

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

JOHN M. VOETSCH,

a Justice of the Harrison Town Court,
Westchester County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Thomas A. Klonick
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Melissa DiPalo, Of Counsel) for the Commission
Richard E. Grayson for Respondent

The respondent, John M. Voetsch, a justice of the Harrison Town Court,
Westchester County, was served with a Formal Written Complaint dated February 1,

2005, containing three charges.

On May 27, 2005, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On June 23, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a part-time justice of the Harrison Town Court, Westchester County since January 1984. Respondent is an attorney and a licensed real estate broker.

2. Respondent has owned Corner Ridge Real Estate, a real estate agency in Harrison, New York, since 1986.

As to Charge I of the Formal Written Complaint:

3. On March 7, 2003, respondent presided over the sentencing of the defendant in *People v. Patrick Rukaj*. Patrick Rukaj, who was 16 years old, had previously pled guilty to Assault in the Third Degree in connection with the death of his classmate, Robert Viscome. The incident had been highly publicized in Westchester County.

4. Patrick Rukaj, his attorney Vincent Gelardi and Assistant District

Attorney Russell Smith were present at the sentencing. ADA Smith recommended a sentence of three years probation and a conditional discharge, with the condition that Patrick perform community service and participate in the TASC (“Treatment Alternatives for Safer Communities”) program.

5. Respondent sentenced Patrick Rukaj, as a youthful offender, to a one-year conditional discharge. The sentence required the defendant to perform 100 hours of community service and to attend alcohol prevention and anger management counseling through the TASC program. Respondent knew that, under the terms of the sentence, he retained jurisdiction over the defendant until March 6, 2004.

6. At the time respondent sentenced Patrick Rukaj, he was familiar with some of the Rukaj family’s history, including that Patrick Rukaj’s father, Gjelosh Rukaj, had been convicted of second-degree murder in 1998. Shortly after Gjelosh Rukaj’s conviction, his attorney contacted respondent about listing the Rukaj house for sale with respondent’s real estate agency. Respondent and his wife drove past the house, at 18 Sky Meadow Drive in Purchase, New York, but respondent was not asked at that time to market the property. Respondent did not preside over any matters involving Gjelosh Rukaj.

7. In late April 2003, Katerina Rukaj, the mother of Patrick Rukaj and wife of Gjelosh Rukaj, contacted respondent and asked him to list the house at 18 Sky Meadow Drive with Corner Ridge Real Estate. The Rukaj family faced a deadline of May 9, 2003, by which to pay back real estate taxes on the house. Katerina Rukaj

contacted respondent about a month after respondent had sentenced Patrick Rukaj, and while he still retained jurisdiction over him.

8. On May 6, 2003, three days before the house was the subject of a tax lien foreclosure sale, Gjeloš Rukaj entered into an Exclusive Right to Sell Agreement with Corner Ridge Real Estate. The agreement authorized Corner Ridge Real Estate to offer the house for sale at a list price of \$2.5 million, and stated that Corner Ridge Real Estate was to be paid a commission of five percent (5%) of the selling price. If another real estate broker assisted in the sale of the house, that broker would receive two percent (2%) of the selling price.

9. The house was listed with the Westchester Multiple Listing Service on May 9, 2003, and respondent was identified as the "List Agent." Respondent withdrew the listing ten days later, when he learned that creditors had filed an involuntary bankruptcy petition against Gjeloš Rukaj.

10. At the time he listed the Rukaj house, it did not occur to respondent that it would be improper for him to handle the sale of the Rukaj house, in view of the fact that the one-year term of Patrick Rukaj's conditional discharge had not expired, that he retained jurisdiction over Patrick, and that Patrick would appear before him again if it were alleged that he did not comply with the conditions of his sentence.

11. On July 23, 2003, respondent asked his court clerk, Rosemary King, to request an opinion from the Advisory Committee on Judicial Ethics, concerning the propriety of respondent's real estate agency representing the Rukaj family in the sale of

their home several months after sentencing Patrick Rukaj. The court clerk telephoned Raymond S. Hack, Counsel to the Advisory Committee, but Mr. Hack offered no opinion. Among other things, the Advisory Committee only renders opinions on prospective conduct and not on conduct that has already occurred.

12. In late July 2003, a series of newspaper articles appeared that were critical of respondent for representing the Rukaj family in the sale of their house only four months after sentencing Patrick Rukaj.

13. On August 8, 2003, the District Attorney of Westchester County filed a petition charging Patrick Rukaj with violating the terms of his conditional discharge. On August 11, 2003, respondent recused himself from presiding over the matter.

14. Respondent now recognizes that it was inappropriate to engage in a business dealing with Katrina and Gjelosh Rukaj when their son Patrick was still subject to respondent's court's jurisdiction and there was a possibility that Patrick might have again come before his court. Respondent also recognizes that by engaging in a business discussion one month after he sentenced Patrick Rukaj, and by entering into a formal business relationship with Patrick's parents two months after the sentencing, he cast doubt on the impartiality of his sentencing decision.

As to Charge II of the Formal Written Complaint:

15. Beginning on May 9, 2001, respondent presided over *Ben Paul Siino v. Jose Restrepo*, a holdover action brought by the plaintiff-landlord, to remove the defendant-tenant from the house at 4 Taylor Avenue, West Harrison, New York, which the

plaintiff owned. Respondent has known the plaintiff Ben Paul Siino, Esq. for more than 25 years.

16. Court records reveal that Mr. Siino commenced the eviction action based on the defendant-tenant's alleged failure to pay rent for the months of April and May 2001. On May 18, 2001, the parties appeared before respondent, who reserved decision.

17. On May 29, 2001, respondent entered judgment in favor of the plaintiff-landlord, Mr. Siino, and issued a warrant evicting the defendant-tenant from the house for non-payment of rent. The warrant gave the defendant-tenant 72 hours to vacate the premises.

18. On or around June 5, 2001, the defendant-tenant attempted to stay the eviction by filing an Order to Show Cause, signed by an Appellate Term judge, which was noticed to be heard before respondent on June 26, 2001. When the defendant-tenant failed to appear on June 26, 2001, respondent denied the Order to Show Cause and entered a final judgment and a warrant of eviction.

19. Mr. Siino decided to sell 4 Taylor Avenue in January 2002. On February 2, 2002, Mr. Siino entered into a brokerage agreement with respondent, providing that Corner Ridge Real Estate would list 4 Taylor Avenue for sale.

20. On November 25, 2002, Corner Ridge Real Estate sold 4 Taylor Avenue for \$465,000. Corner Ridge Real Estate earned a two percent (2%) commission on the sale, or \$9,300.

As to Charge III of the Formal Written Complaint:

21. The charge is not sustained and is therefore dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.4(A)(1), 100.4(A)(3), 100.4(D)(1)(a) and 100.4(D)(1)(c) 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 Formal Written Complaint are sustained insofar as they are consistent with the above findings, and respondent's misconduct is established. Charge III is not sustained and is therefore dismissed.

Every part-time judge is required to maintain a strict separation between the judicial function and the judge's private business activities. Judges are specifically required to avoid extra-judicial activities that cast doubt on the judge's capacity to act impartially, that interfere with the proper performance of judicial duties, or that may be perceived to exploit the judicial position (Sections 100.4[A][1], 100.4[A][3] and 100.4[D][1][a] of the Rules Governing Judicial Conduct).

As a part-time judge with a private real estate business, respondent violated these standards by entering into an agreement to sell real property owned by the family of a youthful defendant whom he had recently sentenced to a conditional discharge in a highly publicized case. Such an agreement cast doubt on the impartiality of his

sentencing decision – which was more lenient than the prosecutor had recommended – and created an appearance of impropriety, contrary to Section 100.2(A) of the Rules. Moreover, since the one-year term of the conditional discharge had not expired, respondent retained jurisdiction over the defendant, who would be required to appear before him again if he allegedly failed to comply with the terms of his sentence. In fact, when it was later alleged that the defendant had violated the terms of his conditional discharge, respondent was obliged to recuse himself from the matter because of his business activities. As an attorney and long-time judge, respondent should have recognized that such business dealings conflict with his judicial role and must be strictly avoided.

It was also improper for respondent to enter into a brokerage agreement to sell a house seven months after he had presided over a holdover proceeding involving the same property. Under the circumstances, respondent's business dealings involving property that had recently been the subject of a holdover proceeding in his court created an appearance of impropriety, contrary to the ethical rules. Having decided that he could preside impartially in the litigation despite knowing the plaintiff for over 25 years, respondent should have recognized the potential conflict a few months later when the successful litigant asked him to be the seller's broker for the sale of property. The litigation, in which respondent issued a prompt warrant of eviction, concerned the same property that respondent was now being asked to sell as a broker.

As a judge, respondent should be aware of the conflicts that might emerge

between his official duties and his brokerage business. In this case, the conflicts were substantial. Accepting employment from an individual who had recently been a successful litigant in his court, and from the family of a defendant who recently received a lenient sentence, creates an appearance of a quid pro quo, *i.e.*, that respondent's employment as a broker was a reward for favorable action he took as a judge. It is respondent's obligation to ensure that he does not convey even the appearance that his judgeship is used to advance his brokerage business.

A judge who was more sensitive to these serious ethical issues might have sought an opinion from the Advisory Committee on Judicial Ethics before agreeing to serve as broker in such circumstances. It is noteworthy that respondent asked his clerk to seek an advisory opinion only *after* respondent had already agreed to be the broker for the Rukaj property, around the time there was adverse publicity concerning his conduct.

In *Matter of Sims*, 61 NY2d 349 (1984), a judge was disciplined for executing releases at her home for defendants who then retained the judge's attorney-husband, creating an appearance of impropriety. Rejecting the argument that the appearance of impropriety standard was impermissibly vague and could not be used as a basis for discipline, the Court of Appeals stated that judges "may be held to this admittedly high standard of conduct...even when performing nonjudicial duties" and added: "When a judge acts in such a way that she appears to have used the prestige and authority of judicial office to enhance personal relationships, or for purely selfish reasons, or to bestow favors, that conduct is to be condemned whether or not the judge acted

deliberately and overtly” (*Id.* at 358).

On the facts presented, respondent’s conduct shows an unacceptable lack of sensitivity to his judicial duties and warrants censure.

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

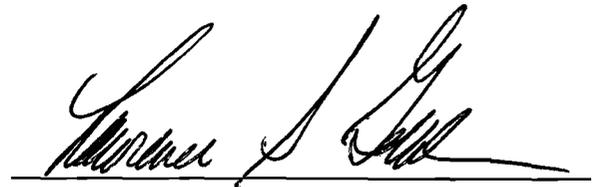
Mr. Goldman, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Luciano, Mr. Pope and Judge Ruderman concur.

Judge Peters was not present.

CERTIFICATION

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

Dated: August 17, 2005

A handwritten signature in black ink, appearing to read "Lawrence S. Goldman", is written over a horizontal line.

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct