

DISTRICT XIII ETHICS COMMITTEE : Supreme Court of New Jersey
: District VI Ethics Committee
Complainant, :
: Docket No. VI-92-53E
vs. :
: DISCIPLINARY ACTION
SAMUEL R. DELUCA, ESQ. :
: FORMAL COMPLAINT
Respondent, : R.1:20-3(h)
:

District VI Ethics Committee by way of Complaint against
respondent says:

GENERAL ALLEGATIONS

1. Samuel R. De Luca was admitted to the Bar of this State in 1967.
2. Respondent maintains a law office at 3451 Kennedy Blvd., Jersey City, New Jersey.
3. This complaint is made upon information received from Michael Miele, 3 Highland Avenue, Rumson, New Jersey 07760.

FIRST COUNT

1. In or about 1977, the grievant, Marlo Martinez, Ralph Martinez and Tony Garcia (hereinafter "the group") met with the respondent at his office and his home to discuss a real estate investment in Atlantic City, New Jersey.
2. Respondent expressed an interest in participating in this venture, and it is alleged that he was to receive a share in the profits in exchange for his legal services. A formal agreement was not executed.
3. The grievant directed respondent to a particular piece of land which was available for sale. Respondent negotiated a contract for the

purchase of such property from A.C. Marineland Corp. Off Shore Facilities Corp. and E. E. Simms, Jr. The group delivered to respondent a cash deposit for which they did not receive a written receipt and the funds were not deposited in respondent's trust account.

4. Subsequently, respondent informed the group that the seller had breached the contract for the sale of the Atlantic City property, and that the group should institute a law suit against the sellers to enforce the contract. The group paid to respondent an additional sum of \$7,000.00 cash to retain the services of an attorney to litigate the case.

5. The group learned that it had been omitted as a party plaintiff from the aforementioned law suit, and that respondent, as the sole plaintiff in the case, had settled the case for an undetermined sum of money.

6. On October 24, 1979, the group filed suit against DeLuca, E. E. Simms Jr., A.C. Marineland Corp. and Off Shore Facilities Corp., in the Superior Court of New Jersey, Chancery Division, Atlantic County, under docket number C-737-79. They demanded an accounting of partnership and settlement funds. (This case was consolidated with another case involving the same defendants, and venue was transferred to Union County.)

7. Following three days of trial on November 30, 1981, December 1 and 2, 1981, the trial was interrupted, and the parties entered into a settlement agreement which was placed on the court record. A Consent

Order of Settlement was executed by counsel, and docketed with the court on February 11, 1982.

8. Grievant contends that prior to trial, respondent misrepresented to the group that he had settled the original law suit against Simms, et al., for \$500,000.00. The Grievant later learned that respondent had settled the law suit in excess of \$2,250,000.00 This was confirmed by the respondent in November of 1993.

Wherefore, respondent is guilty of having violated DR1-102.

SECOND COUNT

1. The Consent Order of Settlement docketed on February 11, 1982 required that the settlement sum of \$80,000.00 be paid, pursuant to a detailed payment schedule, to the law firm of Montefusco & Kesselman, Esqs. as trustees for the group. The monies were to be divided among the grievant and the rest of the group pursuant to an agreement between them.

2. Contrary to the requirements of the Consent Order of Settlement, the respondent made payment of the settlement proceeds directly to some members of the group (the Martinez brothers) all to the exclusion of the Grievant.

3. The Respondent also made a \$10,000.00 payment to Sexto Macras, Esq. although Mr. Macras was not involved in the original litigation.

4. The Grievant never received any settlement monies and was never advised that payment had been made to other members of the group.

WHEREFORE, respondent is guilty of having violated RPC 3.4.

THIRD COUNT

1. In an effort to obtain his settlement monies, the Grievant filed a Civil Action Complaint in December of 1987 entitled Miele v. DeLuca, Docket No. L-54022-87 venued in Monmouth County. An amended complaint was filed on January 31, 1988. The complaints requested the return of the grievants original investment (ie payment of the settlement proceeds) as wall as his share of any profits.

2. The respondent filed a Notice of Motion to dismiss these complaints. In his certification in support of this motion he indicated that a) he had paid all settlements monies due to an attorney for the group and b) the original settlement in DeLuca v. Simms was \$2,205.00 less obligations, etc. On the basis of this certification, grievants complaint was dismissed as were two subsequent lawsuits filed by the grievant.

3. By letter dated November 30, 1993, an attorney for respondent confirmed that the settlement in the matter of DeLuca v. Simms was \$2,250,000.C later modified to \$2,025,000.00 not the \$2,205.00 reported to the Court.

4. Respondent did not pay the settlement monies "to an attorney for the Defendants.. ," (the group) as indicated in his Certification to the Court. Instead, he paid these monies directly to some of the group members and to another attorney not involved in the original litigation. Respondent misrepresented and/or misled the Court by 1) indicating that the original lawsuit settled for \$2,205.00 not \$2,025,000.00 and 2) implying that the settlement monies had been paid in accordance with the Consent Order of Settlement.

5. Based on these misrepresentations, the Court dismissed the grievants Complaint, all to the grievants detriment.

Wherefore, respondent is guilty of having violated RPC 3.3(a) 1 and RPC 3.3(a)5.

District VI Ethics Committee

/s/ Theresa McGuire