STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

JOSEPH S. ALESSANDRO,

a Justice of the Supreme Court,
Westchester 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

DerOhannesian & DerOhannesian (by Paul DerOhannesian, II, and Jennifer C. Zegarelli) for Respondent

The respondent, Joseph S. Alessandro, a Justice of the Supreme Court, Westchester County, was served with an Amended Formal Written Complaint dated

February 19, 2007, containing four charges. The charges alleged that respondent attempted to defraud an individual out of a $250,000 loan and/or failed to repay the loan (Charge I); gave false testimony during the Commission investigation (Charge II); filed a financial disclosure statement with the Ethics Commission for the Unified Court System that was materially incomplete (Charge III); and submitted loan applications that omitted various assets and liabilities (Charge IV). Respondent filed a verified Answer dated March 5, 2007.

By Order dated August 28, 2006, 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 New York City Civil Court Judge Francis M. 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 Justice of the Supreme Court, Westchester County, since January 2006. From January 2004 through December 2005 he served as a

Judge of the County Court.

2. Prior to assuming the bench, respondent and his brother, Francis Alessandro, maintained a private practice of law. Their practice concentrated in, *inter alia*, real estate law. Respondent holds a real estate broker's license.

As to Charge I of the Formal Written Complaint:

3. Respondent was a candidate for election to County Court in 2003. Barbara Battista, a 71-year-old registered nurse who had prior experience working on election campaigns, served as his campaign manager and treasurer at the suggestion of Salvatore LoBreglio, a friend of respondent and Ms. Battista. Ms. Battista had previously prepared respondent's application for an interim appointment to County Court. Mr. LoBreglio, an experienced political operative, was the director of the Westchester Independence Party. In 2005 he was convicted of misprision of a felony.

4. In late August 2003, after respondent had spent more than $140,000 of his personal funds on his campaign, the campaign needed $250,000 in additional funds in order to produce and mail campaign literature.

5. When respondent told Ms. Battista that he was not prepared to put more of his personal funds into the campaign, Ms. Battista offered to lend him $250,000.

6. Respondent agreed to accept the loan of $250,000 from Ms. Battista and to pay her back by July 2004.

7. Respondent prepared and delivered to Ms. Battista a handwritten mortgage note reflecting his $250,000 indebtedness to her and secured by a mortgage

dated August 31, 2003 on his personal residence, located in Valhalla, New York (the "Valhalla property"). Respondent and Francis Alessandro owned the Valhalla property as joint tenants with a right of survivorship.

8. Respondent and Francis Alessandro signed the handwritten note and mortgage.

9. The handwritten note and mortgage provided a fixed annual interest rate of 1.5 percent and a term of 30 days, with the principal due and payable on September "31 [sic]," 2003.

10. Despite the 30-day term contained in the handwritten note and mortgage, Ms. Battista and respondent agreed that the loan was not due and payable until July 2004.

11. Respondent instructed Ms. Battista not to record this mortgage. She did not do so until January 2005.

12. Using money she had borrowed against her retirement funds in a brokerage account, Ms. Battista made the following payments drawn against her personal account totaling $242,000: payments of $50,000 on August 28, 2003, and $135,000 on September 2, 2003, to Strategic Political Group ("SPG") on behalf of respondent's campaign towards the cost of campaign literature, and payments of $15,000 on September 2, 2003, and $42,000 on September 15, 2003, to respondent's campaign account. In addition, Ms. Battista reimbursed herself for $8,000 for undocumented cash payments she had advanced for campaign expenses.

13. The payments made by Ms. Battista from her personal funds to SPG and to the campaign constituted "in kind" contributions, which, if not repaid by Election Day, would be deemed a contribution and a violation of campaign contribution limits under the Election Law.

14. Prior to Election Day, the attorney for the campaign, John Ciampoli, advised respondent, Ms. Battista and Mr. LoBreglio that to avoid potential illegality by the campaign and by Ms. Battista, respondent should personally assume the campaign's debt to Ms. Battista.

15. Mr. Ciampoli prepared and provided loan instrument forms to the campaign committee and advised the committee to use them to document the "in kind" loans that Ms. Battista had made to the campaign. Mr. Ciampoli also prepared a typewritten promissory note which he provided to the campaign both in print and electronically so that any adjustments needed could be made.

16. A typewritten promissory note dated November 3, 2003, was signed by respondent and Ms. Battista, which acknowledged respondent's indebtedness to Ms. Battista in the amount of $250,000 and provided for a 15-year term and a variable interest rate equal to the interest rate charged by her brokerage account that was initially set at 2.86 percent.

17. Mr. Ciampoli did not know who suggested or selected the 15-year term contained in the typewritten promissory note, but he believed that the interest rate came from Ms. Battista.

18. Mr. Ciampoli anticipated that there would be a mortgage prepared to secure the typewritten promissory note, but he did not prepare such a mortgage.

19. A typewritten mortgage dated October 23, 2003, and signed by respondent only (not Francis Alessandro) on November 3, 2003, purported to secure Ms. Battista's loan with the Valhalla property and referenced a "Note of Mortgagor of even date," presumably the typewritten promissory note dated October 23, 2003.

20. Ms. Battista understood that the typewritten mortgage replaced the handwritten mortgage. She recorded the typewritten mortgage on November 5, 2003.

21. Both Ms. Battista and respondent claimed that they did not notice or consider the 15-year term in the typewritten instrument. The 15-year term was inconsistent with respondent's and Ms. Battista's agreement and understanding that the loan would be repaid by July 2004.

22. In November 2003 respondent was elected as County Court Judge. For the next year, he paid Ms. Battista the monthly variable interest as required under the typewritten promissory note, although he may have missed one interest payment. After November 2004, Ms. Battista stopped accepting the interest payments from respondent on the advice of her attorney since the loan had not been repaid by that date.

23. Respondent did not pay any portion of the principal of the $250,000 that he owed to Ms. Battista until February 2006, after she had commenced a lawsuit against him. As of July 2004, respondent had a net worth of approximately $3.5 million comprised mostly of real estate.

24. In June 2004, using personal funds from a loan taken against a joint brokerage account, respondent and Francis Alessandro paid more than $300,000 in cash to purchase a property in Seaside Heights, New Jersey. This property was contiguous to properties on either side and behind it owned by the Alessandro brothers.

25. Both before and after July 2004, respondent repeatedly reassured Ms. Battista that he was attempting to obtain financing to repay her. In September 2004 respondent told Ms. Battista that he had a "mortgage guy" working to obtain a loan, and he showed her what appeared to be an unsigned mortgage application or commitment. In October 2004 respondent left several telephone messages for Ms. Battista in which he claimed he had provided certain papers to a "mortgage guy."

26. In October 2004 Ms. Battista sought the assistance of an attorney, Harvey Kaminsky, to recover the loan from respondent. In a telephone conversation with Mr. Kaminsky, respondent acknowledged his debt to Ms. Battista and told Mr. Kaminsky that he had applied for a mortgage and expected to have the money available within two to three weeks.

27. In late October, respondent told Mr. Kaminsky that to obtain a mortgage, he needed a letter stating that he was current on the interest payments due on the mortgage on the Valhalla property held by Ms. Battista. In response, Mr. Kaminsky sent a letter to respondent under a facsimile cover sheet dated October 27, 2004, which stated: "Enclosed is the letter that you require from Barbara Battista. If more information is needed in the letter pleas[e] advise." The attached letter from Ms. Battista dated

October 27, 2004, stated that "[t]he borrowers listed in this note and mortgage are Joseph Alessandro and Francis Alessandro" and that "all interest payments due and owing on this mortgage are current and there are no interest payments outstanding."

28. Respondent claims that someone who reviewed the October 27th Battista letter questioned whether there were two mortgages on the Valhalla property since previously there had been discussion about a mortgage in respondent's name only but the Battista letter referred to a mortgage made by both Joseph and Francis Alessandro. As detailed in the findings of fact as to Charge II (*infra*), respondent's testimony as to the identity of the person who supposedly questioned whether there were two mortgages was misleading and evasive.

29. Thereafter, respondent told Mr. Kaminsky that he could not obtain financing because the letter provided by Ms. Battista was "not sufficient" and that he needed something from Ms. Battista clarifying that there was only a single mortgage on the Valhalla property, namely the typewritten mortgage, and that the handwritten mortgage was "null and void."

30. Mr. Kaminsky told respondent that his request for such a document put him in a difficult position because the two mortgages were not identical. Mr. Kaminsky believed that the handwritten mortgage afforded Ms. Battista more protection than the typed mortgage in that it had a 30-day term and contained the signature of both property owners, whereas the typewritten mortgage had a 15-year term and, in Mr. Kaminsky's view, the fact that it was signed only by respondent would prevent Ms.

Battista from foreclosing on the property.

31. Nonetheless, pursuant to respondent's request, Mr. Kaminsky prepared an affidavit for Ms. Battista to sign. In the affidavit dated November 30, 2004, Ms. Battista stated that the handwritten mortgage had not been recorded and had been "replaced" by the typewritten mortgage, and that the typewritten and handwritten mortgages referenced "one and the same obligation."

32. Mr. Kaminsky sent the affidavit to respondent under cover of a memorandum dated December 1, 2004. The memorandum stated in part:

> We have drafted another affidavit which Barbara has executed and which appears to comply with the requirements you told me that the bank insisted upon with respect to resolving the issue of the number of mortgages currently on the property. The enclosed affidavit makes it clear that both mortgages relate to one single obligation and that the total obligation on the property is $250,000 plus accumulated interest.

33. When Mr. Kaminsky called respondent after sending the affidavit, respondent told Mr. Kaminsky to speak to his attorney, Edward Koester. Respondent may have provided an incorrect spelling of the attorney's last name. Mr. Kaminsky had difficulty locating Mr. Koester until he ascertained the correct spelling of the attorney's name. Mr. Kaminsky testified that he was unsuccessful in reaching Mr. Koester, but Mr. Koester testified that he spoke with Mr. Kaminsky twice. Mr. Kaminsky referred Ms. Battista to another attorney for potential litigation against respondent.

34. Ms. Battista recorded the handwritten mortgage on January 12, 2005. Because she had earlier recorded the typewritten mortgage, Ms. Battista thereby created a

$500,000 lien on the Valhalla property.

35. On February 25, 2005, Ms. Battista commenced an action in Supreme Court, Westchester County, against respondent and Francis Alessandro to foreclose on the handwritten mortgage.

36. In papers dated April 13, 2005, respondent filed a motion to dismiss the Battista lawsuit. Respondent's motion relied entirely upon Ms. Battista's affidavit stating that the typewritten mortgage had "replaced" the handwritten mortgage. In arguing for dismissal, respondent asserted, *inter alia,* that the earlier note and mortgage were "null and void" because "the plain and unambiguous language of the Battista Affidavit makes clear that the August 31, 2003 Mortgage and Note were replaced and superseded by the November 3, 2003 Promissory Note and Mortgage dated October 23, 2003."

37. Respondent's affidavit in support of his motion to dismiss did not mention his actual agreement to repay Ms. Battista by July 2004 and did not indicate how he had obtained Ms. Battista's affidavit. Respondent's affidavit falsely conveyed, and was intended to convey, that his actual agreement with Ms. Battista was to repay her $250,000 loan in monthly installments over 15 years.

38. After respondent's motion to dismiss was denied, respondent filed a verified answer in which he relied on Ms. Battista's affidavit to raise the affirmative defense that the "action may not be maintained upon the grounds that a defense founded upon documentary evidence exists."

39. Respondent's verified answer denied all the material allegations of the complaint, including that Francis Alessandro resided at the address where he had lived for 40 years, that respondent had executed the handwritten note and mortgage for the purpose of securing a loan of $250,000 from Ms. Battista, and that respondent had delivered the handwritten note to Ms. Battista. The verified answer further denied that, as of the date of the complaint, respondent and Francis Alessandro owed Ms. Battista $250,000 under the terms of the handwritten note and mortgage. At the Commission hearing, respondent testified that his denial of the allegation as to Francis Alessandro's address was an inadvertent error in that the denial was intended to refer to a different paragraph.

40. Respondent's verified answer also raised collateral estoppel as an affirmative defense. Respondent testified at the hearing that that defense was based on what he told his attorney and that he did not know what that doctrine meant. Respondent's attorney in that proceeding, Harry Nicolay, Jr., testified that he "was sure [he] had a reason" for asserting that defense, although he was unaware of any other action or proceeding by or between Ms. Battista and the Alessandro brothers.

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

As to Charge II of the Formal Written Complaint:

42. On September 14, 2005, and December 2, 2005, during the Commission investigation, respondent gave testimony under oath that was misleading and

evasive concerning requests he had received for a letter and affidavit from Ms. Battista and his dealings with GreenPoint Bank, as set forth below.

43. At his September 14, 2005 appearance before the Commission, respondent testified that he had spoken with a loan underwriter from GreenPoint concerning the letter and affidavit that he obtained from Barbara Battista, which are referenced in Findings 27 to 32 under Charge I, *supra*.

44. Specifically with respect to the affidavit, respondent testified before the Commission that he did not recall which bank he had the conversation with, but "I think it was GreenPoint."

45. At his December 2, 2005 appearance before the Commission, respondent testified that he did not know who had requested the documentation evidencing that the mortgage payments on the Valhalla property were current, that he "guess[ed] it was GreenPoint or whatever" and that he did not recall if the person he spoke to was the underwriter at GreenPoint. When reminded by counsel to the Commission that he had previously testified it was the underwriter at GreenPoint who had asked for the documentation, respondent confirmed "that's who it was then."

46. Later during his December 2, 2005 appearance, when confronted with Commission counsel's representation that the GreenPoint underwriter denied speaking to him, respondent stated that he "guess[ed] then the underwriter was Global [Equity] or the broker was Global." When confronted with Commission counsel's representation that the Global loan originator denied having any conversations with him,

respondent then testified, "If he said he had no conversation with me, obviously, I had no conversation with him, but I did have a conversation with somebody pertaining to this information from one of these mortgage companies."

47. At the hearing, respondent testified that the conversations he had regarding the letter and the affidavit were not with GreenPoint or Global Equity but were with his attorney, Edward Koester, or with a bank Mr. Koester was working with, but he was unable to specify the name of anyone.

48. On September 14, 2005, and December 2, 2005, during his investigative appearances at the Commission, respondent gave misleading and evasive testimony concerning an alleged loan commitment that he received, as set forth below.

49. At both appearances, respondent testified that by the time he received the affidavit from Ms. Battista his GreenPoint loan commitment had expired, that Francis Alessandro had informed him that the commitment "was expired," and that the commitment expired because he failed to submit the necessary documents. At the hearing, respondent acknowledged that he never received a loan commitment from GreenPoint. Francis Alessandro denied that GreenPoint had issued a mortgage commitment and denied that he told respondent that the commitment from GreenPoint had expired.

As to Charge III of the Formal Written Complaint:

50. 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 liabilities for 2004, in that he: (a) failed to disclose the 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 Francis Alessandro; and (c) failed to disclose a mortgage held by Countrywide against a property at 1030 East 213th Street in the Bronx owned by respondent.

51. Respondent testified at the hearing that he omitted the mortgage held by Ms. Battista from his financial disclosure statement because he used his brother Francis Alessandro's financial disclosure statement (which also omitted the Battista mortgage) as "a template" and "copied" from his brother's statement, and also because he believed he would get a mortgage and repay Ms. Battista. This testimony establishes that respondent intentionally failed to disclose the Battista mortgage. Respondent also described the omission of the Battista mortgage from his disclosure statement as "a complete oversight."

52. Respondent testified that he failed to disclose the GreenPoint mortgage because his parents made the monthly payments and that he failed to disclose the Countrywide mortgage because those payments were "taken care of" by the manager of the property.

53. On September 14, 2005, after testifying before the Commission concerning his failure to list the mortgage held by Ms. Battista on his 2004 financial disclosure statement, respondent filed an amended disclosure statement on which he

included the mortgages held by Ms. Battista, GreenPoint and Countrywide.

As to Charge IV of the Formal Written Complaint:

54. During 2004, respondent submitted five loan applications to Global Equity Funding ("Global Equity"), three of which were submitted with Francis Alessandro, as described below. Francis Alessandro located Global Equity on the internet, dealt with the mortgage broker, Jack McDowell, by telephone, and gave him the information for the applications; respondent testified that he also spoke to Mr. McDowell. Mr. McDowell returned the applications for signature to Francis Alessandro, who gave them to respondent to sign.

55. On or about April 1, 2004, respondent and Francis 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 Francis Alessandro, contained a number of false statements and omissions, including:

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

(b) Five properties individually owned by respondent were omitted: (i) 1030 East 213th Street; (ii) 1457 Knapp Street in the Bronx; (iii) 421 Elkwood Drive in New Jersey; (iv) 120 Largo Drive in Florida; and (v) Lighthouse Point in Florida.

(c) The mortgage held by Ms. Battista on the Valhalla property owned

by respondent and Francis Alessandro was not disclosed.

(d) A mortgage held by Countrywide on respondent's property at 1457 Knapp Street 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 signed two notes to Ms. Battista.

56. On or about May 27, 2004, respondent and Francis 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 Francis Alessandro, contained a number of false statements and omissions, including:

(a) Five properties jointly owned by respondent and Francis 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) Five properties individually owned by respondent were omitted: (i) 1030 East 213th Street; (ii) 1457 Knapp Street; (iii) 421 Elkwood Drive; (iv) 120 Largo Drive; and (v) Lighthouse Point.

(c) The mortgage held by Countrywide on respondent's property at 1457 Knapp Street was not disclosed.

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

(e) Respondent did not answer the question whether he was a co-maker or endorser on a note.

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

(a) Six properties jointly owned by respondent and Francis 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) Five properties individually owned by respondent were omitted: (i) 1030 East 213th Street; (ii) 1457 Knapp Street; (iii) 421 Elkwood Drive; (iv) 120 Largo Drive; and (v) Lighthouse Point.

(c) The mortgage held by Countrywide on respondent's property at 1457 Knapp Street was not disclosed.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Francis 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 signed two notes to Ms. Battista.

58. On or about August 21, 2004, respondent submitted two applications to Global Equity for loans totaling $299,250 on 26 Franklin Avenue. The applications, which were signed by respondent, contained a number of false statements and omissions, including:

(a) Six properties jointly owned by respondent and Francis 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) Five properties individually owned by respondent were omitted: (i) 1030 East 213th Street; (ii) 1457 Knapp Street; (iii) 421 Elkwood Drive; (iv) 120 Largo Drive; and (v) Lighthouse Point.

(c) The mortgage held by Countrywide on respondent's property at 1457 Knapp Street was not disclosed.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Francis 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 signed two notes to Ms. Battista.

59. Respondent testified that while his brother gave Mr. McDowell all the information for the Global Equity applications, respondent also spoke to Mr. McDowell. Asked at the hearing why he did not list the Battista mortgage on the applications, respondent testified that it was because he "was under the impression that it would have shown up in [his] credit report." This testimony establishes that respondent intentionally failed to disclose the Battista mortgage on the applications.

60. In the summer of 2005, as described below, respondent and Francis Alessandro completed three loan applications with Moses Rambarran, who acted as a mortgage broker. Respondent had known Mr. Rambarran for a few years. Respondent and Mr. Rambarran met in person, and Mr. Rambarran asked respondent questions in

order to complete the applications. As respondent answered the questions, Mr. Rambarran entered the information into a computer; he then printed the applications. Respondent testified that he signed the applications without reading them. Each of these loan applications was granted.

61. On or about August 25, 2005, respondent and Francis 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 Francis Alessandro, contained a number of false statements and omissions, including:

(a) Five properties jointly owned by respondent and Francis 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) Five properties individually owned by respondent were omitted: (i) 1030 East 213th Street; (ii) 1457 Knapp Street; (iii) 421 Elkwood Drive; (iv) 120 Largo Drive; and (v) Lighthouse Point.

(c) The mortgage held by Countrywide on respondent's property at 1457 Knapp Street was not disclosed.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Francis 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 signed two notes to Ms. Battista.

62. On or about August 25, 2005, respondent and Francis Alessandro

signed a second application to Moses Rambarran for a $300,000 loan on property at 1464 Hammersley Avenue, which they jointly owned. The application, which was signed by respondent and Francis Alessandro, contained a number of false statements and omissions, including:

(a) Five properties jointly owned by respondent and Francis 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) Four properties individually owned by respondent were omitted: (i) 1030 East 213th Street; (ii) 421 Elkwood Drive; (iii) 120 Largo Drive; and (iv) Lighthouse Point.

(c) The mortgage held by Countrywide on respondent's property at 1457 Knapp Street was not disclosed.

(d) The mortgage held by Ms. Battista on the Valhalla property owned by respondent and Francis 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 signed two notes to Ms. Battista.

(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.

63. 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 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.

64. In 2005 respondent and Francis 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) Five properties individually owned by respondent were omitted: (i) 1030 East 213th Street; (ii) 1457 Knapp Street; (iii) 421 Elkwood Drive; (iv) 120 Largo Drive; and (v) Lighthouse Point.

(c) The mortgage held by Countrywide on respondent's property at 1457 Knapp Street was not disclosed.

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

(e) Respondent misrepresented that he was not a co-maker or endorser

[1] The copy of this loan application in evidence (Ex. FF) is undated and unsigned. Respondent 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).

on a note, when in fact in 2003 he had signed two notes to Ms. Battista.

(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.

65. 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, his obligation to Ms. Battista.

66. 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), 100.4(A)(2), 100.4(A)(3) 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 through IV 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 deliberately deceptive and injudicious behavior that renders him unfit to serve as a judge. After accepting a $250,000 loan from his campaign manager, he contrived to delay repayment and conceal his liability in a series of deceitful acts. He gave misleading and evasive testimony concerning the matter during the Commission investigation. He intentionally withheld information about the loan on his mandatory financial disclosure statement and on multiple loan applications. This pattern of egregious misbehavior "cannot be viewed as acceptable conduct by one holding judicial office." *Matter of VonderHeide*, 72 NY2d 658, 660 (1988).

The record establishes – and respondent concedes – that after borrowing $250,000 for campaign expenses from Barbara Battista, his 71-year old campaign manager, in August 2003 and orally promising to repay the debt by the following summer, respondent did not repay Ms. Battista until February 2006, after she had commenced a lawsuit against him and after the Commission had begun an investigation. Although the original mortgage note contained a 30-day term and a typewritten instrument executed two months later contained a 15-year term, the parties understood, and respondent has acknowledged, that he agreed to repay the loan by July 2004. While it is unclear who prepared the typewritten instrument – respondent denies doing so and, incredibly, denies reading it before he signed it or even knowing that the term was 15 years – it is clear that that instrument was considerably less favorable to Ms. Battista than the original note. The typewritten document not only changed the term of the loan from 30 days to 15 years,

but was not co-signed by respondent's brother, who co-owned the mortgaged property.

In the ensuing months, while repeatedly assuring Ms. Battista that he would repay her shortly, respondent failed to do so (although during the same period he and his brother borrowed more than $300,000 from a brokerage account to purchase an investment property). In the fall of 2004, when Ms. Battista enlisted the assistance of an attorney, respondent assured the attorney that he was attempting to obtain a mortgage in order to repay the loan but stated that the bank needed a statement from Ms. Battista stating that the typewritten mortgage (with a 15-year term) had replaced the earlier note. After procuring such an affidavit, respondent then told the attorney that his loan commitment had expired because he could not obtain the necessary documents. When questioned about these matters during the Commission investigation a year later, respondent gave testimony that was evasive and inconsistent. His testimony as to who had requested information about the two mortgages shifted repeatedly when he was confronted with contrary evidence; eventually he testified that he could not recall who had made the request. At the hearing, he suggested for the first time that the request might have come from his attorney, whose hearing testimony did not support this claim. He also conceded that, contrary to his investigative testimony, he never had a loan commitment in the fall of 2004.

Finally, respondent used the Battista affidavit he had procured as the basis for his motion to dismiss Ms. Battista's lawsuit when she moved to foreclose on the handwritten mortgage in February 2005. His affidavit in support of the motion

obfuscated the fact that he had promised to repay Ms. Battista by July 2004; it falsely conveyed, and was plainly intended to convey, that the parties' agreement was to repay the loan in 15 years. Also deceptive in numerous respects was respondent's verified answer to the Battista complaint, in which, being duly sworn, he made patently untrue denials (*e.g.*, denying that he had executed the mortgage note for the purpose of securing a loan of $250,000) and asserted with no basis the defense of collateral estoppel. Asked at the hearing about the basis for asserting that defense, respondent testified lamely that he did not know what collateral estoppel meant.

Respondent's misbehavior with respect to the Battista loan clearly transcends the failure to pay a lawful debt. Both his deceptive dealings with Ms. Battista and her attorney, and his evasive testimony about those matters before the Commission, were characterized by a level of dishonesty which is unacceptable for a member of the judiciary. Judges are held to stricter standards than "the morals of the market place" and are required to observe "[s]tandards of conduct on a plane much higher than for those of society as whole...so that the integrity and independence of the judiciary will be preserved" (*Matter of Spector,* 47 NY2d 462, 468 [1979], quoting *Meinhard v Salmon*, 249 NY 458, 464; *Matter of Kuehnel*, 49 NY2d 465, 469 [1980]).

Significantly, respondent also failed to disclose the $250,000 Battista loan on his financial disclosure statement filed with the Ethics Commission for the Unified Court System in 2005 and on multiple loan applications he submitted to brokers over the same period. The evidence, including respondent's own testimony, establishes

conclusively that these omissions were intentional.

Respondent's failure to disclose the Battista loan on his financial disclosure statement is particularly noteworthy. Although respondent has claimed that this omission was "a complete oversight," he also testified that he did not disclose the loan because he intended to repay it shortly. Most significantly, respondent filed this incomplete disclosure form just two months after Ms. Battista had filed a lawsuit against him based on the $250,000 liability, and one day after he had moved to dismiss her claim. Even as respondent was aggressively attempting to avoid his liability to Ms. Battista, he concealed it on his financial disclosure statement.

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 statement also failed to disclose the mortgages on two other properties he owned. His negligence in this regard compounds his misconduct and demonstrates an unacceptable

[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).

carelessness and inattention to his ethical responsibilities.

Finally, over the same period, respondent submitted multiple loan applications that also omitted the Battista mortgage and contained materially false information concerning his financial status. In 2004 he filed five applications (three of which were co-signed by his brother) with Global Equity, a mortgage broker and lender. While Francis Alessandro initiated these applications, respondent testified that he too spoke to the broker, and he signed each of 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. Battista and executed a year earlier. Respondent also failed to disclose other liabilities, including a mortgage on an investment property, and failed to list as assets numerous properties he owned individually and jointly. 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 was still unpaid.

The following year, respondent submitted three more loan applications that contained inaccurate and incomplete information. As to these applications, respondent met personally with the broker and supplied the required information. Again, the applications fail to disclose the $250,000 Battista mortgage as a liability,[3] as well as

[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).

another mortgage owed by respondent, and also fail to disclose his ownership of several properties. On each of the applications, respondent stated that he was not a co-maker on a note, and on two applications he stated that he was not a party to a lawsuit, although he was then a party to a foreclosure action Ms. Battista had commenced a few months earlier.

While insisting that he and his brother 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 the applications because he was "under the impression that it would have shown up in [his] credit report." As with his failure to list the loan on his financial disclosure statement, this constitutes a deliberate effort to conceal the liability.

By failing to disclose significant liabilities 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 certain liabilities 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.

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[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.

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.

In considering an appropriate sanction, we note the pattern of respondent's deliberate falsifications in his dealings with Ms. Battista's attorney and his testimony before the Commission, as well on his financial disclosure statement and loan applications. As we have found, respondent intentionally and repeatedly failed to disclose his liability to Ms. Battista when he was required to do so. Although he contends that those omissions were inadvertent, his protests "lack the ring of truth" (*Matter of Steinberg, supra*, 51 NY2d at 81).

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 signed the incomplete and inaccurate applications without reading them; that he used his brother's financial disclosure form "as a template" in completing his own statement; that Ms. Battista was not trustworthy; that he stopped talking to Ms. Battista's lawyer because the lawyer was "huffy." None of these assertions in any way excuses or mitigates respondent's transgressions. As a judge and as a former real estate practitioner, respondent was certainly familiar with mortgages and 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 the stresses in respondent's personal life are relevant to his misbehavior.

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 his financial disclosure statement, 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, Ms. Hubbard, Mr. Jacob, Judge Konviser and Judge Peters concur.

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