

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Bruzga, Paul W. advs. Betty Denison # 07-068

**SIX MONTH SUSPENSION
STAYED FOR ONE YEAR WITH CONDITIONS**

On February 16, 2010, the Professional Conduct Committee (PCC) deliberated the above referenced matter. The following Committee members were present: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair, Susan R. Chollet, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, James R. Martin and Jennifer L. Parent.

Prior to deliberation, Ms. Parent disclosed that in the mid 1990's, a member of her firm represented Mr. Bruzga relating to a PCC complaint. That matter had no relation to the current matter before the Committee and Ms. Parent was not involved in that prior matter at her firm. After discussion, the Committee expressed the belief that the matter was too far removed in both time and circumstance to warrant recusal.

The Committee reviewed the record, including the Notice of Charges, Respondent's Answer, Jointly Submitted Exhibits, transcript of hearings on September 29, 2009, and September 30, 2009, and supplemental hearing on January 8, 2010, the Hearing Panel Report of November 4, 2009, and Supplemental Hearing Panel Report dated January 28, 2010.

I. FINDINGS OF FACT

The Committee determined that the factual findings, as described by the Hearing Panel, were established by clear and convincing evidence, as follows:

1. Mr. Bruzga is an attorney licensed to practice law in New Hampshire. Mr. Bruzga was admitted to practice in 1978. At all times material to this proceeding, Mr. Bruzga operated his law office as Bruzga Law Offices, 36 Twist Hill Road, Suite C, Dunbarton, New Hampshire 03046-4322.
2. On January 30, 2006, Daniel C. and Betty J. Denison signed an hourly fee agreement with Mr. Bruzga to represent them with respect to the sale of real property, known as Buccaneer Bay Campground, valued in excess of \$1 million.
3. The Denisons were the principals and owners of Danbe Realty, LLC (“Danbe”). Danbe owned the campground.
4. The Denisons had a potential buyer of the campground, Morgan Acquisitions, LLC, (“Morgan”), and they asked Mr. Bruzga to negotiate the sale. Morgan was represented by Richard S. Brovitz, Esquire, of Fix, Spindelman, Brovitz and Goldman of Fairpoint, New York.
5. After extensive negotiations, on February 17, 2006, the parties signed a nine page Purchase and Sale Agreement (“P&S”).
6. Paragraph 16 of the P&S outlined the terms with respect to the buyer’s \$20,000 deposit, as follows:

Deposit. The Deposit shall be made with Seller’s attorney, Paul W. Bruzga, Esq. P.L.L.C., to be held in escrow in accordance with the provisions of this Agreement. The Deposit shall be deposited in an interest bearing account and all interest earned shall be credited to Buyer

upon closing or returned to Buyer along with the Deposit if this Agreement fails to close for any reason which is not the fault of Buyer. If this Agreement fails to close due to Buyer's fault, Seller shall be entitled to keep the Deposit and all earned interest.

7. The closing was scheduled to occur within 15 days after the satisfaction of the various contingencies outlined in the P&S.
8. On or about February 21, 2006, Morgan forwarded a \$20,000.00 check to Mr. Bruzga, as escrow agent under the P&S.
9. Despite the language in the P&S requiring Mr. Bruzga to deposit the money into an "interest-bearing" account, on or about February 27, 2006, Mr. Bruzga deposited the \$20,000.00 check into an IOLTA trust account.
10. After further negotiations, on March 30, 2006, the parties executed a First Addendum to the P&S ("First Addendum").
11. There were many contingencies included in the First Addendum. In each instance, the buyer had until April 13, 2006, to determine whether the contingencies had been satisfied. In each instance, however, the First Addendum required that the buyers provide notice to the sellers "prior to April 13, 2006." For instance, Paragraph 4(b) of the First Addendum, dealing with the environmental audit, provided:

Buyer shall have until April 13, 2006 to obtain an Environmental Audit ("Audit"), which Audit shall be subject to the approval of the Buyer and Buyer's lender. If the Audit is not satisfactory to Buyer and/or Buyer's lender, then Buyer shall have the right to cancel this Agreement by giving notice to Seller prior to April 13, 2006 and Buyer shall be entitled to the prompt return of the Deposit.

12. On April 13, 2006, Robert Morgan, a principal of Morgan, telefaxed the Denisons, with a copy to Mr. Bruzga, a letter indicating that it was terminating the P&S pursuant to paragraph 4.

13. In a letter to Mr. Morgan dated April 20, 2006, Mr. Bruzga informed Mr. Morgan that his termination letter was ineffective because notice was not provided "prior to" April 13, and that the sellers wanted to close the sale promptly.

14. In a letter to Mr. Bruzga dated April 25, 2006, counsel for Morgan, Jordan E. Morgenstern, Esq., demanded the return of Morgan's deposit money, stating:

We terminated the Purchase and Sale Agreement on April 13, 2006, and therefore have no intention of proceeding with the acquisition of the Buccaneer Bay Campground. As escrow agent, it is your obligation to return the deposit to my client immediately.

If my client has not received the deposit by Friday, April 28, 2006, we will commence litigation against you, as escrow agent, and your client, for the return of the deposit.

15. On or about May 11, 2006, Mr. Bruzga withdrew the deposit money (\$20,000.00) from the trust account and placed it into an escrow account designated "Paul W. Bruzga, Escrow Account." That transfer was made without consulting the buyers or the sellers.

16. In a letter to Mr. Bruzga dated July 21, 2006, Mr. Morgenstern wrote:

As I am sure you are aware, more than three (3) months have passed since my client terminated the Purchase and Sale Agreement with Danbe Realty, L.L.C. ("Purchase and Sale Agreement").

We have patiently waited for the deposit to be returned. I have tried to contact you by fax and telephone numerous times over the last few weeks and I have been unable to reach you and my calls have gone unreturned. I am beginning to grow increasingly uncomfortable.

If I do not receive the deposit by Friday, July 28, 2006, I will commence litigation against you, as escrow agent, and your client, for the return of the deposit.

17. At some point in July 2006, the Denisons discussed with Mr. Bruzga the deposit money. Mr. Bruzga advised the Denisons that they were entitled to the deposit money, and that they should write him a letter requesting the release of the deposit money.

18. To that end, in an undated letter to Mr. Bruzga, Mr. Denison wrote:

Morgan Acquisitions is now over 90 days in default of the binding contract for which they were to purchase Buccaneer Bay Campground located in Effingham NH.

We have endured tremendous expense up to this point and now feel the time has come to release the deposit and any interest earned. The entire deposit along with any interest earned should be mailed immediately to Daniel and Betty Denison DBA Danbe Realty Located on 100 Moose mountain Road Brookfield NH. 03872. (sic)

When we receive the deposit money and interest we will then go forward with using it to cover some of our expenses.

Betty and I would appreciate your prompt attention to this matter and if you have any questions don't hesitate to call.

19. On August 8, 2006, Mr. Bruzga withdrew \$8,564.26 from the escrow account. Although Mr. Bruzga considered the remaining balance (\$11,547.21) earned legal fees, he did not transfer the balance to his operating account. Rather, he kept the balance in the escrow account.

20. In a letter to the Denisons dated August 8, 2006, Mr. Bruzga enclosed his final bill and explained that he had withdrawn the deposit money from the escrow account, deducted his fees therefrom, and was enclosing the difference in a check (\$8,564.26) to the Denisons for, what he referred to as, their "damages." Mr. Bruzga further wrote: "It will

be helpful to have a list of your damages totaling at least the above amount in order to rebut any claims for return of the deposit. Please prepare such a list for your records.”

21. Mr. Bruzga also advised the Denisons that they should put the money aside in the event that Morgan succeeded on any future claim to the deposit money.
22. In a letter to Mr. Bruzga dated August 24, 2006, Mr. Morgenstern expressed disagreement with Mr. Bruzga’s argument that his clients were entitled to keep the deposit money. Mr. Morgenstern ended his letter as follows:

If I do not receive the \$20,000 deposit by August 30, 2006 we will instruct our New Hampshire counsel, Jim Cassidy to commence our action for the return of the deposit. The complaint has been prepared and Mr. Cassidy is just waiting to receive word that we would like him to file.
23. On or about September 5, 2006, James M. Cassidy, Esq., filed in Merrimack County Superior Court, on Morgan’s behalf, a Petition in Equity for Return of the Deposit, naming Danbe and Mr. Bruzga as respondents.
24. On or about November 3, 2006, Mr. Bruzga filed, on behalf of both himself and Danbe, a Petition for Specific Performance, which the Court (Conboy, J.) treated as a counterclaim.
25. On April 6, 2007, the case was ultimately settled through mediation.
26. On June 25, 2007, the Respondent closed out the escrow account thus affirming his prior intention to keep the balance as his earned legal fee.
27. The Denisons paid an additional \$5,070.00 in legal fees for the work the Respondent did in litigating the buyers’ petition in equity for return of the deposit.

II. RULINGS OF LAW

The Committee determined the following Rulings of Law, as described by the Hearing Panel, were established by clear and convincing evidence:

Rule 1.15: Safekeeping Property

When Mr. Bruzga transferred the deposit funds to an escrow account in his name he had no authority in law to do so. Such funds should have been deposited in a clearly designated trust account and the buyer and seller should have been notified prior to transfer. The language in *Douglas' Case* 156 N.H. 613 (2007) deals specifically with Rule 1.15(a)(1) as follows:

Rule 1.15(a)(1) requires an attorney to: (1) hold the property of clients or third persons separate from the lawyer's own property; (2) deposit funds in one or more clearly designated trust accounts in accordance with the provisions of the New Hampshire Supreme Court Rules; (3) identify all other property as property of the client, promptly upon receipt; and (4) safeguard that property. The duty to safeguard property means that "[a] lawyer may not use funds for his own or his law firm's purposes. Such misuse is conversion."

See also Nardi's Case 142 N.H. 602-05, (1998), in which the court explained *Nardi's* violation of Rule 1.15(a)(1):

He did, however, knowingly violate the express terms of an escrow agreement by relinquishing control of funds expressly given to him for safekeeping. He did so without the knowledge or consent of the buyers. He possessed no right to transfer the funds as he did and in so doing violated his duties as a fiduciary. Although the respondent explained his conduct, he could not justify it. The escrow transaction in which the respondent was involved was not complex, subtle, or uncertain. He took money belonging to a third person, entrusted to him, to which he had no legal right or interest, and gave it to another for purposes unauthorized and undefined. Ethical lawyering demands much more prudence and integrity.

See id. at 606-07.

Rule 1.15(c) reads:

(c) When in the course of representation a lawyer is in possession of property in

which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

See Douglas' Case 147 N.H. 538 (2002).

At the time Mr. Bruzga disbursed \$8,564.26 to his clients on August 8, 2006, there was an ongoing dispute between the parties as to the deposit fund. Furthermore, he claimed a personal interest in the remaining funds as payment for his attorney's fees. These actions are clear violations of the above rule.

Rule 8.4(a): Misconduct

Having found the above violation, the Committee finds Mr. Bruzga violated Rule 8.4(a) by clear and convincing evidence.

III. ANALYSIS

Although New Hampshire has not adopted the *American Bar Association's Standards for Imposing Lawyer Sanctions* (2005) (*Standards*), the Committee looks to them for guidance. *See, e.g., Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted the *Standards* the Court has considered them when imposing sanctions). The *Standards* list the following factors to be considered in imposing sanctions: (a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. *Standards, supra* § 3.0; *Coffey's Case*, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). In applying these factors the Committee first categorizes the respondent's misconduct, then identifies the appropriate sanction. *Coddington's Case*, 155 N.H. 66, 71 (2007). The Committee then considers the effect of any aggravating or mitigating factors on the ultimate sanction. *Id.*

The Committee identified the baseline sanction for the misconduct under the *Standards* in section 4.13: Reprimand¹.

The Committee considered the following factors, as found by the Hearing Panel.

A. Duty Violated

The Committee considered the duty violated, that being the duty of a fiduciary in a commercial real estate sale. The Respondent was acting both as an attorney for the sellers and as escrow agent for both the sellers and buyers. As escrow agent, both parties to the transaction entrusted the Respondent to safeguard the deposit money. The Respondent agreed to take on the role of escrow agent. It was a role that he was familiar with from his extensive prior experience in these types of matters. By agreeing to serve as escrow agent, Mr. Bruzga offered the buyers a reasonable expectation that the respondent would not disburse the deposit money unless there was no dispute between the parties. The buyers certainly were reasonable in expecting that he would not, in the midst of a dispute, disburse a portion of the deposit to his clients, and then retain the balance of those funds into the Paul W. Bruzga Escrow Account, claiming a personal interest in those funds as his earned legal fee.

B. State of Mind

Mr. Bruzga's action demonstrates, at the least, a negligent state of mind.

C. Potential or Actual Injury

The buyers lost their \$20,000.00 deposit before a definitive finding of breach was made. The deposit language of the P&S was ambiguous and subject to different interpretations, and yet, by making the disbursement, the Respondent substituted his judgment for that of a court. Even if

¹ Section 4.13 uses the term "Reprimand." The most analogous sanction in Hew Hampshire is a Public Censure.

the Respondent's judgment was correct, the trust given to him by the buyers necessitated that he seek clarity of the respective interests before disbursing funds to his clients and asserting his own personal interest in the balance of those funds. The sellers paid approximately \$16,000.00 to the Respondent in legal fees, some of which was presumably caused by litigation expenses as a result of the Respondent's disbursement of escrow funds in violation of his duty as fiduciary and his ethical obligations to safeguard those funds. Finally, there is the harm to the legal profession and to the integrity of commercial real estate transactions when a trusted escrow agent betrays that trust.

D. Aggravating and Mitigating Factors

Mr. Bruzga's prior disciplinary record shows a 2000 suspension for conduct occurring in 1993, that arose in the context of his own divorce. There has been no subsequent discipline until this current matter. The Committee did not place great weight on his prior discipline. Mr. Bruzga's selfish interest in claiming the remaining deposit fund for legal fees was considered an aggravator, as was his substantial experience in the practice of law.

Mr. Bruzga evidenced a cooperative attitude toward the ADO, although "a lawyer has a professional duty to cooperate with the committee's investigation," *Richmond's Case*, 152 N.H. 155, 161, 872 A.2d 1023 (2005).

Having considered all these factors, the Committee decided that the appropriate sanction is suspension.

IV. SANCTION

While Respondent's conduct warranted the sanction of suspension, given the circumstances of this case, his long practice and limited disciplinary record, the Committee

believed the fundamental goal of public protection could be met by imposing the suspension but staying it on condition that Mr. Bruzga undertake additional meaningful legal education with the goal of preventing similar situations in the future.

Given the serious nature of the violations the Committee voted to impose the following sanction, which will maintain public confidence in the Bar and integrity of the legal profession. The Respondent shall be suspended from the practice of law for six months, stayed for one year under the following conditions: that during the stay, the Respondent shall successfully complete the Multistate Professional Responsibility Exam during a traditional proctored exam in a classroom setting and that the Respondent shall complete six (6) New Hampshire Bar CLE ethics credits beyond the annual ethics requirements, in a traditional classroom setting. Said credits shall not be used as carry over credits in a subsequent NHMCLE reporting year. Failure to comply with said conditions will result in a hearing to determine if an immediate suspension from the practice of law for a period of six (6) months is warranted. The Respondent shall maintain a record of his attendance and participation in said programming, including proof of registration, and description of the program(s) and copies of materials. Mr. Bruzga shall provide proof sufficient to demonstrate compliance with this paragraph to Disciplinary Counsel.

If the Attorney Discipline Office (ADO) receives a complaint against Mr. Bruzga during the period of the one year stay that arises out of events that post date adoption of this Order by the Committee and are within the period of the one year stay, that complaint will be processed by the ADO on an expedited basis. Any final adjudication of a violation of the Rules of Professional Conduct that may result from that complaint may provide a basis for a request by Disciplinary Counsel that the Committee impose the stayed six month suspension in this case. If Disciplinary

Counsel makes such a request, the Respondent shall be entitled to an evidentiary hearing and review by the Committee.

At the conclusion of the one year stay described in this Order, the six month suspension shall be permanently stayed provided that there are no complaints or motions pending. If such complaints or motions are filed during such period, they can provide a basis for seeking imposition of the stayed six month suspension even if the proceedings on such complaints or motions are concluded after expiration of the one year period of the stay. Any request for imposition of the stayed suspension that is based upon a complaint must be initiated within 30 days of final disposition of that complaint.

V. COSTS

The Respondent shall pay all costs associated with the investigation and prosecution of this matter. See, N.H. Sup. Ct. R. 37(19).


VI. CONCLUSION

For all of the above reasons, Paul W. Bruzga is hereby suspended from the practice of law for six months, stayed for one year, with conditions for violations of NH. Rules Prof. Conduct 1.15(a)(1), 1.15(c), and 8.4(a).

VII. APPEAL

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), the parties have the right to appeal this decision to the New Hampshire Supreme Court. *See also* Supreme Court Rule 37(3)(c).

March 15, 2010


Margaret A. Nelson
Chair

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April 27, 2011

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Re: Bruzga, Paul W. advs. Betty Denison - #07-068

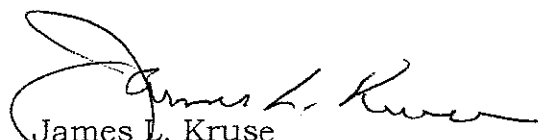
Dear Ms. Fazzino:

I am writing to inform the Committee that Paul W. Bruzga, Esquire, appears to have completed the requirements listed in the March 15, 2010, order issued by the Professional Conduct Committee.

Accordingly, Mr. Bruzga is no longer subject to the terms of the stayed suspension that was in effect from March 15, 2010 to March 15, 2011.

Please let me know if you need any further information.

Sincerely,


James L. Kruse
Assistant Disciplinary Counsel

JLK/ges

cc: David A. Horan, Esq.
Betty Denison