

Jo-Ann G. Durr, Presenter
Attorney at Law
14 Louisa Court
Wayne, NJ 07470

KENNETH D. KROLL	:	SUPREME COURT OF NEW JERSEY
and ROSETTA KROLL	:	DISTRICT XI ETHICS COMMITTEE
	:	
Complainant,	:	DOCKET NO: XI-02-023E
	:	
vs.	:	DISCIPLINARY ACTION
	:	
PATRICIA ADELLE	:	COMPLAINT
	:	
Respondent,	:	

Kenneth D. Kroll and Rosette Kroll, by way of complaint against respondent, says:

GENERAL ALLEGATIONS

1. The respondent maintains offices at 64 Woodlot Road, Wayne, New Jersey.

FIRST COUNT

1. The grievants in this matter, Kenneth D. Kroll, and his wife, Rosetta Kroll, hired the respondent to represent them in the purchase of property located in Pompton Lakes, New Jersey.

2. Prior to the closing of title, which occurred on September 28, 2001 at the respondent's office, the grievants were advised by the respondent that they were required to contribute \$7,184.50 to the total cost of the purchase price and closing fees. A copy of the grievants cancelled check is attached hereto and marked Exhibit 1.

3. The grievants had previously obtained a mortgage commitment from Millennium Mortgage Company, a broker which dealt with Interfirst Wholesale Mortgage Lending and, ultimately, ABN Amro Mortgage Group, Inc. (hereinafter ABN Amro).

4. One of the closing documents produced by ABN Amro was titled "Itemization of Amount Financed" and listed all charges to be paid by the borrowers (grievants) in connection with the mortgage loan. A copy of the aforesaid document is attached hereto and marked Exhibit 2.

5. At the closing, the grievants also examined and signed the HUD-1 Settlement Statement which was prepared by the respondent. A copy of the aforesaid document is attached hereto and marked Exhibit 3.

6. It appears from a comparison of the two documents that the respondent may have overcharged the grievants for fees and escrows in connection with the loan and the grievants left the respondent's office with the impression that they would be receiving a rebate of funds after the closing checks were drawn.

7. Mr. Kroll states in his letter to the Committee dated May 23, 2002 that, after the closing, he called the respondent a total of four times inquiring about the money he believes is owed to him, but, to date, has not gotten a response. See a copy of the grievant's letter dated May 23, 2002 attached hereto and marked Exhibit 4.

6. In her response to the formal grievance filed by the Krolls and dated June 24, 2002, the respondent mentions that she had not yet

settled the question of whether she had miscalculated the closing costs and actually owed money to the mortgage company and, thus, continued to hold the excess funds in escrow. See a copy of respondent's letter dated June 24, 2002 attached hereto and marked Exhibit 5.

9. As of the date of this complaint, the grievants have not heard from the respondent since the date of the closing and have not received a check from her.

10. The actions and non-action of the respondent as set forth in the first count of the complaint constitute violations of RPC 1.3 (Diligence) and RPC 1.4 (Communication).

SECOND COUNT

1. The complainant repeats and realleges each and every allegation as contained in the first count of the complaint

2. The respondent was notified of the filing of the formal grievance against her by letter of the secretary of the Committee dated May 27, 2002. a copy of said letter is attached hereto and marked Exhibit 6.

3. The respondent replied to the grievance by letter to the secretary of the Committee dated June 24, 2002. Exhibit 5.

4. The presenter was assigned to investigate the facts underlying the grievance on July 23, 2002.

5. The presenter advised the respondent of the change in investigators by letter of September 6, 2002 and, also in the letter,

requested that she supply additional information in order to complete the investigation. A copy of said letter is attached hereto and marked Exhibit 7.

6. The respondent, to date, has not complied with the requests made on September 6, 2002.

7. On October 14, 2002 the presenter called the respondent to follow up on the stated requests and, to date, has not received a response.

8. To date, the respondent has not contacted the presenter nor forwarded any of the requested documentation.

9. The actions and inaction of the respondent as set forth in the second count of the complaint constitutes a violation of R. 1:20-3(g)(3).

Dated: January 24, 2003

THE DISTRICT XI ETHICS COMMITTEE

By /s/ Jo-Ann O. Durr, Esq.

Patricia Adelle
(address and phone number
provided on cover letter)

KENNETH D. KROLL	:	SUPREME COURT OF NEW JERSEY
and ROSETTA KROLL	:	DISTRICT XI ETHICS COMMITTEE
	:	
Complainant,	:	DOCKET NO: XI-02-023E
	:	
vs.	:	DISCIPLINARY ACTION
	:	
PATRICIA ADELLE	:	VERIFIED ANSWER IN ACCORDANCE
	:	WITH R.1:20-4(d)
Respondent,	:	

Respondent, Patricia Adelle, by way of verified Answer to
Complaints says:

General Allegations

1. As to paragraph 1 of general allegations, Respondent denies that she maintains an office at 64 Woodlot Road, Wayne, New Jersey. Further, Respondent states that she closed her law practice on October 1, 2002 and is not now engaged in the practice of law in the State of New Jersey.

First Count

1. Respondent admits the allegations of paragraph 1 of the first count.

2. Respondent admits the allegations of paragraph 2 of the first count.

3. Respondent admits to the allegations as to a mortgage commitment from Millennium Mortgage Company, a broker dealing with

Interfirst Wholesale Mortgage and denies knowledge as to ABN Amro Mortgage Group, Inc.

4. Respondent admits to the allegations of paragraph 4 of the first count.

5. Respondent admits to the allegations of paragraph 5 of the first count.

6. Respondent denies the allegations of paragraph 6 of the first count in its entirety.

7. Respondent admits the allegations that complainant called respondent's office on four occasions, four days in a row.

8. Respondent admits the allegations of paragraph 8 of the first count.

9. Respondent admits the allegations of paragraph 9 of the first count.

Second Count

1. Respondent admits the allegations of the paragraphs 1 through 9 of the second count.

Affirmative Defenses as to Count One

1. A review of my trust account ledger on the allegations of overcharging in the First Count shows that a total amount of \$238,096.70 was deposited into the account of September 28, 2001, \$7,184.60 representing closing costs of the complainants in this matter. A total of \$237,781.61 was paid out on that date. Subsequently, a stop payment was issued on an Interfirst escrow check

because the amount requested by Interfirst was incorrect. The total represent that I hold in my trust account the amount of \$315.09, funds due to the complainants.

2. The enclosed letter from Interfirst Reconciliation Department raises the issue that complainants owe \$902.93 on their closing. Therefore, they may have underpaid for their closing.

Mitigating Circumstances as to Counts One and Two

1. Respondent admits that she made one or two attempts by telephone to contact Interfirst as to the amounts owed on the dosing and was unable to finally resolve this issue.

2. Respondent offers in mitigation of her failure to pursue this matter with due diligence the following:

(a) Respondent relocated her law practice in May 2001 to Wayne, New Jersey in order to better care for an aging parent. The practice in Wayne, New Jersey was located in a private home with a separate office.

(b) In January 2002, Respondent was advised by family members who owned the property that she would have to vacate the property, with her mother and her law practice, due to financial difficulties of other family members.

(c) This unavoidable set of circumstances, combined with the fact that I was also pursuing a teaching career and practicing law, led to my overlooking my responsibilities to Mr. & Mrs. Kroll.

d) In October 2002, I was able to relocate my home and at the same time I did not re-establish my law practice. Also in October 2002, I faced a three-month suspension beginning on November 1, 2002 for my failure to cooperate with a previous ethics investigation.

I offer the above explanation, though personal in nature, to explain to the Committee why I have been unable to continue practicing law in the way I should be. I have practiced law as a sole attorney for approximately eight years. The last two years, because of family responsibilities that I had to assume, have made the continuation of the practice of law at first difficult and now impossible.

I certify that the above statements made by me are true. I am aware that if any of the above statements are wilfully false, I am subject to punishment.

Dated: February 28, 2003

/s/ Patricia Adelle

KENNETH D. KROLL : SUPREME COURT OF NEW JERSEY
and ROSETTA KROLL : DISCIPLINARY REVIEW BOARD
:
Complainant, : DOCKET NO: XI-02-023E
:
vs. : HEARING PANEL REPORT
: RECOMMENDING SUSPENSION
PATRICIA ADELLE :
:
Respondent, :

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

The District XI Ethics Committee Hearing Panel respectfully shows:

I. PROCEDURAL HISTORY

1. Respondent was admitted as a member of the bar of New Jersey in 1993, and was engaged in the practice of law at 64 Wood Lot Road, Wayne, New Jersey 07470.

2. On January 24, 2003, a formal complaint was filed with the District XI Ethics Committee and was served upon the Respondent.

3. Respondent filed an answer dated February 28, 2003.

4. A formal hearing was held before this hearing panel consisting of Kenneth F. D'Amato, Esq., Chair, Robert C. La Salle, Esq., attorney member, and Jacqueline Bonney, Public Member on July 14, 2003. The matter was presented by Joanne Durr, Esq.

Respondent did not attend the hearing, despite notice thereof. In fact, Ms. Adelle was, on April 22, 2003, invited by the Chair to

advise as to whether any discovery was necessary and of any anticipated periods of unavailability. Respondent did not respond to that invitation. By letter dated June 6, 2003, a hearing was scheduled for July 2, 2003. Ms. Adelle was served with Notice of the Hearing via regular and certified mail.

Thereafter, the July 2, 2003 scheduled hearing was adjourned due to the unavailability of the presenter. An invitation was made by the Chair to Ms. Adelle via letter dated June 26, 2003 to advise of her unavailability during the time frame of July 7 to July 18, 2003. Again, that notice was sent via regular and certified mail. The certified mailing was returned unclaimed. By letter dated June 30, 2003, the panel members, presenter and Respondent were advised that the hearing had been re-scheduled for Monday, July 14, 2003. The notice to Respondent was again served via regular and certified mail. Notwithstanding the various notices, Respondent did not attend the hearing, and did not at any time contact the Hearing Panel Chair to advise of her availability or unavailability.

II. SYNOPSIS OF ALLEGATIONS

5. The formal complaint filed charged the Respondent with the following allegations of ethical misconduct:

1. RPC 1.3 (diligence); RPC 1.4 (communication); and failure to cooperate with investigation in violation of Rule 1:20-3(g) (3).

Said allegations arose from Respondent's representation of grievants in their purchase of a home. The closing of title occurred

on September 28, 2001. At closing, there were discrepancies regarding the amounts to be charged by grievants' lender. The discrepancies were to be resolved post-closing.

The grievants complained that they had telephoned Respondent on four occasions without receiving a response. Further, in response to the formal grievance filed, Respondent, by letter dated June 24, 2002, advised that she had not yet settled the question as to whether she had miscalculated the closing costs. As of the date of the filing of the complaint (January 24, 2003), Respondent still had not resolved the issue or provided any additional information to the grievants.

The second count of the complaint alleged that Respondent had been notified that the grievance had been assigned for investigation via letter dated September 6, 2002, and that Respondent had failed to respond to said notice and subsequent telephone calls.

Respondent filed an answer to the complaint admitting all of the factual allegations of first count of the complaint with the exception of paragraph 6 (asserting that the Respondent "may have overcharged the grievants for fees and escrows in connection with the loan") . Respondent's answer also admitted all of the allegations of the second count of the complaint.

Respondent set forth two affirmative defenses. In the first, Respondent stated that a total of \$238,096.70 was deposited into her trust account for the closing, and that \$237,781.61 had been disbursed. Respondent stated that she continued to hold \$315.09 in her

trust account as funds due to the grievants. The first affirmative defense also stated that a stop payment had been issued on an escrow check, but the affirmative defense does not further state whether a replacement check was issued or the extent to which the stop payment affected the balance in her trust account.

In her second affirmative defense, Respondent purports to attach a letter from grievants' lender stating that an additional \$902.93 was due from grievants on their closing and that as a result, grievants "may have underpaid for their closing." Respondent failed to attach a copy of the referenced letter.

In addition to the affirmative defenses, Respondent asserted "mitigating circumstances" in which she stated that she had made "one or two attempts by telephone to contact Interfirst as to the amounts owed on the closing and was unable to finally resolve this issue." In addition, Respondent stated that she had relocated her office in May 2001 to Wayne, New Jersey in order to better care for an aging parent, but that in January 2002, she was required to relocate that office. Respondent stated that "This unavoidable set of circumstances, combined with the fact that I was also pursuing a teaching career and practicing law, led to my overlooking my responsibilities to [grievants] ."

III. FINDINGS OF FACT AND CONCLUSIONS

6. At the hearing conducted July 14, 2003, the panel heard the testimony of grievant Kenneth D. Kroll. In addition, the panel

received into evidence the following exhibits:

C-1--PNC Bank cashier's check paid to the order of Patricia Adelle, attorney trust account in the amount of \$7,184.50 dated September 28, 2001.

C-2--Lender's itemization of amount financed, dated September 28, 2001.

C-3--HUD--1 Uniform Settlement Statement, dated September 28, 2001.

C-4--Receipt for recordation of deed dated June 23, 2003, including copy of deed, statement for services rendered by Robert E. Minogue, Esq. dated July 12, 2003 (for recording of deed, etc.), and other correspondence from Mr. Minogue including to Patricia Adelle dated February 20, 2003.

C-5--Letter dated July 18, 2002 from Kenneth ID. Kroll to Ethics Committee.

C-6--Letter dated May 23, 2002 from Kenneth D. Kroll to Ethics Committee.

Mr. Kroll testified that Patricia Adelle represented Mr. and Mrs. Kroll in the purchase of real property. Prior to closing, the Krolls were advised that they needed to bring to closing an amount in excess of \$7,000.00. Said amount is represented by C-1. Mr. Kroll does not recall what, if any, explanation he received at closing from Ms. Adelle concerning C-2. The HUD-1 statement was reviewed at closing. As reflected in C-3, changes were made at closing. Ms. Adelle advised

that the HUD statement would be corrected and retyped. However, Mr. Kroll states that he never did receive a corrected copy of the HUD-1.

About a week or two after the closing, Ms. Adelle advised Mr. Kroll that he may be getting a refund of about \$300.00. However, there was no writing in this respect. Mr. Kroll states that he called Ms. Adelle three or four times over a period of several months and that she did not respond to his telephone calls. Ms. Adelle did have his pager number, his telephone number and had had no difficulties in contacting him before the closing. Mr. Kroll received no writings from Ms. Adelle after the closing.

It was noted that in her response to the District XI Ethics Committee secretary, dated June 24, 2002, Ms. Adelle stated that she continued to "hold the closing papers in my file as I continue to discuss with Interfirst Wholesale Mortgage Lending the status of funds they claim are owed on the closing. Therefore, I am unable to release Mr. Kroll's remaining balance until this matter is resolved with Interfirst."

Mr. Kroll testified that as reflected in his letter dated July 18, 2002 (C-5), he had spoken with a representative of Interfirst Wholesale Mortgage and was advised that there were no monies outstanding on the account.

Mr. Kroll stated that in connection with an attempt to refinance his house, he and Mrs. Kroll retained Robert Minogue, Esq. During the refinance process, Mr. Minogue learned that the deed to the property

for which Ms. Adelle had represented them had not been recorded. As a result, the Krolls engaged Mr. Minogue to perform whatever services were required to ensure that the deed was properly recorded.

Attached as part of C-4 is a letter from Mr. Minogue dated February 20, 2003 in which he states that he left two messages for Ms. Adelle without a reply. The letter states that the title company that Ms. Adelle had used for the purchase had not issued a title policy, and that the deed and mortgage to the property had not yet been recorded.

Mr. Minogue mailed the deed for recording to the Passaic County Register on June 19, 2003. His covering letter states that he had obtained the "duplicate, executed deed" from the seller's attorney. The statement of services rendered by Mr. Minogue indicates that the Krolls incurred \$600.00 in fees, as well as \$1,109.00 in costs (for recording of deed, realty transfer fee and postage)

As a result of reviewing the testimony and exhibits, the hearing panel makes the following factual findings and conclusions:

A. Respondent represented the Krolls in connection with the purchase of a home.

B. The Krolls delivered to Patricia Adelle closing funds in the amount of \$7,184.50. (C-1)

C. The HUD-1 (C-3) contains numerous handwritten modifications apparently made at the time of closing.

D. The bank's itemization of amount financed does not match the

items and amounts set forth on the HUD-1 (this could not be rectified without clarification and testimony from the Respondent). (C-2 and C-3)

E. Following the closing, there remained monies in Ms. Adelle's trust account.

F. Respondent advised grievants that they were likely to receive a refund from the closing.

G. Mr. Kroll telephoned the Respondent on numerous occasions to inquire regarding the money he believed he was to receive as a refund.

H. Respondent failed to respond to Mr. Kroll's inquiries regarding the refund.

I. Respondent failed to release the monies held in trust to grievants or to properly and diligently settle the transaction.

J. As of the date of the hearing (22 months post-closing), Mr. and Mrs. Kroll still had not received the refund, and Respondent had not advised as to the proper disposition of the funds.

K. Respondent failed to properly and timely record the deed, resulting in substantial costs to grievants.

L. The HUD-1 reflects that \$1,060.00 was to be paid from the closing proceeds for the realty transfer fee, and \$30.00 was to be paid for the recordation fee.

N. There is no accounting for the funds deducted at closing for the realty transfer fee and deed recordation; by Respondent's report, she is holding in her trust account \$315.09 as of February 28, 2003.

IV. DETERMINATION

7. The panel has carefully considered and reviewed the testimony and evidence and has concluded that Respondent's conduct constitutes ethical misconduct in that she has demonstrated a pattern of lack of diligence in violation of RPC 1.3 and a pattern of failing to communicate in violation of RPC 1.4. In addition, the Respondent has failed to cooperate with disciplinary authorities in violation of RPC 1.8.

8. As a result, the panel recommends that Respondent be suspended for a period of three months. The panel notes that in February 2002, Respondent was reprimanded for failing to act diligently and failing to communicate with a client in defense of a collection suit. In November 2002, Respondent was suspended for a period of three months for sending a fabricated motion to an adversary and failing to cooperate with disciplinary authorities.

In addition, the panel strongly urges the Office of Attorney Ethics to conduct a full and complete audit of Respondent's trust account regarding the subject transaction.

DISTRICT XI ETHICS COMMITTEE

October 20, 2003

By: /s/ Kenneth F. D'Amato
Hearing Panel Chair