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DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

Filed March 21, 2011

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

PAUL LESLIE SHELTON,

Attorney-Respondent,

Commission No. 09 CH 58

No. 6191197

REPORT AND RECOMMENDATION OF THE HEARING BOARD

INTRODUCTION

The hearing in this matter was held on September 14, 2010 at the offices of the Attorney Registration and Disciplinary Commission ("ARDC") before a hearing panel consisting of Terrence M. Burns, Chair, Mark D. Manetti and Robert A. Wilson. Tracy Kepler represented the Administrator of the Attorney Registration and Disciplinary Commission. Respondent Paul Leslie Shelton appeared and was represented by Warren Lupel.

PLEADINGS

On August 7, 2009 the Administrator filed a one-count Complaint against Respondent alleging that in the course of representing his clients William and Rose Stout in a real estate transaction, he overreached the attorney-client relationship, breached his fiduciary duties, failed to adequately explain the matter to his clients and engaged in a conflict of interest.

Respondent admitted some of the factual allegations, including his representation of the Stouts, denied others, and denied engaging in any professional misconduct.

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THE EVIDENCE

The Administrator called Respondent as a witness, presented the testimony of another witness by deposition and offered twenty-five exhibits, which were admitted into evidence. Respondent testified on his own behalf, called two other witnesses and presented nine exhibits, which were admitted into evidence. The parties also presented a Joint Stipulation of Facts.

The evidence presented at hearing, along with the admitted allegations and joint stipulation, established the following facts.

Undisputed Facts

In and prior to 2005, William and Rose Stout owned and resided on property located at 3114 Rush Creek Road in Stockton,

Illinois, Jo Daviess County (the "Jo Daviess property"). The Stouts attempted to sell the Jo Daviess property and listed it with several brokers, but were unsuccessful in selling it. (Jt. Stip. pars. 6, 8).

On or about May 23, 2005, the Stouts entered into a lease, with an option to buy, property located at 1275 Chadbourne, Lake Summerset, Illinois in Winnebago County (the "Winnebago property"). The owner of the property was Barbara Derrickson. At the time the Stouts leased the property, they were required to pay rent of $1,000.00 per month as well as annual real estate taxes of approximately $5,000.00. (Jt. Stip. pars. 1-3; Adm. Ex. 1).

The Stouts wanted to purchase the Winnebago property, but did not have sufficient funds in 2005 nor did they have enough for the customary 20% down payment. The Stouts also had a poor credit score as well as inadequate income to support a mortgage. As a result, they sought one hundred percent financing. (Jt. Stip. pars. 3-5).

The Stouts met Elizabeth Karwowski-Amato ("Amato") through Derrickson and attempted to interest Amato in the Jo Daviess property. On or about September 14, 2005, Amato

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and Respondent discussed an offer to purchase the Jo Daviess property from the Stouts for $959,000.00, which price was based on an appraisal the Stouts had obtained. On that date they signed a contract for purchase of the property. (Jt. Stip. pars. 12, 14; Adm. Ex. 2).

In November 2005, Respondent and Amato became business partners. Amato mentioned Sam Fakhouri to the Stouts as a potential lender for the purpose of the investment the Stouts were seeking. Amato knew of Sam Fakhouri because he was the owner of the building in which Trust One Mortgage Company rented its office in Homewood, Illinois. (Jt. Stip. pars. 13, 15, 16).

At some point in late March 2006, William Stout, Fakhouri and Respondent met at Respondent's law office to discuss the terms of a mortgage and note. At that time, Respondent drafted a mortgage and demand note evidencing a loan transaction between Fakhouri and the Stouts, which reflected the parties' agreement to the following terms: a mortgage loan from Fakhouri to the Stouts in the amount of $345,000.00, due on October 25, 2006, and a demand note which reflected the Stouts' obligation to pay Fakhouri $345,000.00 in six months, with a possible extension for an additional six months. (Jt. Stip. par. 17; Adm. Exs. 3, 4).

At the direction of the parties, Respondent also drafted an agreement between Fakhouri and the Stouts setting forth additional terms and conditions of the loan agreement. Pursuant to the agreement, the Stouts were required to "take every step possible to procure a refinancing loan on Rush Creek (Jo Daviess) and a refinance loan on Chadbourne (Winnebago) in order to pay off the loan from Fakhouri within the six month expiration date of the mortgage and Demand Note." Their agreement also required them to use the services of Trust One to procure a refinancing loan with which to satisfy their obligation to Fakhouri and pay no less than a 3% mortgage broker's fee to Trust One to obtain the refinancing. The Stouts further agreed to pay $650.00 to

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Respondent as his fee for representing the Stouts at the closing on the Winnebago property, and $3,500.00 to Respondent, through his law group, for his services in drafting and negotiating the mortgage, procuring the investor to provide the loan, drafting the demand note and agreement between Fakhouri and the Stouts and closing of the refinancing. (Jt. Stip. par. 18; Adm. Ex. 5).

The Stouts chose not to attend the closing on the Winnebago property, which took place on April 26, 2006. At their direction, Respondent executed the closing documents on their behalf pursuant to a previously executed Power of Attorney drafted by Respondent. A distribution statement prepared by the title company shows more than $15,000.00 was paid to the Stouts in cash at the closing and they received the Winnebago property free and clear of any liens. Prior to the closing, the Winnebago property was in foreclosure and had two mortgages on it. (Jt. Stip. pars. 20, 21; Adm. Exs. 7, 8).

Respondent received $2,500.00 of the $4,150.00 fee promised to him and his law group. Trust One never sought nor received any sum of money for any purpose from the Stouts or any other party related to any properties owned or leased by the Stouts. (Jt. Stip. pars. 18, 19).

Respondent

Respondent was married in 1984 and has three children from that marriage. After his marriage ended in 2003, he remarried in 2005 to a woman, who has two children. He contributes to the support of his three children and provides the sole support for his two stepchildren. (Tr. 155-56).

Respondent graduated from law school and was licensed to practice law in 1985. From 1987 to 1997, he maintained a partnership with Joseph **Younes** focusing on personal injury work. He then became a sole practitioner and practiced under the name Paul L. Shelton and Associates until 2004, when he changed the name to Shelton Law Group LLC. Beginning in July 2005, he

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operated his practice at 1010 Jorie Boulevard, Suite 144 in Oak Brook. As a sole practitioner, he has concentrated on foreclosure litigation and has also handled numerous real estate closings. (Tr. 36, 39-40, 156-60).

Respondent operated a business with his wife from 1997 to 2002. In 1999, he began investing in real estate and has been involved in approximately twenty-five purchases or sales of properties, either as an investor or on a personal basis. Respondent is a licensed real estate broker, a licensed mortgage broker and a member of the National Association of Realtors. He is also an authorized title agent with several title companies. (Tr. 37-39, 70, 160-61, 207-08).

In 2004, Respondent became acquainted with Elizabeth Amato and her company, Trust One Mortgage Corporation. Respondent received title orders from Trust One and also handled a few real estate closings for Trust One customers. In July 2005, Amato moved her office next to Respondent's office on Jorie Boulevard, where their suites were connected by a conference room. (Tr. 42, 166-71).

Respondent testified Amato was acquainted with Barbara Derrickson, a realtor and real estate investor, who leased property in Winnebago County to Rose and William Stout. The Stouts owned two adjoining parcels of property in Jo Daviess County: a twelve-acre parcel, which at one time had been used for an upscale bed and breakfast operation, and a thirty-seven-acre parcel that was farmland. Derrickson asked Amato to look at the Stouts' Jo Daviess property because Derrickson believed the property was a great deal for Amato to present to one of her investors. At Amato's request, Respondent accompanied Amato on a tour of the property. (Tr. 44-47, 172-74, 191).

Respondent was present when Stout, Derrickson and Amato discussed a purchase price for the Stouts' property and the need for a quick sale. Derrickson advised Respondent and

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Amato privately the property could be sold for $800,000.00 or less and the buyer would be getting a great deal. When Respondent left the property, no preliminary understanding or agreement relative to the purchase of the property had been reached. (Tr. 174-75).

With respect to a contract for the purchase of the Jo Daviess property for $959,000.00, dated September 14, 2005 and signed by Respondent and Amato, Respondent stated he did not believe the price was $959,000.00 at the time Amato showed the contract to him. He recalled the price being $400,000.00, but has no knowledge as to who made the change. Respondent stated he and Amato never provided any earnest money, nor did he recall inserting a zoning contingency into the contract. Respondent does not know whether the contract was ever given to the Stouts. If the deal had gone through, they would have assigned the

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During the time the purchase contract was negotiated by Amato and Derrickson, Respondent had no ownership interest in Trust One. In November 2005, he became a fifty percent owner of the company. At that time, Amato ran the mortgage side of the

business and served as president, while Respondent served as vice-president and secretary, and assisted with marketing. Respondent received an annual salary of $25,000.00 per year from Trust One and in 2006, his law firm derived approximately fifty percent of its income from transactions involving Trust One. (Tr. 41-43, 168-69, 180).

Sometime in the spring of 2006, the Stouts were at the Trust One offices when Amato introduced Respondent to them as her partner and a lawyer. Respondent never told the Stouts

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anything regarding his affiliation with Trust One nor did he inform them of his percentage of ownership in Trust One. When asked if he just assumed the Stouts knew he and Amato were equal partners, Respondent answered "I not only assumed it, I know they knew." (Tr. 49-50, 86, 180).

Respondent testified several weeks later he met with the Stouts, Amato and Sam Fakhouri at the Trust One offices. Respondent knew Fakhouri as Amato's landlord at her other office. Respondent had no business relationship with Fakhouri, had never represented Fakhouri in a legal matter and Fakhouri never provided financing for any other deal with which Respondent was involved, either before or after the Stout matter. Amato asked Respondent to draft documents for the Stouts, who were going to be working with Trust One to obtain a loan from Fakhouri for the purchase of Derrickson's property in Winnebago County. The purchase price was $285,000.00 but the Stouts wanted $300,000.00 from Fakhouri to cover the closing expenses, which they believed could be between $5,000.00 and $10,000.00. (Tr. 48-49, 181-83, 192, 194).

Respondent recalled Fakhouri left the meeting after being introduced to the Stouts. Respondent then had a discussion with Amato, William Stout and possibly Rose Stout regarding the sales contract for the Winnebago property and the terms of the prospective loan, including the dollar amount and the timing for repayment. Respondent described Stout, who was a real estate broker and an insurance broker, as being very sophisticated, but not as sophisticated as Stout seemed to think he was. The Stouts wanted Respondent to represent them at the closing, and sometime prior to April 2006, he agreed to do so. (Tr. 49, 51, 184-85, 187).

Following the meeting, Respondent had a couple of conversations with William Stout regarding the logistics of executing documents and Respondent's handling of the Stouts'

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purchase of real estate. Stout wanted a broker's commission on the transaction, but when Respondent checked into that possibility, he discovered Stout was not current on his multiple listing service dues and therefore could not receive a broker's commission. (Tr. 188, 198-99; Resp. Ex. 2).

Respondent prepared a demand note, which provided in return for a loan from Fakhouri, the Stouts promised to repay Fakhouri $345,000.00. Respondent noted the loan to the Stouts was for $300,000.00 and the extra $45,000.00 was profit to Fakhouri. The demand note initially called for monthly payments, but was then changed to require payment in full by October 25, 2006. Respondent also prepared a mortgage on the Stouts' twelve-acre Jo Daviess property to secure the $345,000.00 debt. (Tr. 56-58; Adm. Exs. 3, 4).

On the same day he prepared the mortgage and note, Respondent drafted a document entitled "Agreement between Sam Fakhouri and William and Rose Stout." The terms of the agreement were negotiated by Respondent after speaking separately to each party. Respondent recalled Fakhouri, who was not represented by counsel, outlined his requirements for the terms and collateralization of the loan. The amount Fakhouri initially wanted for making the loan was reduced after Respondent spoke to the Stouts. In addition, while Fakhouri's original intent was to take a mortgage on the Winnebago property the Stouts were purchasing, following negotiations he subsequently took a mortgage on the Stouts' Jo Daviess property. Although Respondent believed the Stouts' farmland adjacent to the bed and breakfast property was part of the collateral, he was not aware the farmland had a separate property identification number and therefore, was not included in the title report. Respondent believed Fakhouri also viewed the farmland as part of the collateral. (Tr. 59-63, 69, 190-92; Adm. Ex. 5).

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Fakhouri's duties under the agreement included providing a certified check for the funds and allowing an extension of the loan upon thirty days written notice by the Stouts. If extended, the terms of the loan would be the same "except that the rate shall be thirty-five percent (35%) calculated on the outstanding principal and interest." Fakhouri further agreed not to take action to foreclose the mortgage, if an extension were allowed. (Tr. 66).

As for the Stouts, they agreed to take "every step possible" to procure a refinancing loan on their properties to pay off the loan from Fakhouri within the six-month expiration date and to "use the services of Trust One Mortgage Corporation to obtain the [refinancing] loan and [to] pay no less than a three percent (3%) mortgage broker's fee to obtain the loan." As to why the latter provision was included, Respondent testified he was directed to include it because Trust One had arranged the deal, deserved to be paid for it and the manner of payment would be through a commission when the Stouts refinanced one of their properties. According to Respondent, the provision was originally Fakhouri's idea, but the Stouts wanted to ensure Amato was paid and they agreed to the provision. The agreement makes no mention of Amato or her company, E & J Capital. As to the payment of fees to Respondent, the agreement provided the Stouts were to pay $650.00 to Respondent at the time of closing and $3,500.00 to his law group upon the Stouts' refinancing and/or payment of the loan. Respondent acknowledged the provision was confusing because it referenced a closing on the Rush Creek (Jo Daviess) property when, in fact, the Stouts were not closing on the Jo Daviess property at that time. (Tr. 64-69, 73, 199, 200-02; Adm. Ex. 5).

The agreement included a confidentiality clause which stated "the parties shall not disclose this agreement to anyone but the principals of Trust One, Paul Shelton and Elizabeth

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Amato, the Stouts, and Sam." Respondent had no idea why he included that clause. Prior to that time he had never brokered, arranged or negotiated a similar loan. (Tr. 69).

On April 25, 2006, Respondent met with William Stout at Respondent's office and they went through the loan documents. On the same day, Respondent met with Fakhouri, reviewed the loan documents with him and received his check for $300,000.00 payable to the title company. Fakhouri did not pay Respondent to prepare the documents. (Tr. 69, 189-90).

On April 26, 2006, Respondent represented the Stouts at the closing on the Winnebago County property. Respondent brought the check for $300,000.00 from Fakhouri with him to the closing. The Stouts chose not to attend the closing and had signed a limited power of attorney giving Respondent authority to act on their behalf. Respondent described the closing as unconventional in that it was a "short sale," where the property was in foreclosure and the purchase price was less than the amount owed to the lender. (Tr. 70-71, 192-94; Adm. Ex. 8).

Respondent recalled the closing took approximately four hours, during which time he negotiated the amount eventually accepted by the seller's lenders. The agreement reached at closing provided the Stouts had to come up with $285,722.00, which included $2,500.00 to be paid to E & J Capital and $2,500.00 to Respondent. The Stouts would receive a check for more than $14,000.00. Respondent acknowledged his fee of $2,500.00 was not specified in the agreement signed by the Stouts and he did not discuss that amount or the $2,500.00 paid to E & J Capital with the Stouts prior to the closing. Respondent testified he called the Stouts "at the closing" to let them know how the money was being divided and received their approval for his $2,500.00 attorney's fee and payment to Amato. On cross examination, he agreed he did not inform the Stouts of those specific amounts until after the deal was done. Respondent testified if the Stouts had paid the lenders the entire $300,000.00, he would not have received a fee and E &

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J Capital would not have received a commission. Respondent noted after his negotiations, the Stouts paid no more than the price set forth in their purchase contract. He recalled the Stouts were very happy to receive almost $15,000.00, because they had no expectation of receiving any money at the closing. (Tr. 72-73, 194-98, 203-04, 209; Adm. Ex. 1).

Respondent believed after the closing, the Stouts owned the Winnebago County property and the farmland in Jo Davies County free and clear of any liens. The only lien on their property was the mortgage on the twelve-acre bed and breakfast property in Jo Daviess County. (Tr. 203).

Other than forwarding copies of documents to the Stouts after the closing, Respondent had no further contact with them. He denied receiving a September 22, 2006 letter from the Stouts, directed to Fakhouri and him, requesting an extension of the loan from Fakhouri. The letter mentions the Stouts were working on financing from Trust One through Amato and Becky Cira, a Trust One employee, but Respondent was not aware of those efforts. Respondent stated the Stouts never negotiated or refinanced the loan from Fakhouri through Trust One and he never received the $3,500.00 mentioned in the agreement. Respondent's former partner, Joseph **Younes**, represented Fakhouri in a subsequent foreclosure action against the Stouts. (Tr. 68, 82-83, 85, 204; Adm. Ex. 11).

In November 2007, Respondent became sole owner of Trust One. (Tr. 43).

William Stout

William Stout testified, by deposition,[1] he completed two years of college in the 1980s and has been a licensed real estate broker for approximately thirty years. Although he is currently licensed, he no longer acts as a broker. For the past twenty-five years, Stout has worked primarily in insurance sales. (Stout Dep. 6).

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In 1991, Stout and his wife Rose purchased a twelve-acre parcel of property in Jo Daviess County and operated a bed and breakfast on that property. Approximately two years later, they purchased an additional thirty-five acres of farmland, which they still own. Stout testified the apartments on the twelve-acre parcel initially had separate addresses, but later, in order to simplify the mailing system, the entire forty-seven acres was given the same mailing address. He subsequently testified the twelve-acre parcel had a separate mailing address from the farmland. (Stout Dep. 8-10, 25, 46-47).

In 2005, the Stouts were attempting to downsize and wanted to move closer to their children. Around that time, Stout injured his back and could no longer handle the work for the bed and breakfast operation. Although they had no mortgage on the twelve-acre parcel, the real estate taxes were approximately $9,000.00 and Stout was making no more than $30,000.00 selling insurance part-time. In order to pay their bills, they mortgaged the thirty-five acres of farmland for $100,000.00 and withdrew money on an open line of credit. (Stout Dep. 16, 20, 23-31, 35).

Stout testified he and his wife found a home in Winnebago County for sale or lease and contacted the owner, Barbara Derrickson, who happened to be a real estate broker and investor. They did not have enough for a down payment to purchase the property and could not procure financing for the $277,000.00 purchase price. Although they had been trying to sell their Jo Daviess property, they never received a viable offer. Moreover, they could not obtain a mortgage because Stout's credit score and income were too low. At one point, they thought the Veteran's Administration would purchase the Jo Daviess property to house disabled and homeless veterans, but that offer never materialized. (Stout Dep. 17-22, 25, 29, 37).

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In May 2005, the Stouts signed a twelve-month lease for the Winnebago property with an option to buy the property in one year for $285,000.00. Pursuant to the lease, they were responsible for paying $1,000.00 per month in rent, plus real estate taxes, which were approximately $5,000.00. Stout testified they did not want to leave their Jo Daviess home vacant, so they traveled back and forth between the Jo Daviess home and the Winnebago County home, and lived in both places. (Stout Dep. 21, 34, 36).

The Stouts intended to purchase the Winnebago property and after signing the lease, began looking for money. Stout invited Derrickson to look at their Jo Daviess twelve-acre property. After Derrickson viewed the property, she brought Elizabeth Amato to look at it. Amato was impressed and thought she might know someone interested in purchasing the property. Stout recalled Respondent also visited the property. (Stout Dep. 35, 37, 40, 42, 48).

Stout identified a contract, possibly written by Derrickson, to sell the Jo Daviess property for more than $900,000.00 to Amato and Respondent. At the time Amato and Respondent signed the contract in September 2005, Stout knew they "supposedly were business partners." Although the contract did not specify it was only for the twelve-acre parcel, Stout stated the purchasers were aware of that fact because the twelve-acre parcel was the only property not mortgaged. Stout knew Respondent and Amato needed to find an investor to fund the purchase of the property and therefore, questioned whether they were serious purchasers. As a result of the uncertainty, Stout and his wife never signed the contract and nothing further happened with it. (Stout Dep. 43-49, 52; Adm. Ex. 2).

Near the end of 2005, Stout and his wife were contemplating renewing their lease for the Winnebago property, but then learned that the property was under threat of foreclosure. Because they had Amato's and/or Respondent's business card, Stout's wife contacted Amato at Trust One

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to see if Amato and Respondent were still interested in the Jo Daviess property or if they could find someone to finance the Stouts' purchase of the Winnebago property. Stout stated Respondent and Amato had represented themselves to be mortgage brokers. When Stout was asked if he knew Respondent was associated with Trust One, Stout testified he only knew Respondent "worked for them." (Stout Dep. 54-56, 84).

Stout's wife spoke first to Amato at Trust One and then to Respondent. Stout, who might have been on a second phone, understood from the conversation that Amato and Respondent knew of a person who might assist them with financing. Because of the looming foreclosure, the Stouts wanted to move quickly and after a few weeks, Amato reported they had found an investor. Stout met Amato and Respondent at Trust One to discuss the nature of the transaction and the investor's requirements regarding repayment of the loan. Stout believed a one-year time frame for repayment would be enough time for him to raise funds. (Stout Dep. 55-59).

Stout testified the loan was to be collateralized by the Jo Daviess property and therefore, if the Stouts failed to repay the loan, the investor would foreclose on that property. Stout believed the investor was not concerned with Stout's low credit scores because the Jo Daviess property had enough equity to cover the loan. At some point, the Jo Daviess property had been appraised at one million dollars, but a later appraisal, made after the Stouts discontinued their regular maintenance of the property, valued the property at $500,000.00. Stout testified Respondent had seen the property and had a copy of the initial appraisal. (Stout Dep. 60-63).

Stout agreed to the terms of a loan whereby he would receive $300,000.00. The purchase price of the Winnebago property was $285,000.00 and Stout intended to use the $15,000.00 balance for real estate taxes and other home maintenance expenses as he saw fit. (Stout Dep. 64-66).

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Stout testified he met Sam Fakhouri for the first time at Trust One on the day they signed a loan agreement and Stout received his funds. Amato and Respondent were also present, but Rose Stout was not. Stout recalled his wife signed the document after it was faxed to her. Stout acknowledged the agreement refers to an address that was commonly used for the entire forty-seven acres of the Jo Daviess property, rather than the twelve-acre parcel, but he maintained only the smaller parcel was involved in the transaction. (Stout Dep. 68-69, 71).

Pursuant to the agreement, the Stouts consented to repay Fakhouri $345,000.00 within six months, with a possible extension of six months at an interest rate of 35%. They further agreed to take every possible step to refinance the Jo Daviess or Winnebago properties in order to repay Fakhouri, to use the services of Trust One to obtain the financing and to pay a mortgage broker's fee of not less than three percent. (Stout Dep. 72-74).

With respect to Respondent's fee, the agreement provided that the Stouts shall pay $650.00 to Respondent for closing the purchase of the Rush Creek (Jo Daviess) property. Stout explained the provision would apply if the Jo Daviess property were ever sold. (Stout Dep. 75).

Stout testified prior to the time he signed the agreement, Respondent did not advise him of the nature of Respondent's financial or ownership interest in Trust One; Respondent would receive a financial benefit as a result of the Stouts' use of Trust One; Respondent's own business, personal or financial interest in Trust One might affect his representation of the Stouts; or a potential conflict of interest might exist between Respondent's role as the Stouts' attorney and his role as a one-half owner of Trust One. Stout stated he reviewed the agreement before signing it. (Stout Dep. 68, 83-84).

Regarding the Stouts' efforts to obtain financing to repay Fakhouri, Stout approached several banks for a loan, but because of his low credit scores, he was turned down. He had been

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told by Amato and Respondent if he could not obtain financing, they had someone who could work with him to re-establish his credit within six months, at which point he could refinance through Trust One. Stout paid an individual for credit rehabilitation, but never obtained refinancing. Stout never actually used Trust One for any services and did not make any payment to Trust One. (Stout Dep. 74-75, 84).

On September 28, 2007, Stout obtained a reverse mortgage on the Winnebago property from First Reverse Financial Services and received a line of credit of approximately $100,000.00 to cover living expenses and legal expenses. Stout and his wife were not able to repay the $300,000.00 they received from Fakhouri and in 2008, a judgment of foreclosure was entered on the twelve-acre parcel in Jo Daviess County. Stout acknowledged while disputing the foreclosure, he and his wife claimed the Jo Daviess property was their present residence. He did not recall the specifics of the court's findings or comments regarding a homestead exemption, but he remembered his attorney told him the judge was not listening to their position. (Stout Dep. 10-14, 76-78, 80; Resp. Exs. 4, 5).

Stout testified he lost his twelve-acre Jo Daviess property through foreclosure and is still repaying the loan on the thirty-five acres of farmland. (Stout Dep. 31, 76).

Elizabeth Karwowski

Elizabeth Karwowski (formerly Amato and herein referred to as Amato) testified she is in the business of credit education and restoration. In 2005, she was a mortgage broker and provided services through her companies, Trust One Mortgage and E & J Capital. Trust One, which had an office in Homewood and another one on Jorie Boulevard in Oak Brook, focused on conventional financing for residential loans. As part of the loan process, Amato reviewed the credit reports of loan applicants. Amato sold a fifty percent interest in Trust One to Respondent

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in November 2005, and then sold him her remaining interest at the end of 2007. (Tr. 97-98, 133-36, 140-41).

Amato testified she learned of William and Rose Stout's property in Jo Daviess County in 2005 through a mutual acquaintance, Barbara Derrickson. Derrickson, who was a successful real estate investor and somewhat of a role model for Amato, talked up the value of the Stouts' property and made it seem like a "gold mine." Because Amato was somewhat inexperienced in investments, she took Respondent with her to view the property. Derrickson did not advise them the Stouts needed cash to purchase Derrickson's property in Winnebago County. (Tr. 101-03, 107-08).

Amato testified she visited the Jo Daviess property only once and Derrickson, Respondent and the Stouts were also present at that time. She introduced herself to the Stouts as a mortgage broker and the owner of Trust One. Amato described the building on the property as being very old, with mold in the basement. She recalled the Stouts represented the value of the property was $1.6 million and the VA was interested in purchasing it. (Tr. 104-05, 112).

Following Amato's visit to the property, she received a contract from Derrickson to purchase the Jo Daviess property. Amato denied the writing on the first page of the contract, including what appears to be a purchase price of $959,000.00, was hers or Respondent's, but testified Respondent did add a contingency clause to the contract. Amato did not recall the purchase price was $959,000.00 and testified she and Respondent did not intend to purchase the property for that amount. At the time they

were considering the contract in September 2005, Respondent and Amato were not partners and Respondent had no ownership interest in either Trust One or E & J Capital. At some point Amato heard from Derrickson the Stouts were not moving forward. (Tr. 108-10).

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Around the beginning of 2006, the Stouts contacted Amato by telephone and explained they were renting a home from Derrickson in Winnebago County and the home was in foreclosure. The Stouts asked for help in obtaining funds to purchase the Winnebago property. Amato viewed William Stout as "extremely sophisticated," very arrogant regarding lending and brokering and a person who came across as an expert in real estate. She stated she wanted Respondent involved, in part, because Stout's attitude changed when he was working with a man. (Tr. 111-14, 121, 130).

Amato denied suggesting in January 2006 the Stouts mortgage their Jo Daviess property and use the funds to purchase the Winnebago property. She also denied telling them Trust One had an investor, who was interested in financing a loan for them using the Jo Daviess property as collateral. Amato never indicated to the Stouts there was a relationship between Sam Fakhouri and Trust One. (Tr. 136-37).

Amato recalled receiving a preliminary mortgage loan application from the Stouts and reviewing William Stout's credit scores. She had initially suggested a conventional residential mortgage, but when she learned Stout was ineligible because of his low credit scores, she advised him she could not be of assistance. Amato recalled Stout and his wife were very upset at the prospect of moving from their new home and they suggested a hard-money investment. Amato agreed to investigate that possibility, but advised them the transaction might not happen. Stout continued to call her as often as three times per day for more than two months. Ultimately, Amato spoke to Sam Fakhouri, the landlord of her Homewood office and a hard-money investor, who would loan his own capital, if he felt a property was worth it, and Fakhouri indicated he was interested in discussing the possibility of a loan. Amato testified she never utilized Fakhouri's services prior to the Stout transaction. (Tr. 100-01, 115-19, 134, 138).

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In or before April 2006, the Stouts came to Trust One and spoke to Amato and then to Respondent about hard-money options. At that time Amato and Respondent were partners; she ran the business and he handled marketing. Subsequently, Fakhouri and the Stouts met at the Trust One office and had discussions with Amato and Respondent regarding a possible loan. Amato testified she and Respondent wanted to make sure the Stouts understood and knew everything. When Amato informed Stout the loan would have a short time frame and a very high interest rate, Stout advised her that was not a concern. (Tr. 118-24, 129, 138).

Amato testified Fakhouri loaned money to the Stouts to purchase the Winnebago property. Amato also testified E & J Capital received a commission of $2,500.00 for procuring the $300,000.00 loan. Respondent did not receive any part of that commission. Trust One never entered into a business transaction with the Stouts, never received any funds from the Stouts and did not receive any money as a result of the loan from Fakhouri to the Stouts. (Tr. 120, 124-25).

After the Stouts' second visit to Trust One, Amato had no further dealings with them until William Stout called her approximately one year later when he was trying to refinance one of his properties in order to repay Fakhouri. Amato explained to him he could only refinance his primary home, which was the Winnebago property. Amato testified she tried everything, including looking at reverse mortgages, but because Stout had not corrected his credit problem and did not provide requested documentation, she could not help him. She did not recall Respondent having dealings with Stout at that time. (Tr. 125-28, 135).

Evidence Regarding Foreclosure On The Jo Daviess Property

The Administrator presented documents from the court file pertaining to Fakhouri's foreclosure action against the Stouts. Those documents, along with the joint stipulation of facts, revealed the Stouts never paid any amount to Fakhouri in repayment of the $300,000.00 they

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borrowed in April 2006. On July 6, 2007, Joseph **Younes**, as counsel for Fakhouri, filed a Complaint to Foreclose Mortgage against the Stouts in the Circuit Court of Jo Daviess County. Fakhouri was seeking a foreclosure and sale of the Jo Daviess property and/or possession of the property, which was used as collateral for the $345,000.00 mortgage loan he made to the Stouts. (Jt. Stip. par. 25; Adm. Exs. 14, 16).

On March 27, 2008, the Stouts filed their answer to the amended complaint. As an affirmative defense, the Stouts alleged the Jo Daviess property was their principal residence at the time they obtained the loan and therefore, the transaction was subject to the provisions of the High Risk Home Loan Act. The Stouts asserted Fakhouri failed to comply with the requirements of the Act. They also asserted Respondent had agreed to act as their attorney, but was in fact, acting as an agent for Fakhouri, who through Respondent, made a material fraudulent misrepresentation to them. As a third defense, the Stouts alleged the loan from Fakhouri was unconscionable. (Jt. Stip. par. 30; Adm. Ex. 18).

On April 14, 2008, a hearing was held and the Court heard testimony regarding the Stouts' use of the Winnebago property and the Jo Daviess property. After hearing evidence, the Court rejected the Stouts' claim regarding their primary residence and found Fakhouri proved his case. In announcing its ruling the Court stated, in part:

> I think that Mr. Stout is clearly a sophisticated business man. I don't think he was overreached as a result of being in any way mentally impaired or not sophisticated in business and even though, Mr. Stout, you may not be actively involved as a real estate broker, the fact that you even have that license would indicate a level of expertise in the area that would be greater than the average person, and by the same token I find in the plaintiff he's not a lending institution in the sense that he's, you know, the First National Whatever.
>
> The document, the agreement, the parties entered into with [Respondent], what he was there to do was to, as it states specifically in it, you know, for $650 he's going to close the deal for $3,500, he's going to prepare the documents, he's going to negotiate with the plaintiff. That's what he's doing and work on further helping the defendants here procure the loan that they really needed and this was a

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> business venture that I see was an opportunity for the defendants to do well if they could take advantage of it and the only way they could do it with the situation was to borrow in a unique and exotic way.

(Jt. Stip. par. 33; Adm. Ex. 22; Resp. Ex. 6).

On April 17, 2008, the Court, having rejected the Stouts' affirmative defenses, entered judgment in favor of Fakhouri in the amount of $407,250.00, plus an award of attorney's fees in the amount of $14,998.75, costs in the amount of $775.65 and foreclosure of the Jo Daviess property. Thereafter, the Stouts' attorney filed a motion to reconsider the Court's judgment order. After extensive briefing on the issue of whether the Jo Daviess property was the Stouts' primary residence, the Court denied the Stouts' motion to reconsider. (Jt. Stip. pars. 32, 34-40; Adm. Exs. 21-27).

On September 5, 2008, a sheriff's sale of the Jo Daviess property took place and Fakhouri submitted the winning bid of $100.00. At no time was the September 5, 2008 sheriff's sale on the Jo Daviess property confirmed or enforced. On July 15, 2009, a second sheriff's sale took place and at that time, Fakhouri submitted the winning bid of $100,000.00. On August 18, 2009 the Sheriff of Jo Daviess County submitted a Report of Sale and Distribution stating the property had been sold for $100,000.00, leaving a deficiency of $341,282.65 owed to Fakhouri. (Jt. Stip. pars. 41-43; Adm. Ex. 28).

Evidence Offered In Mitigation

Father Dennis Lewandowski

Father Dennis Lewandowski testified he is affiliated with the Holy Spirit Catholic Church in Naperville and has known Respondent since 1991. He considers Respondent to be a friend and has used Respondent's services as an attorney for both

church-related matters and personal matters. Father Lewandowski has a very favorable opinion of Respondent's reputation for integrity and honesty and would not hesitate to recommend his services. (Tr. 93-95).

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Respondent

Respondent testified he has performed pro bono work, primarily in the past twelve months, for foreclosure clients who did not have the means to pay him. He has also performed pro bono legal work for the church and has volunteered and participated in fundraising activities for various charities. Respondent testified he did not charge Father Dennis Lewandowski any fees for handling the sale of the rectory or a personal condo, but may have received title fees. (Tr. 162-66, 206-07).

Prior Discipline

The parties stipulated at hearing Respondent has not been previously disciplined.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. *In re Ingersoll*, 186 Ill. 2d 163, 710 N.E.2d 390 (1999). Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less than proof beyond a reasonable doubt. *People v. Williams*, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). We note that suspicious circumstances, standing alone, are not sufficient to warrant discipline. *In re Winthrop*, 219 Ill. 2d 526, 848 N.E.2d 961 (2006).

The evidence in this case established Respondent first met the Stouts in the fall of 2005 when he and Elizabeth Amato looked at their Jo Daviess property. At that time Amato owned Trust One Mortgage Company and Respondent had no ownership interest in the company. However, William Stout believed that Respondent and Elizabeth Amato "supposedly were business partners." Respondent met the Stouts again in the spring of 2006, after he became a one-half owner of Trust One, when the Stouts were seeking financing to purchase property in

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Winnebago County. Respondent's partner in Trust One, Elizabeth Amato, arranged for a hard-money investor, Sam Fakhouri, to loan money to the Stouts for that purpose. Respondent met with the Stouts and Fakhouri at Trust One and drafted documents pertaining to the loan, which was secured by a mortgage on the Stouts' Jo Daviess property.

One of the documents drafted by Respondent was an agreement between Fakhouri and the Stouts, which specified the Stouts would use the services of Trust One to obtain a refinancing loan to pay off Fakhouri and would pay Trust One no less than a three percent mortgage broker's fee to obtain the refinancing loan. The agreement further provided Respondent would receive a $650.00 fee at closing and his law group would receive an additional $3,500.00 when the Stouts refinanced and/or paid off the Fakhouri loan. According to the agreement, the $3,500.00 fee was for services involving preparation of the documents, negotiating the loan with Fakhouri, procuring the investor to provide the loan and for closing on the refinance loans. On April 26, 2006, Respondent represented the Stouts at the closing of the Winnebago property for which he received a fee of $2500.00 and Amato's company, E & J Capital, also received a $2500.00 fee.

The Administrator alleged Respondent engaged in misconduct with respect to the Stouts by failing to disclose the following: his ownership interest in Trust One; his receipt of a financial benefit as a result of the Stouts using Trust One to obtain refinancing to repay Fakhouri; the potential conflict of interest created by his own interest in Trust One; and his interest in Trust One might materially affect his representation of them. The Administrator further alleged prior to the closing, Respondent did not discuss his $2,500.00 fee or the $2,500.00 fee to Amato through E & J Capital, Inc. with the Stouts.

Respondent was charged with overreaching, breaching his fiduciary duty to his clients, failing to explain a matter necessary to permit his clients to make informed decisions about the

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representation, representing clients where the representation was materially limited by his own interests, entering into a business transaction with clients without obtaining their consent after disclosure and engaging in conduct which tends to defeat the administration of justice or to bring the courts of the legal profession into disrepute. We find some, but not all, of the misconduct was proved.

We begin by addressing Rule 1.7(b), which provides a lawyer shall not represent a client if the representation may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after disclosure. In *In re LaPinska*, 72 Ill. 2d 461, 381 N.E.2d 700 (1978), the Court stated "the rule against representing conflicting interests is a rigid one, designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties." The Court further stated in determining whether there is a conflict of interest, "we look not toward the congruence of interests, but toward the potential for diverging interests." *Id*. 381 N.E.2d at 703. In the case of competing interests, the attorney has an obligation to disclose all relevant information to the client. *See In re Imming*, 131 Ill. 2d 239, 545 N.E.2d 715 (1989).

Having reviewed the evidence, we believe Respondent placed himself in a position of competing interests when he drafted an agreement, which contained a clause obligating the Stouts to use the services of Trust One. On the one hand, he had a duty to protect his clients' interests and exercise his professional and uncompromised judgment on their behalf. Yet on the other hand, he was a shareholder of the company that would profit from the agreement. Because Respondent's objectivity in representing the Stouts could have been materially limited by those diverging interests, he had an obligation to expressly disclose the nature of his conflicting

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interest and the impact it might have on his representation, rather than relying upon the Stouts' more limited knowledge of his relationship with Trust One.

While Respondent testified the Stouts were aware of his part ownership in Trust One, William Stout's testimony left substantial doubt as to what, and how much, he knew about Respondent's involvement in Trust One. Stout testified he knew in September 2005, Respondent and Amato "supposedly were business partners" but in fact, at that time they were not business partners in Trust One, as that relationship was not formed until November 2005. Stout also testified he knew Respondent "worked for" Trust One, but denied he was told of the nature of Respondent's financial or ownership interest in Trust One.

We are troubled by Stout's lack of specific knowledge. His assumptions, which were not entirely accurate, were based on his own perceptions and conclusions, rather than on complete and specific disclosures made by Respondent. Respondent never sat down with the Stouts and explained his interest in Trust One, his potential conflict and the impact it might have on his representation and the financial benefit he would receive, if the Stouts used the services of Trust One to refinance the loan from Fakhouri. The Stouts were entitled to that information in order to make an informed decision regarding both the agreement and Respondent's representation of them. Neither Respondent's assumptions of the Stouts' knowledge or sophistication or the confidentiality clause in the agreement referring to Amato and Respondent as "principals of Trust One," are sufficient to show the extent of the Stouts' actual knowledge at the time they signed the agreement.

We are aware in the foreclosure action brought by Fakhouri against the Stouts, the Court viewed William Stout as a sophisticated businessman. The Court's findings are not binding on us, but can be considered with the other evidence presented in determining whether misconduct

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has been established. *See In re Owens*, 144 Ill. 2d 372, 378-79, 581 N.E.2d 633, 636 (1991) (judgment in a civil case may not be the only factor in Hearing Board's decision but can be a component). The evidence presented to us established Stout had not used his broker's license for quite some time and he was under time pressure to obtain a loan. Further, Respondent testified Stout

was "not as sophisticated as he [Stout] thought he was." Because we did not personally observe Stout, we are unable to make a clear determination as to his sophistication, but even if we did find he was knowledgeable and experienced in real estate transactions, we do not believe Respondent was excused from his duty to fully disclose his interest in Trust One.

As Respondent placed himself in a situation where his obligation to the Stouts was potentially threatened by his own interests and he did not make the necessary disclosures regarding those interests, we find he violated Rule 1.7(b). Those same circumstances also give rise to our finding that Respondent breached his fiduciary duty to represent his clients with loyalty and to avoid conflicts of interest. *See In re Wyer*, 00 CH 10, M.R. 18227 (Nov. 26, 2002) (as a fiduciary, the attorney owes his client a duty of loyalty, a duty of care and a duty to avoid conflicts of interest); *In re Marquis*, 99 CH 83, M.R. 17432 (May 25, 2001) (attorney breached his fiduciary duty by arranging a loan to his daughter from his client's trust funds without disclosing to the client his professional judgment might be affected). Further, we find Respondent's failure to disclose information to the Stouts was a violation of Rule 1.4(b), which requires an attorney to explain a matter so his or her client is able to make informed decisions regarding the representation. In *In re Casson*, 06 SH 23 (June 29, 2007), the Hearing Board noted Rule 1.4(b) imposes an "affirmative duty" to take necessary steps to sufficiently explain matters to a client, so the client can make intelligent choices regarding the representation.

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We find the remainder of the charges against Respondent were not proved by clear and convincing evidence. We do not believe Respondent entered into a "business transaction" with the Stouts in violation of Rule 1.8(a)(2). The Administrator argued the Stouts and Respondent engaged in a prohibited business transaction, when the Stouts agreed to use the services of Trust One to obtain a loan to repay Fakhouri. We do not view the Stouts' acceptance of that provision in their agreement as a "transaction" with Respondent, as Respondent neither suggested the arrangement nor negotiated with the Stouts regarding its inclusion in the agreement. Notably, the agreement in this case was between the Stouts and Fakhouri and not the Stouts and Trust One or the Stouts and Respondent. Further, Trust One never received funds as a result of the agreement. We see little similarity between this case and cases where an attorney actually advises or persuades a client to make a financial commitment. Typical of the latter scenario are situations where an attorney procures a loan or investment funds from a client to benefit himself or another client. *See In re Twohey*, 191 Ill. 2d 75, 727 N.E.2d 1029 (2000); (attorney persuaded client to invest in company that attorney represented); *In re Flynn*, 07 SH 112, M.R. 24027 (Sept. 22, 2010) (attorney obtained loans from client).

With respect to the charge of overreaching, we find Respondent did not overreach the attorney/client relationship by drafting an agreement that required the Stouts to use the services of Trust One. An attorney commits overreaching when he takes undue advantage of the position of influence he holds vis-?-vis a client. *In re Rinella*, 175 Ill. 2d 504, 677 N.E.2d 909 (1996). *See also In re Stillo*, 68 Ill. 2d 49, 368 N.E.2d 897, 898 (1977). Respondent testified Fakhouri suggested the clause relating to Trust One be included in the agreement and the clause was approved by the Stouts, who wanted to ensure Amato received compensation. Respondent's testimony was credible and, as no contrary evidence was provided, we conclude the Stouts'

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agreement to use the services of Trust One reflected their intent and was not the result of Respondent taking advantage of any position of influence.

We also conclude Respondent's failure to disclose information to the Stouts did not tend to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 770. This was a private real estate transaction involving purchasers, who we believe would have proceeded, even if the disclosures had been made.

As a separate issue, the Administrator alleged misconduct with respect to Respondent's failure to discuss with the Stouts, prior to the April 26, 2006 closing, their payment of a $2,500.00 fee to him and a $2,500.00 fee to Amato, through her company E & J Capital, Inc. We find Respondent did not engage in any misconduct relating to those fees. We note the testimony on this issue came only from Respondent, whom we found to be credible, as neither Stout nor Amato were questioned with respect to communications or decisions regarding the actual amount of fees that were paid.

The evidence established as a result of Respondent's negotiations with the seller's lender at the closing, he received more than the

$650.00 fee specified in the agreement signed by the Stouts[2] and Amato's company received a fee. According to Respondent, those fees came from the lender's proceeds and did not increase the total amount the Stouts had planned to pay for the property. We received no evidence to indicate Respondent knew, prior to his negotiations, the precise amount the lender would accept. Once he received the information at the closing, Respondent telephoned the Stouts from the closing to inform them of the fees and obtain their approval. Although Respondent ultimately acknowledged his call occurred "after the deal was done," we do not know if checks had actually been disbursed or if Respondent was merely indicating he had reached an agreement with the lender. Nevertheless, the Stouts had an

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opportunity to object to the fees when Respondent called them, or at any time thereafter, and we received no evidence they did so.

RECOMMENDATION

Having concluded Respondent engaged in misconduct, we must determine the appropriate discipline. In so doing, we consider the purpose of these proceedings is not to punish, but rather to safeguard the public, maintain the integrity of the profession and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 623 N.E.2d 300 (1993). Attorney discipline also has a deterrent value in that it impresses upon others the repercussions of errors such as those committed by Respondent in the present case. *In re Discipio*, 163 Ill. 2d 515, 645 N.E.2d 906 (1994).

In arriving at the appropriate discipline, we consider those circumstances, which may mitigate and/or aggravate the misconduct. *In re Witt*, 145 Ill. 2d 380, 583 N.E.2d 526 (1991). In mitigation, Respondent cooperated in these proceedings, has been licensed since 1985 with no prior discipline and presented a character witness who testified to his reputation for honesty. *See In re Clayter*, 78 Ill. 2d 276, 399 N.E.2d 1318 (1980). In addition, no evidence was presented to suggest Respondent's actions were the result of corrupt or dishonest motives. *See In re Samuels*, 126 N.E.2d 509, 535 N.E.2d 808, 816 (1989); *In re Kink*, 92 Ill. 2d 293, 442 N.E.2d 206 (1982).

We find Respondent engaged in an isolated act of misconduct rather than a pattern of bad behavior. *See In re Enstrom*, 104 Ill. 2d 410, 472 N.E.2d 446 (1984) (Court found an isolated act of misconduct was a significant factor in determining discipline). Although we made several findings of misconduct, those findings were predicated on the same set of circumstances and therefore, we do not believe this is a case where multiple rule violations should result in increased discipline.

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In aggravation, we may consider any harm or risk of harm that was caused by Respondent's conduct. *See In re Saladino*, 71 Ill. 2d 263, 375 N.E.2d 102 (1978) (discipline should be "closely linked to the harm caused or the unreasonable risk created by the [attorney's] lack of care"). The Administrator argued if Respondent did not have a financial interest in the agreement between the Stouts and Fakhouri, he may have advised the Stouts to walk away from a high risk loan, which they most likely would not be able to repay. In considering this issue, we cannot ignore the reality that the Stouts were desperate to purchase the Winnebago property. Because the Stouts initiated discussions with Amato, called her repeatedly, inquired about a hard-money investor and believed they would be able to repay the loan, we conclude they would have entered into the agreement regardless of disclosures or advice from Respondent. Because we believe the Stouts bear considerable responsibility for any harm they may have suffered, we give this factor limited weight.

The Administrator has urged us to recommend a suspension of no less than nine months. That suggestion was premised on the assumption we would find all of the charges in the Complaint to be proven, which we have not done. We have reviewed the cases cited by the Administrator and find the misconduct in those cases to be more severe than Respondent's actions in this case. In *Twohey*, 191 Ill. 2d at 75, an attorney was suspended for six months for inducing an individual client to loan money to a corporate client on three separate occasions without informing the individual of his conflict of interest or advising the client to seek independent counsel, and for making representations to the individual client he should have known were false. The corporate client was financially unstable and the individual client lost her $40,000.00 investment. In *Marquis*, 99 CH 83, an attorney was suspended for nine months for arranging a loan of $120,000.00 from an elderly client's trust assets to the attorney's adult

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daughter to purchase a home. The attorney, who also represented both the buyer and seller at the closing, did not disclose his professional judgment might be affected, did not disclose the use of the client's assets may be inconsistent with the client's interests and did not advise the client to consult another attorney concerning the matter.

Other cases in which attorneys failed to make disclosures to their clients have resulted in lesser sanctions. In *In re Brewer*, 09 CH 69, M.R. 23827 (May 18, 2010), the attorney was censured on consent, for representing a charitable foundation, which lent $10,000.00 to another of the attorney's clients and failing to explain the implication of his representation and advising either client to seek independent legal advice. In *In re Magro*, 02 CH 58 (Apr. 3, 2003), an attorney was reprimanded for representing both a mother and son in the sale of property from the mother to the son, without advising either party of his conflict or his representation of one could be materially limited by his representation of the other. In *In re Dooley*, 01 CH 116 (Aug. 18, 2003), an attorney was reprimanded for engaging in discussions to purchase the controlling interest in a company he was representing without advising of his conflict or his professional judgment might be impacted. The attorney had practiced law for more than fifteen years with no prior discipline and had a good reputation for truth and veracity. In *Casson*, 06 SH 23, the attorney failed to sufficiently explain a matter so his client could make an informed decision regarding hiring the attorney as private counsel or continuing to have the attorney represent him as public defender, and failed to disclose to the court he had switched from appointed counsel to privately retained counsel. The attorney, who had no record of prior discipline, was involved in community activities and had a good reputation for honesty and integrity, was reprimanded.

Based on the facts in the case and our review of applicable precedent, we conclude a reprimand is the appropriate sanction for Respondent's misconduct. In our opinion, Respondent

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does not pose any threat to his future clients and therefore should not be removed from practice. Although he erred in assuming casual statements could be a substitute for direct and explicit communication to his client, his misconduct was limited to one incident. Moreover, he did not engage in any intentionally deceptive misconduct, nor has he been previously disciplined. We are confident a reprimand will protect the public and remind attorneys of their professional obligation to provide full disclosure to their clients.

Accordingly, and for the reasons stated, we recommend that Respondent Paul Leslie Shelton be reprimanded.

Terrence M. Burns, Chair, Mark D. Manetti, and
Robert A. Wilson, Hearing Panel Members.

Date Entered: March 21, 2011

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1 The discovery deposition of William Stout was taken on March 10, 2010. At the time of the deposition the parties stipulated, in the event Stout was unable to testify at hearing, the deposition would be considered an evidence deposition and offered without objection. (Stout Dep. 82). The deposition was admitted into evidence, without objection, as Administrator's Exhibit 29.

2 We note while the loan agreement states the $650.00 fee to Respondent was for closing "the purchase of Rush Creek," the transaction addressed by the agreement was the purchase of the Winnebago property. The Administrator did not allege or argue Respondent was not entitled to a fee for the closing of the Winnebago property and the parties agreed, in the Joint Stipulation of Facts, the $650.00 was Respondent's fee for representing the Stouts at the closing on the Winnebago Property. We attribute the reference to Rush Creek to a mistake in drafting.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

PAUL LESLIE SHELTON,

Attorney-Respondent,

Commission No. 09 CH 58

No. 6191197

REPRIMAND

To Paul Leslie Shelton:

You are being reprimanded by the Hearing Board of the Attorney Registration and Disciplinary Commission as follows:

1. As detailed in the Hearing Board Report and Recommendation, you failed to disclose information to your clients William and Rose Stout, in connection with their signing of an agreement, which obligated them to use the services of a company in which you had an ownership interest. Specifically, you failed to inform them of your ownership interest in Trust One, the potential conflict created by your interest in Trust One, the fact that you would derive a financial benefit if they used the services of Trust One and the fact your interest in Trust One might materially affect your representation of them.

2. Your conduct violated Rules 1.4(b) and 1.7(b) of the Rules of Professional Conduct and, in addition, constituted a breach of your fiduciary duty to the Stouts.

3. You have not been previously disciplined, you did not engage in any dishonest act, and you fully cooperated in these proceedings.

4. The Hearing Board has authority pursuant to Supreme Court Rule 753(c) and Commission Rule 282 to administer a reprimand to an attorney in lieu of recommending

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disciplinary action by the Court and the Board has determined such action is appropriate in this case.

5. You are hereby reprimanded and admonished not to repeat the misconduct outlined in the Report and Recommendation.

6. You are further advised while this reprimand is not formally presented to the Supreme Court, it is not to be taken lightly. This reprimand is a matter of public record, is on file with the Attorney Registration and Disciplinary Commission and may be admitted into evidence in subsequent disciplinary proceedings against you.

Terrence M. Burns, Chair, Mark D. Manetti, and
Robert A. Wilson, Hearing Panel Members.

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