

IN THE MATTER OF
DISTRICT XIII ETHICS COMMITTEE

v.

BRUCE E. BALDINGER, ESQ.
(RESPONDENT)

**HEARING REPORT
RECOMMENDING SUSPENSION**

TO: THE HONORABLE CHAIR AND THE MEMBERS OF THE DISCIPLINARY
REVIEW BOARD

The District XIII Ethics Committee Hearing Panel respectfully shows:

I. PROCEDURAL HISTORY

1. Respondent was admitted as a member of the Bar of New Jersey in 1984 and is engaged in the practice of law at 991 US Highway 22, West, Suite 102, in the Town of Bridgewater, County of Somerset, State of New Jersey.
2. In June 2006, a formal complaint, (Exhibit C-1) was filed with the District Ethics Committee and was served upon the respondent.
3. Respondent's answer thereto was filed and marked into evidence as Exhibit C-2).
4. Prior to the a formal hearing, counsel for the respondent filed a motion to dismiss (Exhibit C-3) which was responded to by the presenter (Exhibit C-4) and that response was responded to by counsel for the respondent (Exhibit C-5). The hearing chair denied this motion to dismiss orally at prior to the beginning of the formal hearing.
5. A formal hearing was held before this hearing panel consisting of Stephen D. Williams, Chair and Jeralyn Lawrence and George Sopko over several days December 12

and 13th and January 26th and 30th. Subsequent to the dates of testimony the he presenter submitted additional testimony of respondent via deposition submissions and both counsel submitted post hearing submissions to the hearing panel. All dates of the hearing were attended by the respondent, Bruce E. Baldinger with his counsel, first Alain Leibman, Esq. and then by Paul F. Claussen who substituted in as counsel for the respondent during the hearing. The Committee was represented by the presenter, Nancy McDonald, Esq. All exhibits are herewith submitted with this hearing report.

II. SYNOPSIS OF ALLEGATIONS

6. The formal complaint filed charges the respondent with the following allegations of unethical conduct.

A. Violated RPC 1.7 Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

B. RPC 1.8 Conflict of Interest: Current Clients: Specific Rules

(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 a manner that can be understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the

transaction.

The allegations against the respondent were that he violated RPC 1.7 by being involved in a conflict of interest with his clients by having a personal interest in the transaction. Further that he violated RPC 1.8 (a)(1), RPC 1.8 (a)(2) and RPC 1.8 (a)(3) as set forth above.

III. FINDINGS OF FACT AND CONCLUSIONS

7. The Hearing Panel having heard four (4) days of testimony and having reviewed the evidence admitted at the hearing and the post hearing submissions of counsel finds as follows:

The Respondent, Bruce E. Baldinger was and is engaged in the practice of law in Somerset County with the firm of Baldinger & Levine since the early 1990's. While in practice he had the opportunity to represent the grievants, Charles Smith and Michael Bassillo in a number of matters over a period of several years. As a result of this representation, parties became friends as well as having an attorney-client relationship.

The relationship between Baldinger and Smith spanned some sixteen (16) years at the time the grievance was filed. It included Baldinger representing Smith in numerous matters and Smith performing computer work for Baldinger. In addition the parties developed a friendship that while not social led them to talk regularly on the telephone

Baldinger first got to know Bassillo through Smith who introduced them in approximately 2000 when Smith told Baldinger that he and Bassillo were going to try to work together in certain real estate transactions. After meeting Bassillo Baldinger represented him in several legal matters prior to the incident that gave rise to this grievance.

In late 2003 Baldinger's wife filed for divorce. He recalls that he called Smith and the two discussed the divorce and the need Baldinger would have to find a new home as his wife wanted him out of the marital home. The two then began discussing ways that Smith and Bassillo could help out Baldinger and they discussed the possibility of Bassillo

and Smith buying something for Baldinger and renting it to him until such time that he could buy the property from them.

In January 2004 Baldinger found a home located at 8 Mosle Road in Peapack that he liked and telephoned Smith to tell him. Shortly thereafter Smith and Baldinger looked at the property together with an eye that it would be purchased for Baldinger. Thereafter Smith got Bassillo involved and it was decided that they would purchase the home make improvements to the home on behalf of Baldinger then sell it to him when he was ready to purchase it. In the interim, Baldinger would make the monthly payments on the property and pay all carrying costs. The parties also discussed the possibility of subdividing the property with the profits from the sale of the subdivided lot to be divided between Baldinger, Smith and Bassillo.

The parties negotiated a purchase price of \$400,000 with the prior owner of the property.

Due to Smith's prior financial history it was decided between them that Bassillo would actually purchase the property and that Baldinger would do the legal work needed to buy the property. The grievants' testified that it was agreed that Baldinger would pay all closing costs regarding the purchase of the property however this was disputed by the respondent. On the day of the closing Smith and Bassillo were advised that Neil Guthrie, a per diem attorney who worked out of Baldinger's office would be handling the actual closing on their behalf. At the closing it was learned that an additional \$15,000 was needed for closing costs. Smith and Bassillo confronted Baldinger to pay the closing costs and he refused. Bassillo therefore had to borrow against his home equity line of credit on his personal home the \$15,000 to close on the property.

The grievants took possession of the property and immediately began to make the changes and improvements requested by Baldinger. As the property had previously been a two family home it required extensive alterations in addition, they were also renovating the property to fit the design requirements of Baldinger which included remodeling the second floor to include an oversized master suite with bath and a small second bathroom. The design called for no access into the upstairs bathroom from any room other than the master bedroom. On the first floor renovations included the removal of certain walls and the installation of a new kitchen and bathroom as well as the creation of another small

bedroom. In addition to the planned alterations, during the renovation process it was discovered that certain additional jobs were needed to bring the house up to code, this included the installation of new joists, the installation of fire stops and the need to replace much of the plumbing on the property.

The costs of these improvements were paid by the grievants with the understanding that they would be reimbursed by Baldinger.

Shortly after closing title, Baldinger did move into the property and began living there. He lived there until the Township Zoning Official found violations and revoked the Certificate of Occupancy and made him move out. Baldinger did make the first three payments on the mortgage but ceased shortly after having to vacate the property.

The grievants continued to work on the property with the belief and understanding that Baldinger would be purchasing the property until they had a meeting on or about July 22 or 23rd when Baldinger first advised the grievants that he no longer planned to buy the house from them and that he had found someplace else.

There was a dispute between the parties as to what occurred in that meeting. Baldinger stated that the grievants demanded a total of \$600,000.00 to purchase the property from them and they knew all along that he could not afford that amount while the grievants stated that Baldinger refused to purchase it at any price.

When Baldinger refused to purchase the property, the grievants were forced to borrow additional sums to keep the project afloat and then were forced to list it for sale. Unfortunately they were unable to sell the property and it ultimately was foreclosed on by the bank. One of the reasons it was unable to sell was the room set up of the second floor which was built to Baldinger's specifications. The realtor's testified that the fact that there was no independent bathroom on the second floor that could be used for the second bedroom there was a design hindrance to the sale of the property.

After Baldinger refused to purchase the 8 Mosle Road property he entered into an agreement with a Chris Wade, another one of his clients, to rent a property located at 19 Rogers Road in Chester under a 10 year option to purchase which he negotiated with Mr. Wade, who apparently was not represented in that transaction. It should be noted that the purchase price for that property by Baldinger will be in excess of the \$600,000 he stated he could not afford to pay the grievants.

Baldinger admitted that he had entered into this business deal with Smith and Basillo and he further admitted that it was never reduced to writing. At no time did Baldinger advise Smith and Basillo that they should have obtained independent legal counsel and the Committee finds that in no way was Neil Guthrie the grievants' attorney in this matter. He acted solely on behalf of Baldinger in this transaction and was there at Baldinger's direction not Smith and Basillo.

IV. DETERMINATION

8. The panel has carefully considered and reviewed the testimony and evidence and has concluded that respondent's conduct constituted unethical conduct in that he represented the grievants in the above referenced transaction when he had a personal interest in the transaction creating a conflict of interest in violation of RPC 1.7(a)(2). In addition, he entered into a business transaction with the grievants and the transactions was never reduced to writing, nor were the grievants given the opportunity or encouraged to seek independent representation in the transaction. Finally there was no informed consent in writing between Baldinger, Smith and Bassillo outlining the essential terms of the transaction in violation of RPC 1.8(a)(1) and (2) and (3).

9. In addition, while it was not before the Committee Hearing Panel, it believes that the respondent violated many of the same RPC provisions in his dealing with his client, Chris Wade in the transaction to secure his current home and recommends an investigation be undertaken to determine if unethical conduct did in fact take place by the respondent in that transaction. In that transaction, Baldinger signed a ten (10) year lease on a residence with an option to purchase the home from Wade for \$610,000.00.

10. As a result of the above, the panel recommends that the respondent, Bruce Baldinger be suspended from the practice of law.

DISTRICT XIII ETHICS COMMITTEE

By: 
Hearing Panel Chair

Date: May 22, 2007