49. Grievant was the title owner of the property, which was sold to Ann Capazzi on February 28, 2007 for the sum of \$915,000.00. Respondent prepared a deed dated February 28, 2007 conveying the property from Grievant to Ann.

50. By letter dated March 12, 2007, Respondent forwarded the sum of \$217,823.65 to Capazzi at East Coast Title Company representing the proceeds from the sale of the property as well as \$3,948.05 for title insurance.

51. Respondent's transaction ledger indicates the \$217,823.65 was payable to Durie Properties.

52. Respondent was not copied on the transmittal letter. The transaction ledger lists Ann Capazzi as the client.

53. Respondent did not have any discussion with Grievant regarding the closing or the disbursement of funds. A copy of the documents related to this real estate transaction is annexed as **Exhibit "D"**.

FIRST COUNT
RPC 1.2 – Fraudulent Conduct

54. Respondent treated Durie Properties as owner of the property for the purpose of the subject real estate transactions despite having knowledge and documentation that Grievant and/or Virginia were actual title owners.

55. Respondent, in fact, represented Grievant and/or Virginia in the real estate transactions as title owners to the real estate, but had no communications with them.

56. Respondent had no written authorization or other documentation suggesting that Grievant and/or Virginia knew about or consented to the transactions and exercised no due diligence to verify the arrangement.

57. To the extent Respondent believed Durie Properties was the constructive owner of the properties, the transactions that listed Grievant and/or Virginia (or Ann Capazzi) misrepresented the situation and disregarded the ramifications and consequences to the parties involved in the transaction.

58. A cursory review of the signatures on the closing documents should have raised suspicion regarding the authenticity of the signatures.

59. Based on the foregoing, Respondent violated RPC 1.2 by clear and convincing evidence.

SECOND COUNT
RPC 1.4 – Failure to Communicate

60. Respondent represented Grievant and Virginia, individually, with regard to the real estate transactions as they were listed as title owners on the closing documents.

61. Respondent had no communication with Grievant or Virginia as to any aspect of the transactions.

62. Based on the foregoing, Respondent violated RPC 1.4 by clear and convincing evidence.

THIRD COUNT
RPC 1.5 – No Fee Agreement

63. Respondent did not have a written legal service agreement with any entity or individual associated with the subject real estate transactions.

64. Respondent had no documentation identifying who Respondent represents or the fee arrangement for the legal services provided.

65. Based on the foregoing, Respondent violated RPC 1.5 by clear and convincing evidence.

FOURTH COUNT
RPC 1.7 – Conflict of Interest

66. Respondent represented Capazzi and East Coast Title prior to or concurrent with Durie Properties.

67. Respondent represented Grievant and Virginia, individually, with regard to the real estate transactions as they were listed as title owners on the closing documents.

68. Respondent had no communications with Grievant or Virginia regarding the transactions or the disbursement of the proceeds.

69. Respondent exercised no due diligence to determine if Respondent and/or Virginia had knowledge of the transactions.

70. Listing Grievant and/or Virginia as the sellers of the subject property had tax and legal ramifications to them for which they did not receive legal advice.

71. Directing the sale proceeds to Capazzi or Durie Properties promoted the interests of Capazzi and Durie Properties over Grievant and/or Virginia.

72. Respondent was never appointed Agent for Grievant or Virginia under a Power of Attorney or other document.

73. Respondent had no written authorization or other documentation suggesting that Grievant and/or Virginia knew about or consented to the transactions and exercised no due diligence to verify the arrangement.

74. Based on the foregoing, Respondent violated RPC 1.7 by clear and convincing evidence.

FIFTH COUNT
RPC 1.13 – Organization as Client

75. Respondent's representation of Durie Properties is separate and distinct from the representation of Grievant as a member of the organization.

76. Respondent provided legal services and acted on behalf of Grievant and Durie Properties concurrently.

77. Grievant and Durie Properties had separate and conflicting interests in the subject transactions for which Respondent provided legal services.

78. Based on the foregoing, Respondent violated RPC 1.13 by clear and convincing evidence.

SIXTH COUNT
RPC 1.15 – Failure to Safe Keep Property

79. The proceeds from the refinances and sales of the subject properties were made payable to Grievant and/or Virginia.

80. Respondent did not notify Grievant or Virginia of the receipt of these funds.

81. Respondent did not deliver the funds to the payees listed on the check.

82. Respondent delivered the funds to Capazzi and/or Durie Properties without any documentation that Grievant or Virginia authorized the disbursements.

83. Based on the foregoing, Respondent violated RPC 1.15 by clear and convincing evidence.

SEVENTH COUNT
RPC 4.3 – Dealing with Unrepresented Client

84. Respondent considered Durie Properties his client.

85. Respondent considered Grievant and Virginia nominees of Durie Properties.

86. Respondent was never appointed Agent for Grievant or Virginia under a Power of Attorney or other document.

87. Respondent had no written authorization or other documentation suggesting that Grievant and/or Virginia knew about or consented to the transactions and exercised no due diligence to verify the arrangement.

88. Based on the foregoing, Respondent knew or should have known that Grievant and/or Virginia were not represented in connection with the subject real estate transactions.

89. Notwithstanding the above, Respondent effectuated transactions in the name of Grievant and Virginia, individually, that had clear and significant legal ramifications and consequences to them.

90. Based on the foregoing, Respondent violated RPC 4.3 by clear and convincing evidence.

EIGHTH COUNT
RPC 8.4 - Misconduct

91. Respondent treated Durie Properties as owner of the property for the purpose of the subject real estate transactions despite having knowledge and documentation that Grievant and/or Virginia were actual title owners.

92. Respondent, in fact, represented Grievant and/or Virginia in the real estate transactions as title owners to the real estate, but had no communications with them.

93. Respondent had no written authorization or other documentation suggesting that Grievant and/or Virginia knew about or consented to the transactions and exercised no due diligence to verify the arrangement.

94. To the extent Respondent believed Durie Properties was the constructive owner of the properties, the transactions that listed Grievant and/or Virginia (or Ann Capazzi) misrepresented the situation and disregarded the ramifications and consequences to the parties involved in the transaction.

95. A cursory review of the signatures on the closing documents should have raised suspicion regarding the authenticity of the signatures. The proceeds from the refinances and sales of the subject properties were made payable to Grievant and/or Virginia.

96. Respondent did not notify Grievant or Virginia of the receipt of the funds from the subject real estate transactions.

97. Respondent did not deliver the funds to the payees listed on the check.

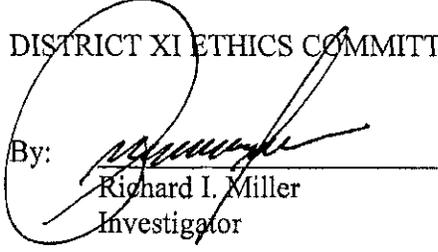
98. Respondent delivered the funds to Capazzi and/or Durie Properties without any documentation that Grievant or Virginia authorized the disbursements.

99. Based on the foregoing, Respondent violated RPC 8.4 by clear and convincing evidence.

WHEREFORE, Respondent should be disciplined.

DISTRICT XI ETHICS COMMITTEE

By:


Richard I. Miller
Investigator

DATED: October 22, 2015