

FILE NO. A05-498

STATE OF MINNESOTA

IN SUPREME COURT

In Re: Petition for Disciplinary
Action against RICHARD J. HAEFELE
a Minnesota Attorney,
Registration No. 39214

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION
FOR DISCIPLINE**

The above-titled matter came on for hearing before the Court, the undersigned Judge of District Court presiding as referee, on September 9, 2005, in the LPRB Hearing Room, MN Judicial Center, St. Paul Minnesota, pursuant to Order of Appointment of the Minnesota Supreme Court.

Respondent appeared personally, and by and through Attorney, Stephen C. Rathke, of Minneapolis, Minnesota. Petitioner, Minnesota Lawyers Professional Responsibility Board, appeared by and through Attorney/Assistant Director, Betty Shaw, of St. Paul, Minnesota.

Based upon all the files, records, and proceedings herein, and upon the briefs of counsel, the Court hereby makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on October 5, 1973, and currently practices law in Chaska, Minnesota.

Discipline History

2. Respondent's disciplinary history includes:

a. On December 12, 1993, Respondent received a public reprimand and two years probation for the following misconduct: 1) On four occasions, between May 1990 and September 1991, Respondent wrote trust account checks on behalf of four clients that exceeded the funds each client had on deposit. One of the checks exceeded the entire

amount in the trust account, resulting in an overdraft; 2) Respondent misappropriated \$1,214.41 of interest earned on the trust account, paying that interest to himself instead of the Lawyers Trust Account Board; 3) On two occasions, Respondent paid to or on behalf of clients interest earned on the pooled trust account funds without individual accounting to determine how much each client should receive; and 4) Respondent failed to keep proper books and records. Respondent's conduct violated Rules 1.15(b), (d), (g), and (h), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC). See In re Haefele, 503 N.W.2d 780 (Minn. 1993).

b. On February 7, 1990, Respondent received an admonition for entering into business transactions with a client in violation of Rule 1.8, MRPC.

Pattern of Misconduct

Sexual Relations with a Client

3. Roxanne Lenarz retained Respondent to represent her in a bankruptcy in January 2003. There was no written retainer agreement limiting Respondent's representation in the matter. Lenarz paid Respondent a retainer.

4. The attorney-client relationship initially involved a Chapter 7 Bankruptcy, but later included legal services on other matters.

5. Respondent's actions regarding the bankruptcy do not indicate that he withdrew from representing Lenarz after the first meeting of creditors on March 25, 2003. He did not make a motion to the Bankruptcy Court for leave to withdraw as required by Local Rule 9010-3(e)(2) and (4), U.S. Bankruptcy Court, D. Minn. He did not provide Lenarz with an engagement letter limiting the scope of his representation. When Respondent sought bankruptcy approval of his representation, he did not limit the scope of his representation. Respondent did not give notice to creditors (the other parties to the action) or the Court that he was withdrawing from representation before discharge.

6. Respondent and Lenarz began a social relationship in February 2003 which became intimate during the attorney-client relationship. The testimony of Lenarz regarding the commencement of sexual intimacy on or about March 14, 2003 (her son's birthday) is far more credible than Respondent's testimony, and the finding here is that sexual intimacy began in mid-March 2003.

7. The sexual relationship continued until late October or November 2003.

8. On March 27, April 4, April 21, May 14 and May 16, 2003, Respondent filed documents with the Court adding parties to the Bankruptcy proceedings (Ex. 101, pp. 2-4) ensuring that they were included in the filing and received notice of Lenarz' discharge. On April 8, 2003, Respondent was sent a notice of hearing and motion for relief from stay by M&I Home Equity Corp. Similarly on April 14, 2003, Respondent was sent a notice of hearing and motion for relief from stay by Wakota Federal Credit Union. On April 17, 2003, Respondent was sent a notice of hearing and motion for relief from stay by Washington Mutual Bank (Ex. 101, pp. 3-4).

9. Respondent's representation included the Bakken adversary proceeding which was commenced on May 27, 2003, one day before the Lenarz bankruptcy order of discharge was issued (Exs. 7 and 101).

Business Relations with a Client

10. During the relationship between Respondent and Lenarz, she accompanied Respondent on several shopping trips to flea markets and antique shops in the spring of 2003 at which Respondent purchased a number of items for her and for her house.

11. Lenarz reasonably assumed items purchased for her and for the house were gifts (e.g. when Respondent suggested purchasing a set of dishes to use at a luncheon for his mother, together with an eight-piece place setting which was monogrammed with the letter H, Lenarz reasonably assumed that the dishes were a gift). The nature of the relationship and the nature of the purchases make Lenarz' belief that these purchases were gifts more credible than Respondent's testimony that they were "loans".

12. Respondent did not tell Lenarz that the purchases for her home were "loans" to be repaid out of proceeds from the mortgage on her homestead until later in the relationship. Respondent did not explain the terms of these "loans" or document or otherwise memorialize any of them.

13. On April 12, 2003, Respondent took Lenarz to a dealership in Buffalo, Minnesota, where he had previously purchased a Suburban for himself. Respondent urged Lenarz to buy a 1999 Suburban as a replacement for her car that was about to be repossessed. Respondent owns several Suburban vehicles.

14. Lenarz would not have chosen to purchase a Suburban but for Respondent's insistence and his payment for the vehicle. Lenarz reasonably believed that the vehicle was a gift and that if their relationship did not continue that Respondent might take back the vehicle since it was the type of vehicle he preferred.

15. Lenarz was Respondent's client at the time he "loaned" her the money for the Suburban and for the items for her home.

16. Lenarz lived in a large Victorian house in Carver, Minnesota. Lenarz also owned a smaller house on a lot adjacent to her homestead (Oak Street house).

17. Respondent has purchased a number of older, historic commercial and residential buildings and restored them for use as rental property. Respondent has an interest in several real estate ventures, including a real estate partnership with Jim Farrington.

18. The Oak Street house was in foreclosure proceedings when Lenarz retained Respondent to represent her in the Chapter 7 Bankruptcy in January 2003.

19. On September 29, 2003, Lenarz received a check for just under \$12,000 from Title Mark's escrow account (Ex. 20). Lenarz endorsed the check to Respondent believing that he would use the check to pay off the delinquent mortgage amount on the Oak Street house to prevent a sheriff's sale scheduled for September 30, 2003 (Exhibits. 20 and 21).

20. Respondent did not pay off the delinquent mortgage, but instead deposited the check proceeds into his account and applied the money to the debts he claimed Lenarz owed him (Ex. 20, p. 2).

21. The Oak Street house was ultimately returned to the federal government under its guarantee to the mortgage holding bank and was then purchased by Respondent's real estate partner, Jim Farrington.

22. When Respondent began representing Lenarz, she had been ordered to sell her homestead in order to pay a \$30,000 mechanics' lien judgment. When Lenarz retained Respondent she had already placed her homestead on the market.

23. In the spring of 2003 Respondent met with Lenarz and her realtor and told the realtor to take Lenarz' homestead off the market. Respondent told Lenarz he would refinance her homestead so that she could pay off the judgments against it.

24. Lenarz understood that Respondent would enter into a purchase agreement for her home, he would apply for and obtain a mortgage, pay off all the judgments on her homestead and then he would quit claim her homestead back to her and she would make all of the payments on the mortgage, taxes and insurance.

25. On May 12, 2003, Respondent purchased Lenarz' homestead for \$475,000 and placed a \$325,000 mortgage on the property (Ex. 12).

26. Lenarz was unrepresented in the transaction whereby Respondent acquired title to her home. Respondent did not notify Lenarz in writing that independent counsel should be considered in entering into this transaction.

27. Lenarz did not consent to the transaction in a document separate from the transaction documents that specified whether Respondent was representing her or otherwise looking out for her interests in the transaction or that explained Respondent's conflicting interest to her interests or that disclosed the reasonably foreseeable risks to her from the conflict.

28. On Respondent's advice, Chaska Builders' judgment was not paid off at the May 12, 2003, closing. Respondent believed he could obtain a reduction in the amount of Chaska

Builders' charges (Exhibits 9 and 12). At the May 12, 2003, closing \$10,569 was escrowed to pay off Gordon Johnson's judgment (Ex. 12).

29. Respondent did not immediately give Lenarz a quit claim deed to the property.

30. In late May or early June 2003 Respondent invited Lenarz to accompany him on a trip to Canada. Before Lenarz would agree to go on the trip she asked Respondent to deed her home back to her as he had promised to do.

31. On or about June 3, 2003, Lenarz met Respondent in his office where he told her she would have to sign a paper regarding the money that he claimed she owed him before he would quit claim her home back to her (Ex. 13, p. 3).

32. Respondent also claims that Lenarz signed a June 3, 2003, letter documenting their understanding regarding the May 12, 2003, transaction (Ex. 13). Lenarz acknowledges that the signature on the photocopy of the June 3, 2003, letter looks genuine but denies that she would have agreed to a letter containing the third paragraph of the first page of the letter. Lenarz acknowledges that the signature on the photocopy of the handwritten list of amounts Respondent claims were due him looks genuine. Lenarz acknowledges that she signed such a document in order to obtain a quit claim deed to her home. Lenarz does not remember the document looking like the attachment in Exhibit 13.

33. Respondent has not produced the original of either the June 3, 2003, letter or the handwritten list of the amounts Respondent claims were due him as of June 3, 2003 (Ex. 13).

34. Lenarz has consistently disputed the authenticity of the June 3, 2003, letter and attachment (Ex. 13). *See*, Ex. 113, pp. 28-31.

35. Lenarz' dispute regarding the authenticity of page 3 of Exhibit 13 is not without merit. For example, Respondent lists two payments to Dauwalter Plumbing for a total of \$4,900 owed to him as of June 3, 2003 (Ex. 13). The Dauwalter Plumbing invoice is dated June 26, 2003, and is for only \$3,900 of which only \$2,300 is indicated as having been paid prior to the invoice date (Ex. 14).

36. In his claim for repayment Respondent also included \$850 of totally undocumented cash "loans" allegedly made to Lenarz while she was his client (Ex. 13, p. 3).

37. Respondent's quit claim deed to Lenarz, drafted by him, makes her homestead subject not only to the \$325,000 purchase money mortgage but also to an additional \$30,000 mortgage which was \$3,357.12 more than Respondent claimed Lenarz owed him.

38. Respondent's quit claim deed converted Lenarz' consumer debt into a debt secured by her homestead. Respondent did not notify Lenarz in writing that independent counsel should be considered in entering into this transaction.

39. Lenarz did not consent to the transaction in a document separate from the transaction documents that specified whether Respondent was representing her, or otherwise looking out for her interests in the transaction, or that explained Respondent's conflicting interest to her interests, or that disclosed the reasonably foreseeable risks to her from the conflict.

40. Lenarz was Respondent's client at the time she entered into the June 3, 2003, transaction. Respondent's conversion of his client's unsecured consumer debt into debt secured by her homestead was not fair and reasonable to his client.

41. Lenarz became unemployed in the fall of 2003. Lenarz made all of the monthly mortgage payments on her homestead until January and February 2004.

42. Lenarz resumed making mortgage payments after she obtained employment in 2004. Lenarz made the mortgage payments for March 2004 through the December 2004 settlement agreement.

43. In December 2003 Lenarz filed the quit claim deed Respondent had given her on June 3, 2003, in order to be able to file for homestead exemption for 2004 (Ex. 4). Lenarz told Respondent in December 2003 that she was going to file the deed.

44. In the summer and fall of 2003 Respondent became financially pressed because an anchor tenant in one of his commercial buildings was not paying rent and had vacated the building.

45. Respondent began pressuring Lenarz to obtain a "second mortgage" on either her homestead or the Oak Street property in order to obtain the cash he needed for his restaurant remodeling.

46. As an attorney experienced in real estate matters, Respondent knew that Lenarz could not obtain second mortgage financing in her own name on either her homestead or the Oak Street property, which was in foreclosure.

47. Respondent's demand for a second mortgage refinance amounted to a demand that Lenarz deed her homestead to his partner Jim Farrington or to himself so that he could obtain a second mortgage.

48. Lenarz' income in 2002-2003 was not sufficient to support both first and second mortgage payments on her home. Respondent knew, or should have known, that Lenarz' income in 2002-2003 was not sufficient to support both a first and second mortgage payment on her home.

49. In order to satisfy Respondent, Lenarz put her home on the market in the summer/fall of 2003 and obtained a purchase agreement for \$450,000 contingent on the sale of the buyer's home.

50. After the contingent sale fell through in the fall of 2003, Respondent resumed pressuring Lenarz to deed her homestead back to him (Ex. 110, p. 2).

Aggravating Factors

51. After Lenarz refused to re-deed her property to Respondent, he filed three lawsuits against her.

52. On February 11, 2004, Respondent filed an unlawful detainer action against Lenarz (Ex. 6). Respondent knew when he filed the unlawful detainer action that Lenarz was not a tenant and that he was not the owner of the property (Exs. 4 and 6).

53. On March 2, 2004, the court dismissed Respondent's unlawful detainer action finding that, "Plaintiff has failed to prove the allegations in the complaint" (Ex. 6, p. 3).

54. On February 24, 2004, Respondent brought another action against Lenarz seeking possession of the homestead and damages in excess of \$50,000 (Ex. 5).

55. On March 5, 2004, Respondent filed a notice of *lis pendens* on Lenarz' homestead thereby effectively preventing her from selling the property (Ex. 16).

56. After attempting to defend herself *pro se*, Lenarz hired an attorney and incurred \$46,000 in legal fees in defending herself against Respondent's suits (Lenarz test.).

57. Lenarz and Respondent settled these lawsuits in December 2004. Under the terms of the settlement, Lenarz received \$70,000 (more than half of which was consumed by attorney fees) and Respondent received her homestead and all of the furniture in it except that located in the family room, office and her bedroom (Ex. 117; Lenarz test.).

58. Respondent has benefited from his business transaction with Lenarz. He now owns her former homestead appraised at \$475,000 in the spring of 2003. He paid Lenarz \$70,000 and incurred a 30-year mortgage of \$325,000 for a total investment of \$395,000. Lenarz has paid approximately 18 months of the mortgage obligation. Even if one credits Respondent's figure of \$40,000 as "loans" to Lenarz against the homestead during 2003, Respondent's investment in the home is only \$435,000 or \$40,000 under market value.

59. In addition to his superior position by reason of his attorney status, Respondent took advantage of the romantic-sexual relationship with Lenarz. Respondent has not acknowledged his misconduct and shows no understanding or insight into his wrongdoing.

60. Respondent has been previously disciplined for acquiring an adverse interest in a client's property.

61. Respondent has been previously publicly disciplined.

Based upon the foregoing Findings, the Court makes the following:

CONCLUSIONS OF LAW

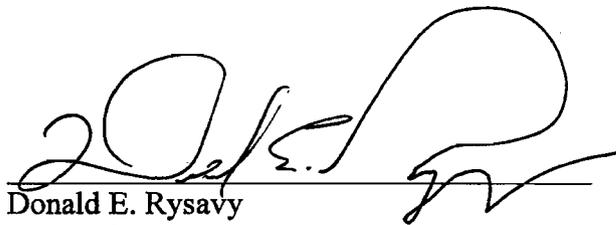
1. Petitioner has proved by clear and convincing evidence that Respondent's conduct in engaging in a sexual relationship with a client violated Rule 1.8(k), MRPC.

2. Petitioner has proved by clear and convincing evidence that Respondent's conduct in engaging in a business transaction with a client without (a) advising the client in writing to seek independent counsel before the transaction, (b) disclosing the terms of the transfer to the client in writing, (c) obtaining the client's written consent in a document separate from the transaction documents, (d) disclosing the potential conflicts, and (e) without providing for fair and reasonable terms for his client violated Rule 1.8(a), MRPC.

RECOMMENDATION FOR DISCIPLINE

The undersigned referee recommends that Respondent be suspended from the practice of law for six months and that reinstatement pursuant to Rule 18(a)-(e), Rules on Lawyers Professional Responsibility (RLPR), be conditioned upon payment of Rule 24, RLPR, costs and disbursements and compliance with Rule 26, RLPR.

Dated: September 20, 2005



Donald E. Rysavy
Judge of District Court
Serving as Referee Pursuant to Supreme Court Order

FILED
IN THE OFFICE OF THE CLERK
ADMINISTRATOR MOWER COUNTY DIST

SEP 20 2005

Patricia A. Bell, Adm