IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:)
)
LISA D. KREMPASKY) Supreme Court #SC94158
)
Respondent.)

RESPONDENT'S BRIEF

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RESPONDENT PRO SE

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STATEMENT OF FACTS

Lisa Krempasky (Respondent) was licensed to practice law in Missouri in 1991 practicing mostly as a solo practitioner and without previous discipline. Respondent practiced part-time, rarely billing over ten hours per week, and always actively participated in other businesses including real estate development and mortgage brokering. Respondent was a part owner of residential mortgage brokerages licensed by the Missouri Division of Finance during the periods relative to the instant matter. Respondent also owned a separate commercial mortgage brokerage which is not required to be licensed by the state of Missouri.[1]

Respondent quit seeking new law clients in 2007 at which time Respondent quit practicing law but for practice related to winding up matters contained herein. Respondent has been suspended from the practice of law since March 1, 2013 which is approximately when Respondent and Informant agreed to the terms of the Joint Stipulation.

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[1] Respondent, appearing pro se, acknowledges that the factual statements made herein are subject to the mandates of Rule 55.03(c), and Respondent avers that they are true and correct to the best of Respondent's knowledge, information, and belief.

Commercial Loan Brokerage

In the mid 1990s Charles Norman (Norman) retained Respondent for estate planning purposes. Norman's estate plan went through numerous changes over the years resulting in a living trust in 2000 which was subsequently amended. The trust named Respondent as its successor trustee and Respondent accepted that role upon Norman's death.

In the years leading up to Norman's death, Respondent and Norman discussed many business ventures and ideas not as investments, but just because Norman was interested in them. Norman loved the City of St. Louis and was very interested in projects that were bettering it. They discussed residential redevelopment projects and what areas those were happening in. Norman had an extensive knowledge of St. Louis and loved telling stories about how great it once was. They discussed projects done by Respondent directly and projects done by various borrowers who were clients of Respondent.

At some point in time they were talking about various real estate projects and addresses. One of those properties, unbeknownst to Respondent, was a home owned by Norman's mother in the 1940s. Respondent immediately stopped the conversation and pulled out pictures of himself at the house. From that time, Norman started asking about whether his trust could lend to help rehab homes and revitalize the city he loved so much.

Norman and Respondent discussed lending money on many occasions. Norman wanted to lend to projects which Respondent was rehabbing directly but Respondent declined. Instead the parties discussed other options. Respondent told Norman that Respondent's rehabber clients always looked for new lenders. They discussed the terms thoroughly. They discussed the procedures of how the loans took place. They discussed how rehab loans, commonly known as "hard money loans" worked and what their terms were. They discussed the difference between interest and points and how Respondent would receive points on loans the trust made to a borrower and how those points would work.

At the time of the discussions, Respondent made the St. Louis industry standard points for hard money loans. These points were 5 for every 4 months or portion thereof on any loan extension. Typically those points amounted to roughly 20 over the course of a year. Hartmann later negotiated with Respondent to pay fewer points, only 1 per month, which was roughly a 40% decrease off the industry standard cost of funds.

After Respondent explained the loan terms and procedures to Norman over several conversations and several months Norman amended his trust to allow Respondent to receive points payments from borrowers.

On May 17, 2004 Norman died and Respondent assumed the role of successor trustee. Respondent began gathering assets and making plans to distribute to beneficiaries. Norman never married and had no children. Soon beneficiaries started challenging Norman's will and trust. People who were not included made claims that they should have been. Others made claims that Norman had promised them more. New unsigned wills drafted by different attorney's popped up.

Most of the claims were handled without litigation, but some litigation did result. Additionally, the prevalence of claims made it clear that the trust could not be distributed until the statutory time periods for challenging the will and trust had passed.

Since immediate distribution could not be made, Respondent began determining how to manage the assets. As had been discussed many times with Norman, Respondent began lending trust money to Hartmann who Respondent had many successful loans with previously and who was now even more widely respected throughout the city as a top rehabber.

Respondent began lending small sums from the Norman Trust which grew as Hartmann successfully completed projects and paid loans back. This was 2004 and 2005, a time of great and quick profits for real estate rehabbers. No money down loans made it possible for a huge number of new buyers to enter the market and that drove prices through the roof. Prices were skyrocketing and eager buyers were putting in offers over the asking price of real estate before the project was even complete. It was not unusual that a seller had 4 or 5 offers over the asking price on the first weekend a house was on the market.

During this same period Respondent was trustee for a few other trusts. Those trusts were invested in underperforming assets and the beneficiaries wanted to know other options. Respondent made them aware of the opportunity to lend to Respondent's clients and gave them full disclosure that borrowers were Respondent's client and that they were paying Respondent's fees. The beneficiaries of Hamel I and II met directly with Robert D. Hartmann (Hartmann) and his partner Tom Huling (Huling) prior to deciding to lend them money. The beneficiaries of the Kuchar trust were given written disclosure and after several discussions gave Respondent their approval to lend to Hartmann and Huling. At no time did Respondent make the unilateral decision to lend trust funds to Hartmann or other borrowers.

Individual lenders included Respondent personally, Respondent's mother, both of Respondent's brothers, John Dantico, William Young and Bruce York. Huling and Gary Detmer also lent to Hartmann but they were his personal friends and partners and Respondent did not receive any points for their loans. Those two lenders were already investing with Hartmann prior to meeting Respondent and engaging Respondent for flat fee legal work.

The unrelated individual lenders Dantico, Young and York heard through the grapevine about the lending opportunity and initiated contact with Respondent to get additional information. In their meetings Respondent stated the terms borrowers offered to lenders, explained that Respondent represented the borrowers and that borrowers paid Respondent for the loans. The lenders were never requested to pay any fees nor did they offer to pay any. Those lenders have previously hired lawyers and are aware that if they hire a lawyer they incur legal fees. Lenders later alleged that Respondent did not identify Hartmann by name and Respondent did not tell them the amount Respondent was being paid by Hartmann. Young also alleged that Respondent failed to return documents so that Young could foreclose out his deeds of trust.

Respondent stipulated that Respondent did not disclose that Respondent represented Hartmann or was paid fees by Hartmann, but in doing so Respondent was responding to allegations of those individual lenders that Respondent did not tell them the name of the borrowers which, however, was obviously disclosed to them on the loan documents. The individual lenders also admitted during the course of years and years of litigation that Respondent told them Respondent represented the borrowers (whether or not they were identified as Hartmann or Hartmann related entities initially) and that Respondent was paid by the borrowers (whether or not the amount was specified).

In summer 2005 Dantico and York requested a meeting with Respondent because they wanted to raise funds for Hartmann (whose name they now knew) and wanted to be paid for doing so. They discussed Respondent's fees (if they didn't know them previously) and how they could profit from raising funds that they would lend in their company name. At the end of the meeting, Respondent declined their offer to raise loans funds though Respondent would have received substantial points from those funds.

All of the real estate loans Respondent received fees on were closed through title companies which were charged with making sure the loan was in the agreed position (either first or second) and all prior liens were paid in full and released. These loans typically were for the purchase or refinance of a property and did not typically include construction money.

Respondent's commercial mortgage brokerage was paid large sums of money by Hartmann for points on the loans to him. However the size of the payments is misleading. Respondent typically gave at least 20% of the funds to charity to help the poor. Further, Respondent lent large amounts of the "income" from Hartmann back to Hartmann and ended up losing it just like all of the other lenders who lost money to Hartmann. Respondent's profits ended up being mostly on paper.

By late fall 2005 Hartmann had run out of money to pay back lenders including Respondent who had invested hundreds of thousands of dollars with Hartmann, including proceeds from refinancing Respondent's home in early fall 2005.

Soon after Hartmann defaulted on the loans, litigation started due to the now clouded titles. Many of those lawsuits included a claim for fraud against Respondent arising from the Norman Trust's recorded deeds of trust. After extensive discovery, all fraud claims were either dismissed with prejudice or ruled in Respondent's favor on motions for summary judgment. The underlying actions remained and there was quite a bit of litigation to get title cleared up. Respondent confessed judgment to clear up titles when it was clear the deeds of trust would not legally be granted a priority position to enable foreclosure. These quiet title actions were not a result of any actions taken by Respondent (other than making loans) and the title clouds were because of the actions of Hartmann or the title companies in failing to properly pay off liens or properly record the paid off liens as Respondent had directed them.

By way of additional explanation, a substantial number of Hartmann related loans were closed at Capital Title Company. The president of Capital Title, Peter Shaw, was sentenced to and serve 51 months in jail for fraud related to improprieties at his title company.

Also brought against Respondent were three lawsuits brought by Dantico, two brought by Young and two brought by York. The Dantico and Young lawsuits were either dismissed by the plaintiff without a settlement or Respondent's motions for summary judgment were granted. The first York case was settled and the second one is still pending. These individual lenders made substantial fraud allegations and either later dismissed them or lost the claims on summary judgment, not even having enough evidence to go to trial. York's remaining claim is an attempt to reach undefined personal assets of Respondent to satisfy a consent judgment reached with the Norman trust.

Notary

During the course of the loans Hartmann and Huling were required to sign a number of notes and deeds of trust in Respondent's office. A few times they asked Respondent if they could have a courier bring them the documents so they could sign and return them to be notarized to save them the trip. At the client's request, this was done a few times by notaries in Respondent's office when the client provided a copy of their driver's license and when they verified the signature by telephone.

Later Respondent became aware that Hartmann and Huling were going directly to Respondent's office staff asking them to perform this service for them. Respondent stopped the practice immediately. At that time, Huling and Hartmann inquired whether they could give Respondent a power of attorney to sign the documents for them to save them the trip. Due to the volume of loans, signatures were required several times per week. Huling and Hartmann decided to give a very broad power of attorney to deal with all real estate transactions, but the power of attorney was, to the best of Respondent's recollection, only used to sign the notes and deeds of trust securing the money Huling and Hartmann borrowed.

Though many challenges were made, no document was ever invalidated due to either Hartmann and Huling signing the documents outside of the presence of the notary and later confirming the signature verbally or due to the fact Respondent signed them with a power of attorney.

Respondent also gave office staff blanket authority to sign Respondent's name. This is a practice that is widely used in business and law offices and there was no indication that it was ever used inappropriately.

Loans Not Securities

Of great significance is the fact that money was lent to Hartmann and not invested with him. The loans were always for the purchase, refinance or, on rare occasions, rehab of real estate. Loans were always secured by a promissory note and deed of trust. Any "sale" of promissory notes always included the assignment of the deed of trust. Original deeds of trust and subsequent assignments were recorded with the Recorder of Deeds office.

When notes and deeds of trust were assigned from one lender to another, Respondent did not receive a fee. The assignment or "sale" of an existing note and deed of trust generated no fees for Respondent. Further when assigned, they were assigned for face value with no increase or decrease in value. Interest due under the note was apportioned between the assignor and assignee on a per diem basis with each party earning the amount of interest for the portion of the month they were the lender on the note.

Respondent received points on many loans over 2004 and 2005, the years in question. During that time, tens of loans were paid in full by Hartmann including tens of loans to Hartmann and loans to all individual lenders. Hartmann defaulted on all loans at approximately the same time.

ARGUMENT

I.

The parties stipulated several ultimate findings, but there are many facts that explain the backstory of the allegations:

a. While Respondent had a duty to preserve and distribute trust assets, both the trust terms and Mr. Norman personally authorized lending trust funds to Hartmann. Norman amended his trust to allow Hartmann to pay Respondent directly for any loans Respondent made with Hartmann or others. Respondent did take reasonable steps to assure the loans to Hartmann were secured, all loans were closed through a title company that both ran title and was directed that the loan was to be in first or second position (on a loan by loan basis). Loan proceeds were most typically for the purchase or refinance of a piece of property and did not typically have a construction budget component. Respondent lent Respondent's own funds on the same terms and conditions and using the same mode and method as Respondent lent trust funds. Respondent stipulated a violation of Rule 4-1.1 based on the fact that Hartmann's scheme, unbeknownst to Respondent, involved fraud and caused the trust to lose part of its investment even though the loans were authorized by Norman prior to his death.

b. The real estate transactions in question were loans which Hartmann sought from lenders. Hartmann offered standard terms. There was no negotiation or modification of the terms. The terms were what the terms were. They were presented to lenders as take it or leave it terms. All loans used standard fill-in-the-blank language not subject to negotiation. The forms used language that was standard in the industry and was not drafted by Respondent. Fill in the blank terms included loan amount, borrower name and address, lender name and address, loan amount and start and end dates, etc. Every loan went through the same process. They were closed at title companies which were tasked with clearing out prior liens prior to releasing funds. The properties were added to borrower's insurance coverage. Liens were recorded against the properties to secure the loan. The same standard process was followed every time.

Additionally, Respondent made actual disclosure to all client and non-client lenders. Respondent made it clear that borrowers paid Respondent for all fees associated with the loans and that Respondent worked for the borrowers. With Norman, this was done verbally and Norman subsequently changed his trust to allow Respondent to receive compensation directly from Hartmann and other borrowers. With the

Kuchar trust Respondent gave written disclosure and Kuchars authorized the loans verbally. With the Hamel trusts, the sole beneficiaries met personally with Hartmann and Huling to ask questions prior to authorizing loans.

As to individual non-client investors, they were also told that Respondent represented borrowers. They were told that borrower paid Respondent's fee. They were given copies of all documents and were sent all checks for payment of their interest directly. All of their questions were always answered with information which was truthful at the time and when Respondent later found it to be false Respondent disclosed it to all lenders whether client or non-client.

Of great significance is what Rule 4-1.7 required in 2004 when the disclosures were made. It required disclosure, but not written disclosure. Respondent stipulated that written disclosure was not made, but that is actually irrelevant since the required disclosures were made verbally.

Further, since all documents were standard fill in the blank documents with standard non-negotiable terms, loans were closed through title companies, and deeds of trust were standard forms and recorded in the Recorder of Deeds office. The loan defaults arose because of Hartmann's fraud and title companies failing to properly pay off and/or record the releases of liens paid off.

c. Paragraph b above details the disclosures given to lenders. All lenders had ample opportunity to seek independent counsel when they were made aware that Respondent represented the borrowers. There was typically a span of several weeks between the time all disclosures were made and any funds were invested. Most notably in this matter, Norman did give written consent to Hartmann paying Respondent's fee by amending his trust to permit it.

However, it was Respondent's understanding that this stipulation under Rule 4-1.8(a) related to transactions between Respondent and Hartmann since he was actually a client and Respondent actually engaged in business transactions with him. In situations with Hartmann, he proposed all transactions and terms to Respondent. Those terms were better for Hartmann (the client) than those he was then receiving from other sources. That meets the fair and reasonable requirements stated by the comments. To Respondent's knowledge, Hartmann has never disputed or complained about the fees in any way. Further, Hartmann consented to the terms/fees over and over in writing when he paid them by check.

d. The Norman Trust authorized Respondent to lend to Hartmann and Norman personally authorized the use of trust funds for lending purposes per Rule 4-1.15. The are no physical items which Respondent failed to return. The stipulated failure to safekeep has solely to do with the loans made to Hartmann being defaulted upon due to Hartmann's fraud. The stipulated failure to safekeep property is not a traditional lack of safekeeping where a client's property is lost, misplaced or destroyed. Instead, though property was segregated in an account specifically in the name of Norman Trust, it was lent as agreed by Norman and those investments were lost due to fraud of other parties.

e. Informant argues, again, that this violation of Rule 4-1.16(d) is from the improper loans. However, Respondent was told this violation had to do with William Young's allegations that Respondent failed to return physical documents so he could foreclose on his deeds of trust. After Young made the request, Respondent's office sent him the documents they had, most or all of which had already been previously provided to him. Still Young persisted in his insistence that other documents existed, though he never identified them. It is Respondent's belief that Young sought documents which never existed and were never required by Young.

Respondent's understanding of the stipulated violation is consistent with the plain language of Rule 4-1.16(d) which has to do with returning papers at the termination of representation (though representation is specifically denied). Informant's argument is a best a stretch of the Rule's plain meaning.

f. The Informant continues to lump all lenders into the category of "client." As has been explained and has been admitted by every individual lender, they had specific knowledge that Respondent represented the borrowers and that borrowers paid Respondent and that the lenders did NOT pay Respondent. They knew this. They never asked what their fee would be. They never offered to pay any legal fees. And they didn't because they had been informed that Respondent represented borrowers. Individual lenders never once gave any indication that they believed Respondent was anything except borrower's attorney right up until the minute Hartmann told them he could not pay their loans back and started trying to make other arrangements to pay them back. Since the disclosures were made, individual lenders had no reasonable expectation that Respondent was their attorney and certainly not without telling Respondent of said expectation.

When it's all boiled down the stipulated misrepresentation under Rule 4-8.4(c) was not telling an lender how much the borrower (Respondent's client) paid Respondent. Respondent disclosed the amount verbally to Norman and at least one other trust while may or may not have disclosed it to 2 other trust lenders, though Respondent did disclose that payment was being made by borrower. The individual lenders were not Respondent's clients specifically because Respondent disclosed to them that Respondent represented and was paid by borrowers.

Finally, Respondent has settled with the vast majority of lenders and the parties stipulated that at the time the agreement was signed only York did not have restitution. Since the time of the stipulation, Respondent reached a consent settlement with York agreeing that Respondent had no personal liability to York though York is exploring whether Respondent has any assets in Respondent's possession which may be garnished to satisfy the consent.

g. Respondent was not a notary, however, Respondent had two notaries in the office. Each of these notaries took all of the required classes, read all of the rules and was responsible for exercising their duties in accordance with the law. In some instances, the notaries, for the convenience of a client, would notarize the client's signature on a document when the notary both had a copy of the client's driver's license on file and confirmed the signature by phone with the client. In no case was any such document ever invalidated because of the notary process though they were disputed in tens of cases.

Respondent was aware that this happened a few times. Once Respondent became aware that Huling and Hartmann were pressing Respondent's notaries to do this on a regular basis, the practice was stopped. It was at this time that Huling and Hartmann gave Respondent a power of attorney to sign the documents on their behalf so they still would not need to make a trip to the notary. This is the stipulated Rule 4-8.4(d) violation.

Notaries also notarized Respondent's signature which was not signed in their presence. Typically how that happened is that Respondent signed the documents in Respondent's office and took them out to the notary's desk to get the notary signature. While technically not signed directly in front of the notary, they were signed in the general vicinity of the notary, were verified by the Respondent in the presence of the notary and the signature was well known to the notary as Respondent's signature.

Informant argues that *In re Wallingford*, 799 S.W.2d 76 (Mo. banc 1990) controls. In ***Wallingford*** the attorney forged a client's name to sworn affidavits and got a public reprimand. Here no one forged anyone's name. All documents were actually signed by the party whose name was notarized or were signed by someone having a power, all the signatures were confirmed, none of the signatures were invalidated and no harm came resulted because of the notary process. Further, the Respondent did not personally take the actions. The ***Wallingford*** attorney only received a public reprimand for a much more serious action.

ARGUMENT

II.

Respondent stipulated to a three year suspension. Respondent has taken responsibility for Respondent's actions going so far as to quit practicing law but for winding up Hartmann related matters more than seven years ago in 2007 and agreeing to a license suspension which has been in effect from March 1, 2013 to present.

Nonetheless, the full explanation of the facts behind each stipulation as detailed above do not warrant a three year suspension. It is true that investors lost money when they invested with Respondent's client Hartmann. But Respondent's activities relating to these investments were litigated in tens of cases. In no case was Respondent found even civilly liable for inappropriate actions. In a cases brought by Dantico and Young, even after approximately 500,000 pages of discovery, Plaintiffs could not produce enough evidence to even withstand a Motion For Summary Judgment.

The only case in which Respondent had any civil liability was the consent judgment between Respondent and Missouri Securities Division. In this case Respondent consented to a technical violation of the Missouri securities law where Respondent failed to give written sales material to lenders and failed to disclose to some lenders the amount of money borrower paid Respondent. This case is the basis of the agreed 3 year suspension. And it is a case where the Missouri Securities Division could not have requested action against the Respondent's law license since that is not a remedy available to it.

It is not Respondent's intent to litigate that matter here but it is important to note that the brokering and origination of notes of deeds and deeds of trust on real estate are governed by the Missouri Division of Finance, not the Missouri Securities Division. Respondent met all requirements of Section 443 RSMo. Respondent had won this same case several times before and agreed to enter into the consent judgment with the Missouri Securities Division for unrelated personal reasons.

Informant argues that a protracted removal of Respondent from the practice of law is essential to limit the harm to the public. Assuming for the moment that is true, Respondent has for all practical purposes not sought new clients for more than seven years and has in fact been suspended for approximately eighteen months since the time the parties reached the agreement of the three year suspension. Should the Court order a suspension of Respondent, who has done everything to comply with the agreement of the parties, it should begin from March 1, 2013 when Respondent's suspension took effect. To do otherwise would essentially keep Respondent out of the practice of law for 10 years in total with a suspension of approximately 5 total years.

ABA Sanctions Standards

The parties stipulated to several ABA Standards that might be applicable to the stipulations. However, the above arguments detail the backstory to the base stipulations and makes the stipulated standard's application heavy handed.

Standard 4.62 applies to knowingly deceiving clients. Respondent did not engage in knowing deception however. Informant acknowledges there was no deceit by commission. He, however, argues that Respondent deceived by omitting to disclose that Respondent would receive payments for facilitating the loans. That simply is not the facts. Every lender (client or not) was told that Respondent represented the borrowers, though they may not have initially been told the names of the borrowers. Every lender (client or not) was told borrower paid Respondent a fee. If the lender asked, Respondent told how much the fee was and Respondent told Norman and parties to some of the other trusts the amount of the fees.

Standard 4.63 could be properly applied to this case. Under that Standard, "reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client." Here Respondent failed to provide some client and some non-client lenders with the name of the borrowers and the AMOUNT of fees Hartmann paid to Respondent. In the majority of cases the client and non-client subsequently, and prior to Hartmann's default, became aware of both his name and the amount of fees he paid Respondent.

Standard 4.12 and its comments, while stipulated, are distinguishable from the instant case. In the instant matter one must again be mindful of who were clients and who were not. None of the individual lenders were clients and even if they were they were given the documents on every loan they made and could have, at any time prior to Hartmann's default, requested that any or all loans be assigned to another lender and Hartmann would have made every effort to fulfill their request.

With regard to the trusts Respondent served as trustee for, Norman was consulted directly on many occasions prior to his death. On all other trusts Respondent directly consulted with the beneficiaries and sought their approval before lending trust money. Some beneficiaries even met directly with Hartmann and Huling prior to consenting to the investment.

In all cases the parties received substantial returns of 20% per year on the loans up until the time Hartmann defaulted on them as opposed to the cited case where the client received no interest. *Disciplinary Board of the Supreme Court v.*

Banks, 641 S.W.2d 501 (Tenn.1982). Further, in Banks the lawyer took funds out of a client's investment portfolio, without the client's knowledge, without providing the client any documentation and to invest in the attorney's own real estate development projects. In the instant case, Respondent specifically declined requests by some lenders to invest in Respondent's own real estate projects. Also, in addition to being paid interest, lenders were provided with the documentation on their loans and the details of the terms. The ***Banks*** attorney was suspended for one year.

Standard 4.13 could be properly applied to this case. In that Standard, 4.13 "reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client." Respondent both recorded documents to secure lender's loans and closed them through a title company that was hired to make sure the deeds of trust were in either first or second position on a case-by-case basis. Even though Respondent took these industry standard and customary steps, both client and non-client lenders lost money to Hartmann's fraud.

Standard 4.42(a), while stipulated, has no supporting facts argued by Informant. In fact, none of the stipulated violations have to do with diligence.

Informant argues that Standard 4.52 is applicable because Respondent failed to assure that staff would not notarize documents unless the signers were present. That is Informant's explanation of lack of competence as it applies to the instant matter. Nonetheless, through tens of lawsuits, not one document was invalidated for this practice. Further, as soon as Respondent became aware that Huling and Hartmann were requesting this service regularly it was immediately stopped. That is not a lack of competence. At best it is a temporary misunderstanding of what was going on in Respondent's office.

Informant also cites that Respondent was incompetent for failing to secure loans. The only problem with that argument is that the loans were secured by real estate and the deeds of trust were recorded in the Recorder of Deeds office. Further, a title company was engaged and paid to assure that all prior or senior liens were paid off as part of the loan process.

Standard 4.53 is just as applicable to the instant matter. In that Standard, "reprimand is generally appropriate when a lawyer: (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client." Here Respondent knew and followed the industry standard procedures for closing real estate through a title company. In St. Louis real estate closings happen through title companies and not through real estate attorneys typically. However, Respondent failed to recognize that additional precautions beyond standard title companies closings would be necessary to protect lender's loans from the intervening fraud of Hartmann and Capital Title.

Additionally the Court should exam the details of the stipulated Aggravating Factors.

The parties stipulated that Respondent had a dishonest or selfish motive in failing to disclose the amount of payment Respondent received from borrowers. It should be noted that some people are shocked by the amount of money that Respondent made in total and try to say that alone is reason to discipline Respondent. In regard to that, the totals are misleading. Respondent gave a minimum of 20% of the income to charitable organizations for the poor. Often, Respondent gave more than that. In addition to the charitable donations, Respondent lent a large portion of the "income" back to Hartmann and lost that money just like all the other lenders. This is not a case where Respondent lived a lavish lifestyle from the money earned. Respondent lived and continued to live a modest lifestyle and after losing huge amounts of money to Hartmann, Respondent did not have the means to live otherwise.

It should be noted specifically that Norman, another trust, York and Dantico specifically knew how much Respondent was making and others may have. The trusts knew prior to lending. York and Dantico knew no later than when they met with Respondent at their request because they had a plan to solicit other lenders for Hartmann and wanted to be paid for doing so. Respondent declined to accept their proposal.

The parties stipulated that Respondent engaged in a pattern of misconduct in representing numerous clients. Again, it needs to be remembered that many of the lenders were not Respondent's clients. Six trusts (including Respondent's and Respondent's mother's trust) lent to Hartmann. While all lenders were told information accurately, the trusts were given special attention. All trusts (and all lenders) were specifically made aware that Respondent represented Hartmann and that Hartmann paid Respondent's fee. Four of the trusts knew the amount of Respondent's fees specifically. One of the other trusts met in person with Hartmann and Huling prior to lending and the last trust was given written disclosure and the opportunity to meet with Hartmann but chose not to. In no case did Respondent make the unilateral decision to invest trust funds.

This is true with individual lenders also. They were all made aware that Respondent represented borrowers and borrowers paid Respondent for the loans.

They were given opportunity to set any requirements for the loans they wanted and Respondent followed all requirements so set. All loans were closed through a title company which was tasked with making sure prior liens were paid off. And there were typically several weeks between when the lender asked to meet with Respondent and when they lent money to Hartmann. Respondent did not solicit borrowers and instead they heard about the loans through the grapevine and sought Respondent out.

The parties stipulated that Respondent had substantial experience having been licensed since 1993. That stipulation is wrong on its face since Respondent was actually licensed in 1991. However, being licensed doesn't equate to experience. Respondent practiced as a sole practitioner from the start without the benefit of mentorship. But beyond that, Respondent did not ever have a very active law practice, billing on average less than 10 hours per week and always engaging in other businesses at the same time including mortgage loan brokering and real estate development. Respondent did not engage in a full-time traditional law practice.

The parties stipulated that Respondent failed to make restitution to York. Informant incorrectly states the stipulation when he says Respondent failed to make restitution to all former clients. Settlement/restitution has been made. And since the parties entered into the Joint Stipulation York dismissed his claims against Respondent personally, but is presently litigating whether Respondent has control of any assets which York can use to satisfy the consent. York has known the information which gave rise to this claim for 2.5 years and to date has not produced evidence to support it through several rounds of discovery.

Lastly, there are additional mitigating circumstances to which the parties did not stipulate which clearly apply including, but not limited to the delay in disciplinary proceedings and remorse of the Respondent. It is undeniable that all stipulated violations in this matter took place in 2004 or 2005, that is 9 or 10 years ago, most of which time Respondent has not been engaged in the active practice of law but for winding up matters related to the instant case. Further Respondent has been remorseful for lender's losses from the very beginning, even though the losses were due to fraud by Hartmann and/or title companies and not due to Respondent's wrongdoing, working with lenders and Hartmann to try to minimize their losses and find alternate ways to recover the money they lost.

<u>Missouri Cases</u>

In all but one of the cases cited by Informant the discipline ranged from public reprimand to one year suspensions. The only case that deviated from that pattern was the *Belz* case. *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008) In that case attorney Belz was given a three year suspension based substantially on the fact that there was an admission of direct misappropriation of client funds. That situation does not exist in the instant case. In the instant case Respondent received payment from Hartmann for work performed by him. All lenders, whether client or not, had actual knowledge that was the case.

In a 2000 case, *In re Snyder*, 35 S.W.3d 380 (Mo. banc 2000) gave Attorney Snyder a 6 month suspension when he convinced clients to give him a direct conflicting interest in their property. One of the operative words there is convinced. Snyder had 2 clients, both in need of criminal representation, he convinced them to give an interest in their home to secure legal fees. This is very different that the instant case. Here Respondent presented a lending option to lenders who specifically asked about the loans. At no time were lenders "convinced" to do anything. In most cases Respondent's discussions with lenders happened weeks or months before they ultimately made the decision to lend. They were given ample opportunity to decide on their own and to consult anyone they wanted to and they were told Respondent represented and was paid by borrower. Here Respondent did not take an interest in any property, Respondent simply billed fees monthly and was paid monthly.

In 1999, the Court issued a public reprimand to Attorney Weier in *In re Weier*, 994 S.W.2d 554. Weier's violation was engaging in business transactions with clients and people who believed they were clients. The distinguishing factor is that at no time did Attorney Weier disclose his involvement in businesses when he was negotiating substantial business contracts between the businesses and his clients. That is very different from Respondent's actions. First, Respondent did disclose both Respondent's attorney-client relationship between Respondent and borrower and the fact the borrower paid Respondent's fees. Second, there were no negotiations between the borrower and the lender. The borrower offered to pay certain terms. It was take it or leave it for the lender. Further, the documents used to secure the loan were take it or leave it also. They were standard hard money fill in the blank forms which only required borrower and lender name and address, loan start date, loan end date (which was a number calculated to be 4 months from the start date), loan amount and property address.

In 1996 this Court issued an opinion in *In re Charron*, 918 S.W.2d 257 (Mo. banc 1996) suspending an attorney for one year. In Charron, the lawyer took money directly from a probate estate without court approval when it was required and paid fees in excess of the statutory amount, again without court approval. Attorney Charron also went directly against the explicit wishes of his client when administering the his estate and trust. Respondent did no such thing. In each trust, either the trust settler (in the case of Norman) or the beneficiaries (in the other cases) approved of lending money to Hartmann. Some of the trust beneficiaries even met directly with Hartmann and Huling prior to approving Respondent to start to make the loans.

In another 1996 case this Court issued a 6 month suspension to Attorney Disney for telling an individual false information as part of a business transaction. Specifically Disney promised to record a deed of trust against property used to secure a loan, but he didn't. He also promised to pay taxes and provide insurance. *In re Disney*, 922 S.W.2d 12 (Mo. banc 1996) Notably, in the instant matter Informant does not point out any promises that Respondent made and did not fulfill.

In 1981 this Court gave Attorney Lowther a one year suspension for engaging in business transactions with a client. *Matter of Lowther*, 611 S.W.2d 1 (Mo. 1981) In that case Lowther represented a corporation who was taking out an investment loan. Lowther arranged for the loan, but in order to do so required that he be given one-fifth of 2% of the corporation unbeknownst to other members of the Board of Directors. Lowther took an interest in the company without paying for it and without approval or knowledge of the Board. Again, in the instant matter, Respondent did not take an interest in anything. Respondent billed fees monthly and was paid them. The bill was approved by all necessary parties that needed to approve it in order to pay it. Again, notably, Informant merely recites the case for the proposition that it is dangerous to take a piece of the action with a client. While *Lowther* does say that, Respondent didn't take a piece of the action and Informant doesn't argue how the case applies to the instant matter.

Also notable in the cases cited by Informant was that the attorneys in each case continued in the active practice of law up to the point where the discipline was imposed. In the instant matter Respondent has, for practical purposes, not been publicly practicing law for 7 years and has actually been suspended from the practice of law since the Informant and Respondent reached their agreement eighteen months ago.

In the instant case, Respondent's conduct is of a nature that could warrant reprimand.

CONCLUSION

Respondent respectfully asks the Court to issue appropriate discipline which the parties stipulated was a three year suspension but which the facts, circumstances and case law indicate to be a reprimand or a suspension of a year or less and to make any suspension retroactive to the date of Respondent's suspension on March 1, 2013. Respondent's seven year absence from the practice of law and present eighteen month suspension have provided substantial public protection and achieved the goals of maintaining the integrity of the profession.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that on this 18th day of August, 2014, a true and correct copy of the foregoing has been sent to Informant via email to: Sam.Phillips@courts.mo.gov.

Lisa Krempasky

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06(b);

3. Contains 7549 words, according to Google Drive, which is the word processing system used to prepare this brief.

Lisa Krempasky