STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

DETERMINATION

FRANCIS M. ALESSANDRO,

a Judge of the New York City Civil Court,
Bronx County.

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Edward Lindner and Melissa DiPalo, Of Counsel)
for the Commission

Marvin Ray Raskin for Respondent

The respondent, Francis M. Alessandro, a Judge of the New York City Civil Court, Bronx County, was served with an Amended Formal Written Complaint dated

February 19, 2007, containing two charges. The charges alleged that respondent filed two financial disclosure statements with the Ethics Commission for the Unified Court System that were materially incomplete (Charge I) and submitted loan applications to mortgage brokers that omitted various assets and liabilities (Charge II). Respondent filed a verified Answer dated February 22, 2007.

By Order dated January 31, 2007, the Commission designated Mark S. Arisohn, Esq., as referee to hear and report proposed findings of fact and conclusions of law. On March 9, 2007, the Commission directed that the hearing in the matter be consolidated with the hearing in a pending proceeding against Supreme Court Justice Joseph S. Alessandro. A joint hearing was held on June 18, 19, 20, 2007, and February 14, 15 and 22, 2008, in New York City. The referee filed a report dated July 21, 2008.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of removal, and respondent's counsel recommended the sanction of admonition or censure.

On December 11, 2008, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the Civil Court of the City of New York, Bronx County, since 1990. As a Civil Court Judge, respondent deals with cases involving mortgages, notes and indentures.

2. Prior to assuming the bench, respondent and his brother, Joseph S. Alessandro, maintained a private practice of law concentrating in, *inter alia,* real estate

law.

3. In 2003 Joseph Alessandro was a candidate for election to the Westchester County Court. He was elected to County Court in November 2003 and became a Supreme Court Justice in January 2006.

4. In late August 2003 respondent and Joseph Alessandro co-signed a mortgage note reflecting a $250,000 loan to Joseph Alessandro's campaign by Barbara Battista, a 71-year-old registered nurse who was the campaign manager and treasurer. The handwritten note, dated August 31, 2003, was prepared by Joseph Alessandro and was secured by a mortgage on his residence located in Valhalla, New York (the "Valhalla property"). Respondent and Joseph Alessandro owned the Valhalla property as joint tenants with a right of survivorship.

5. The note signed by respondent and Joseph Alessandro had a term of 30 days, with the principal due and payable on September "31 [sic]," 2003. Despite the 30-day term contained in the note, Ms. Battista and Joseph Alessandro agreed that he would repay the loan by July 2004.

6. Respondent testified that he signed the note and mortgage "as an accommodation" to his brother and that he believed that the $250,000 loan was his brother's responsibility, although he acknowledged that as a signatory he was legally obligated on the note.

7. Thereafter, a promissory note dated November 3, 2003, reflecting the original $250,000 loan was signed by Ms. Battista and Joseph Alessandro, which

provided for a 15-year term. A mortgage dated October 23, 2003, and signed on November 3, 2003, by Joseph Alessandro, but not respondent, purported to secure the loan with the Valhalla property. Despite the 15-year term contained in this note, Ms. Battista and Joseph Alessandro understood that he would repay the loan by July 2004, as they had originally agreed. Ms. Battista recorded this mortgage on November 5, 2003. Respondent testified at the hearing that he was unaware of this promissory note and mortgage until early 2005.

8. In 2004 Joseph Alessandro did not repay any portion of the $250,000 loan from Ms. Battista. In January 2005 Ms. Battista recorded the handwritten mortgage, and on February 25, 2005, Ms. Battista commenced a lawsuit against respondent and Joseph Alessandro in Supreme Court, Westchester County, to foreclose on the handwritten mortgage note.

9. In February 2006 respondent, Joseph Alessandro and Ms. Battista entered into a settlement agreement pursuant to which Ms. Battista received $273,000.

As to Charge I of the Formal Written Complaint:

10. On July 7, 2004, respondent filed with the Ethics Commission for the Unified Court System a financial disclosure statement for the calendar year 2003. Respondent failed to disclose fully his assets and liabilities for 2003, in that he: (a) failed to disclose the note and mortgage held by Ms. Battista against the Valhalla property; (b) failed to disclose a mortgage held by GreenPoint against a property at 1472 Hammersley Avenue in the Bronx, which respondent jointly owned with Joseph Alessandro; (c) failed

to disclose that he owned a one-half interest in the Valhalla property; and (d) failed to disclose that he owned a one-half interest in a property at 895 James Street in Pelham.

11. On April 14, 2005, respondent filed with the Ethics Commission for the Unified Court System a financial disclosure statement for the calendar year 2004. Respondent failed to disclose fully his assets and liabilities for 2004, in that he: (a) failed to disclose the note and mortgage held by Ms. Battista against the Valhalla property; (b) failed to disclose the mortgage held by GreenPoint against the property at 1472 Hammersley Avenue; (c) failed to disclose that he owned a one-half interest in the Valhalla property; and (d) failed to disclose that he owned a one-half interest in the property at 895 James Street.

12. Respondent testified at the hearing that he was "negligent" in failing to disclose the mortgage held by Ms. Battista on his financial disclosure statements, but also testified that he omitted the Battista mortgage from his financial disclosure statements because he felt that it was his "brother's obligation" and because it was an "unrecorded" instrument. This testimony establishes that respondent intentionally failed to disclose the Battista mortgage on his financial disclosure statements.

As to Charge II of the Formal Written Complaint:

13. During 2004, respondent and Joseph Alessandro jointly submitted three loan applications to Global Equity Funding ("Global Equity"), as described below. Respondent located Global Equity on the internet and gave the mortgage broker, Jack McDowell, the information for the applications over the telephone. Mr. McDowell

returned the applications to respondent for his signature, and respondent gave them to Joseph Alessandro to sign.

14. On or about April 1, 2004, respondent and Joseph Alessandro submitted an application to Global Equity for a $350,000 loan on property at 21 Hamilton Avenue in New Jersey, which they jointly owned. This application, which was signed by respondent and Joseph Alessandro, contained a number of false statements and omissions, including:

(a) Three properties jointly owned by respondent and Joseph Alessandro were omitted: (i) 1472 Hammersley Avenue; (ii) 895 James Street; and (iii) 2711 SE 27th Way in Florida.

(b) One property individually owned by respondent, 2715 SE 27th Way, was omitted.

(c) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Joseph Alessandro was not disclosed.

(d) Respondent misrepresented that he was not a co-maker or endorser on a note, when in fact in 2003 he had co-signed a $250,000 note to Ms. Battista which had not been repaid.

15. On or about May 27, 2004, respondent and Joseph Alessandro submitted a loan application to Global Equity to refinance 23 Hamilton Avenue, which they jointly owned, for $350,000. This application, which was signed by respondent and Joseph Alessandro, contained a number of false statements and omissions, including:

(a) Five properties jointly owned by respondent and Joseph Alessandro were omitted: (i) 1464 Hammersley Avenue; (ii) 895 James Street; (iii) 24 Franklin Avenue in New Jersey; (iv) 28 Franklin Avenue; and (v) 2711 SE 27th Way.

(b) One property individually owned by respondent, 2715 SE 27th Way, was omitted.

(c) The mortgage held by Ameriquest on respondent's Bronx residence was not disclosed; the application shows a mortgage on the property, but Ameriquest is not identified.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Joseph Alessandro was not disclosed.

(e) Respondent misrepresented that he was not a co-maker or endorser on a note, when in fact in 2003 he had co-signed a $250,000 note to Ms. Battista which had not been repaid.

16. On or about July 22, 2004, respondent and Joseph Alessandro submitted an undated application to Global Equity for a $266,000 loan on property at 26 Franklin Avenue, which they jointly owned. This application, which was signed by respondent and Joseph Alessandro, contained a number of false statements and omissions, including:

(a) Six properties jointly owned by respondent and Joseph Alessandro were omitted: (i) 1464 Hammersley Avenue; (ii) 895 James Street; (iii) 21-23 Hamilton Avenue; (iv) 24 Franklin Avenue; (v) 28 Franklin Avenue; and (vi) 2711 SE 27th Way.

(b) One property individually owned by respondent, 2715 SE 27th Way, was omitted.

(c) The mortgage held by Ameriquest on respondent's Bronx residence was not disclosed; the application shows a mortgage on the property, but Ameriquest is not identified.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Joseph Alessandro was not disclosed.

(e) Respondent misrepresented that he was not a co-maker or endorser on a note, when in fact in 2003 he had co-signed a $250,000 note to Ms. Battista which had not been repaid.

17. Respondent testified at the hearing that he did not disclose the mortgage held by Ms. Battista on the loan applications because it was "unrecorded." This testimony establishes that respondent intentionally failed to disclose the Battista mortgage on the applications.

18. In the summer of 2005, as described below, respondent and Joseph Alessandro completed three loan applications with Moses Rambarran, who acted as a mortgage broker. Joseph Alessandro met with Mr. Rambarran and provided the information for the applications. Each of these loan applications was granted.

19. On or about August 25, 2005, respondent and Joseph Alessandro submitted an application to Mr. Rambarran for a $550,000 loan on property at 895 James Street, which they jointly owned. The application, which was signed by respondent and

Joseph Alessandro, contained a number of false statements and omissions, including:

(a) Five properties jointly owned by respondent and Joseph Alessandro were omitted: (i) 21-23 Hamilton Avenue; (ii) 24 Franklin Avenue; (iii) 26 Franklin Avenue; (iv) 28 Franklin Avenue; and (v) 2711 SE 27th Way.

(b) One property individually owned by respondent, 2715 SE 27th Way, was omitted.

(c) The mortgage held by Ameriquest on respondent's Bronx residence was not disclosed; the application shows a mortgage on the property, but Ameriquest is not identified.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Joseph Alessandro was not disclosed.

(e) Respondent misrepresented that he was not a co-maker or endorser on a note, when in fact in 2003 he had co-signed a $250,000 note to Ms. Battista which had not been repaid.

(f) Respondent misrepresented that he was not a party to a lawsuit, when in fact he was a defendant in a foreclosure action brought by Ms. Battista in February 2005.

20. On or about August 25, 2005, respondent and Joseph Alessandro signed a second application to Mr. Rambarran for a $300,000 loan on property at 1464 Hammersley Avenue, which they jointly owned. The application, which was signed by respondent and Joseph Alessandro, contained a number of false statements and omissions,

including:

(a) Five properties jointly owned by respondent and Joseph Alessandro were omitted: (i) 21-23 Hamilton Avenue; (ii) 24 Franklin Avenue; (iii) 26 Franklin Avenue; (iv) 28 Franklin Avenue; and (v) 2711 SE 27th Way.

(b) One property individually owned by respondent, 2715 SE 27th Way, was omitted.

(c) The mortgage held by Ameriquest on respondent's Bronx residence was not disclosed; the application shows a mortgage on the property, but Ameriquest is not identified.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Joseph Alessandro was not disclosed.

(e) Respondent misrepresented that he was not a co-maker or endorser on a note, when in fact in 2003 he had co-signed a $250,000 note to Ms. Battista which had not been repaid.

(f) Respondent misrepresented that he was not a party to a lawsuit, when in fact he was a defendant in a foreclosure action on the Valhalla property brought by Ms. Battista in February 2005.

21. On each of the above loan applications, which require the borrower to list assets and all outstanding liabilities, respondent signed an acknowledgment stating that the information provided in the applications was true and correct and that he understood that he could be subject to criminal penalties if the information provided was

false. Respondent claimed that he did not review the applications prior to signing them.

22. On August 25, 2005, respondent and Joseph Alessandro submitted an application to Mr. Rambarran to refinance the Valhalla property for $275,000.[1] The application contained a number of false statements and omissions, including:

(a) Seven properties jointly owned by respondent and Joseph Alessandro were omitted: (i) 1464 Hammersley Avenue; (ii) 1472 Hammersley Avenue; (iii) 21-23 Hamilton Avenue; (iv) 24 Franklin Avenue; (v) 26 Franklin Avenue; (vi) 28 Franklin Avenue; and (vii) 2711 SE 27th Way.

(b) One property individually owned by respondent, 2715 SE 27th Way, was omitted.

(c) The mortgage held by Ameriquest on respondent's Bronx residence was not disclosed; the application shows a mortgage on the property, but Ameriquest is not identified.

(d) The mortgage held by Ms. Battista on the Valhalla property was not disclosed; the application shows a $250,000 mortgage or lien on the property, but Ms. Battista is not identified.

(e) Respondent misrepresented that he was not a co-maker or endorser on a note, when in fact in 2003 he had co-signed a $250,000 note to Ms. Battista which had not been repaid.

---

[1] The copy of this loan application in evidence (Ex. FF) is undated and unsigned. Joseph Alessandro testified that this application was filed, that the loan was granted and that the proceeds were used to repay Ms. Battista in early 2006 (Tr. 1219-20).

(f) Respondent misrepresented that he was not a party to a lawsuit, when in fact he was a defendant in a foreclosure action on the Valhalla property brought by Ms. Battista in February 2005.

23. By filing numerous mortgage applications containing material omissions and misstatements regarding the Battista notes, mortgages and foreclosure action, respondent attempted to conceal, or created the appearance that he was attempting to conceal, the obligation to repay Ms. Battista.

24. By filing numerous mortgage applications containing material omissions and misstatements about his assets and liabilities, respondent attempted to influence, or created the appearance that he was attempting to influence, the lending institutions' decision whether to extend a loan.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(I) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Amended Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

Over a two-year period respondent engaged in a course of deceitful and dishonest behavior that renders him unfit to serve as a judge. He intentionally withheld

information on his mandatory financial disclosure statements and on multiple loan applications. In its totality, respondent's conduct demonstrates "a pattern of injudicious behavior and inappropriate actions which cannot be viewed as acceptable conduct by one holding judicial office." *Matter of VonderHeide*, 72 NY2d 658, 660 (1988).

In 2004 and 2005 respondent filed two financial disclosure statements with the Ethics Commission for the Unified Court System that were materially incomplete, and submitted multiple loan applications that contained materially false information concerning his financial status. None of these documents disclosed the outstanding $250,000 loan from Ms. Battista, which respondent had co-signed with his brother in August 2003. The evidence, including respondent's own testimony, establishes conclusively that these omissions were intentional.

Respondent testified at the hearing that he was "negligent" in failing to disclose the mortgage held by Ms. Battista on these statements, but also testified that he omitted the Battista mortgage because he felt that it was his "brother's obligation" and because it was an "unrecorded" instrument. This testimony establishes that respondent intentionally failed to disclose the Battista mortgage.

Respondent's omission of the Battista mortgage on his 2004 financial disclosure form, which was filed in April 2005, is particularly noteworthy since just two months earlier, Ms. Battista had filed a lawsuit against respondent and his brother based on the $250,000 liability, and one day earlier, the defendants had moved to dismiss her claim. Even if, as respondent claims, he did not communicate with his brother as to the

status of the Battista loan, he certainly knew in early 2005, when Ms. Battista commenced a lawsuit against him, that the loan had not been repaid.

We have commented previously on the importance of judges' annual financial disclosure statements, which are required by the Rules of the Chief Judge (22 NYCRR §40.1).[2] The information provided on these forms is open to public scrutiny so that, for example, lawyers and litigants can determine whether to request a judge's recusal. It is unacceptable for a judge to provide information that is incomplete or inaccurate; doing so deliberately is manifestly improper. Moreover, respondent's statements also fail to disclose another mortgage he owed and his part-ownership of two properties. His negligence in this regard compounds his misconduct and demonstrates an unacceptable carelessness and inattention to his ethical responsibilities.

Over the same period, respondent submitted multiple loan applications that contained materially false information concerning his financial status. In 2004 he filed three applications (co-signed by his brother) with Global Equity, a mortgage broker and lender. After providing information to the broker by telephone, respondent signed the applications. On each application, which specifically requires the borrower to list all outstanding liabilities, respondent failed to disclose the $250,000 mortgage held by Ms.

[2] The Commission's 2008 Annual Report states: "As noted on the official website of the Unified Court System, the Ethics in Government Act of 1987 was enacted 'in order to promote public confidence in government, to prevent the use of public office to further private gain, and to preserve the integrity of governmental institutions. The Act accomplishes those goals by prohibiting certain activities, requiring financial disclosure by certain State employees, and providing for public inspection of financial statements'" (p. 23).

Battista and executed a year earlier. Respondent also failed to list as assets numerous properties he owned individually and jointly with his brother. In addition, on each application, respondent checked a box stating, untruthfully, that he was not a co-maker or endorser on a note, although the $250,000 Battista note he had signed the previous year was still unpaid.

The following year, respondent submitted three more loan applications that contained inaccurate and incomplete information. Again, the applications fail to disclose the $250,000 Battista mortgage as a liability[3] and state that respondent was not a co-maker on a note. By checking a box on each application, respondent also stated affirmatively that he was not a party to a lawsuit, although he was then a party to the foreclosure action Ms. Battista had commenced a few months earlier.

While insisting that he and his brother had provided all the relevant information to the brokers who completed the loan applications, respondent also testified that he did not list the Battista mortgage on his loan applications because it was "unrecorded." This explanation makes no sense, since it obviously has nothing to do with the validity of his liability and the loan application made no distinction between recorded and unrecorded mortgages. As with his failure to list the loan on his financial disclosure statements, this constitutes a deliberate effort to conceal the liability.

---

[3] One application (Ex. 25) lists a $104,138 mortgage on the Valhalla property, which appears to be an error since that amount is listed elsewhere as the mortgage on a different property (*see* Ex. 26). The last application, seeking to refinance the Valhalla property, lists a $250,000 lien or mortgage on the property, with no other information and no mention of Ms. Battista (Ex. FF).

By failing to disclose a significant liability and by failing to disclose that he was a party to a foreclosure action, respondent withheld information from the lenders that might have adversely affected his loan applications. His failure to disclose numerous assets was also significant, since such assets could be available to the lender in the event of a default. The pattern of omitting such information constituted the intentional concealment of material information about his financial status while attempting to obtain loans based on false information.

Reflecting the seriousness of such conduct, regardless of whether it is intentional or negligent, all the loan applications signed by respondent state that "any intentional or negligent misrepresentation" of the information contained therein "may result in civil liability...and/or in criminal penalties" under Title 18, United States Code, section 1001 *et seq.* *See also*, NY Penal Law §155.05(2)(a); *People v. Termotto*, 81 NY2d 1008 (1993) (defendant convicted of larceny based on false representations to banks as to his financial status to obtain loans).

Such impropriety reflects adversely on respondent's integrity and on the judiciary as a whole. *See, e.g., Matter of Collazo*, 91 NY2d 251 (1998); *see also*, *Matter of Boulanger*, 61 NY2d 89, 91 (1984) (judge filed a false financial affidavit in his matrimonial action for the purpose of concealing assets from his former wife and also failed to file timely gift tax returns; such conduct, even if negligent, was "unacceptable"); *Matter of Steinberg*, 51 NY2d 74, 82 (1980) (judge filed fraudulent income tax returns

that reflected "deliberate falsification").[4] It jeopardizes the public's respect for the judiciary, which is essential to the administration of justice. As the Court of Appeals stated in *Matter of Mazzei*, 81 NY2d 568, 571-72 (1993):

> Judges personify the justice system upon which the public relies to resolve all manner of controversy, civil and criminal. A society that empowers Judges to decide the fate of human beings and the disposition of property has the right to insist upon the highest level of judicial honesty and integrity. A Judge's conduct that departs from this high standard erodes the public confidence in our justice system so vital to its effective functioning.

In its totality, respondent's dereliction of his ethical responsibilities constitutes a departure from the high standards of conduct required of every judge, both on and off the bench.

We reject respondent's attempts to minimize his responsibility for these transgressions, including his insistence that he and his brother provided all the pertinent financial information to the brokers who completed the loan applications, that he relied on his brother's assurances that he (Joseph) "would take care of" the Battista obligation, and that he signed the incomplete and inaccurate applications without reading them. None of these assertions in any way excuses or mitigates respondent's transgressions. Respondent

---

[4] *Matter of Garvey*, 1982 Annual Report 103 (Comm on Judicial Conduct), in which the Commission dismissed a charge that the judge understated his liabilities and overstated his assets on financial statements filed in connection with four bank loan applications, presents significant mitigating factors that are not present here. In *Garvey*, the Commission stated that its dismissal of that charge was based in significant part on the testimony of the bank's president that the financial statements were ministerial and were not a determining factor in granting the loans to a long-time customer in good standing whom he knew personally.

has acknowledged that, as a signatory, he was legally obligated on the Battista note. As an experienced judge and former real estate practitioner, he was certainly familiar with loan applications and with the importance of reading documents before signing them. We also reject respondent's argument that the omission of liabilities and assets on the loan applications was of minor significance since his net worth was more than ample. A loan applicant cannot make that determination since, on its face, the form requires complete disclosure, subject to criminal penalties.

Nor are we persuaded that respondent's personal circumstances during this period, as described in the dissent, are relevant to or otherwise mitigate his misconduct. Despite these circumstances, respondent was, by his own account, a productive, accomplished jurist; he was also able, throughout this period, to manage an extensive roster of investment properties and to buy additional property. In this regard, we note that providing truthful, complete information on financial disclosure forms, which is of paramount importance among a judge's duties, is not an unduly demanding or time-consuming obligation.

We reject the argument that the sanction of removal is excessive because many of respondent's derelictions, as depicted in this record, were the result simply of carelessness, sloppiness and inattention to his ethical responsibilities. As we have noted, it is clear that respondent in several instances intentionally provided incomplete information and made statements that were patently untrue (*e.g.*, stating on loan applications that he was not a party to a lawsuit). A pattern of providing incomplete,

inaccurate information about his financial status on financial disclosure statements, coupled with similar derelictions on multiple loan applications, is unacceptable (*see Matter of Boulanger, supra*, 61 NY2d at 91).

The Court of Appeals has determined that removal was warranted for a single instance of "deliberately deceptive conduct," since such behavior is "antithetical to the role of a judge who is sworn to uphold the law and seek the truth" (*Matter of Heburn*, 84 NY2d 168, 171 [1994], quoting *Matter of Myers*, 67 NY2d 550, 554) (judge falsely subscribed a designating petition as a witness, despite a "fair and clear warning" that a false statement would subject the signatory to penalties for false swearing). Manifestly, a pattern of such behavior requires the sanction of removal. This record of repeated derelictions has irretrievably damaged respondent's ability to carry out his constitutionally mandated duties and renders him unfit for judicial service.

By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser and Judge Peters concur.

Ms. Hubbard dissents as to the sanction and votes that respondent be censured.

Judge Ruderman did not participate.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: February 11, 2009

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANCIS M. ALESSANDRO,

a Judge of the New York City Civil Court,
Bronx County.

DISSENTING OPINION
BY MS. HUBBARD

- -

While I concur that respondent should be disciplined for the misconduct established in this record, I respectfully dissent as to the sanction of removal and vote to impose a public censure. Based on the totality of the record, I believe that the sanction of removal is unduly severe, especially in view of the mitigating circumstances presented.

Providing incomplete, misleading or inaccurate information on financial disclosure statements and mortgage applications constitutes serious misconduct and warrants a severe sanction without doubt. But in this case, I find several compelling factors which persuade me that the extreme sanction of removal is too harsh.

First and foremost is respondent's belief that the Battista loan, the most important debt not disclosed, was in reality his brother's obligation to repay. Although respondent acknowledged that as a signatory he was legally liable for this debt, the evidence is compelling that he relied on his brother Joseph's assurances that he (Joseph) would repay the loan. To the extent that respondent understood that the short-term note

he signed would be repaid by his brother, his failure to disclose this liability, even if intentional, had a rational basis that does not necessarily reflect an improper motive.

It is also significant to me that, contrary to the charge that respondent omitted the Battista loan "for the purpose of concealing and/or avoiding" this liability, failing to list the loan on his financial disclosure statements and loan applications would not, as I see it, in any way affect or avoid his liability to her.

Finally, I note respondent's testimony as to the circumstances in his household throughout this period involving the deteriorating health of his spouse and the death of his parents, who lived with him and his wife. While I understand that a judge's professional obligations must take precedence over his extra-judicial activities, it appears to me that respondent's negligence should be considered in view of those personal circumstances.

The Court of Appeals has stated: "Removal is an extreme sanction and should be imposed only in the event of truly egregious circumstances" (*Matter of Cunningham*, 57 NY2d 270, 275 [1982]). I believe that the record as to respondent does not reflect "truly egregious circumstances," and thus a sufficient basis for removal is lacking. Accordingly, I respectfully dissent from the determined sanction and vote to censure respondent.

Dated: February 11, 2009

Elizabeth B. Hubbard

Elizabeth B. Hubbard, Member
New York State
Commission on Judicial Conduct