(No. 15-CC-1 Respondent Santiago censured.)

In re CIRCUIT JUDGE BEATRIZ SANTIAGO
of the Circuit Court of Cook County, Respondent

Order entered August 18, 2016

SYLLABUS

The Illinois Judicial Inquiry Board (Board) charges respondent, Judge Beatriz Santiago, with conduct bringing the judicial office into disrepute. The charges stem from respondent's refinancing a mortgage on a property located at 1106 North Spaulding Avenue in Chicago (the Spaulding property). The Board alleges respondent attempted to and did deceive her mortgage lender, American Equity Mortgage (AEM), by making several misrepresentations in her mortgage application that caused AEM to believe respondent occupied the Spaulding property as her primary residence when respondent, in fact, resided at another property, 3355 Potomac Avenue (the Potomac property), and had no intention of establishing residence at the Spaulding property. Because of this conduct, the Board charges respondent with two specific violations of the Code of Judicial Conduct: (1) Respondent failed to personally maintain high standards of conduct so that the integrity and independence of the judiciary may be preserved in violation of Illinois Supreme Court Rule 61, Canon 1; and (2) failed to respect and comply with the law and conduct herself in a manner that promotes public confidence in the integrity of the judiciary in violation Illinois Supreme Court Rule 62, Canon 2.

Held: Respondent censured.

Sidley Austin, LLP, of Chicago, for Judicial Inquiry Board.
Collins, Bargione & Vuckovich, of Chicago, for Respondent.

Before the COURTS COMMISSION: KARMEIER, Chairperson, AUSTRIACO, GOLDENHERSH, KLEEMAN, MCBRIDE, WEBBER, and ZIMMERMAN, commissioners, ALL CONCUR.

FACTS

Respondent is currently a circuit judge of the Circuit Court of Cook County Sixth Judicial Subcircuit. She was elected on November 6, 2012. Prior to becoming a judge, respondent was a public defender in Cook County for approximately 14 years.

In 2005, respondent purchased the Spaulding property. The original mortgage is dated August 23, 2005. She rehabbed it and moved into the Spaulding property in

February 2007. In 2011, she agreed to be a Democratic candidate for the circuit judge position she currently holds. However, the Spaulding property where respondent was living is not located in the Sixth Judicial Subcircuit where there was a judicial vacancy, but her parents' house on Potomac was in the subcircuit. Accordingly, respondent moved out of the Spaulding property and back into her parents' house on Potomac.

In her statement of candidacy for the office of judge filed on November 22, 2011, respondent stated under oath she resided at the Potomac property, which is located within the Sixth Judicial Subcircuit. The Potomac address is owned by respondent's parents and is the home in which respondent resided prior to attending college and law school. She also resided there most of her career as a public defender. Respondent has no ownership interest in the Potomac property.

Prior to the primary election for her current seat, an objector challenged respondent's eligibility to be a candidate based, *inter alia*, on residency. The objector specifically alleged respondent did not reside at the Potomac property, but actually resided at the Spaulding property, which is located within the Seventh Judicial Subcircuit. The objector's petition challenging respondent's residency was adjudicated before an election hearing officer in a three day hearing beginning on January 26, 2012. Respondent testified at that hearing that she had not resided at the Spaulding property since late August or early September 2011.

On January 30, 2012, the election hearing officer issued a written report and recommended a decision denying the objector's challenge to respondent's judicial candidacy. The hearing officer found that despite "a number of facts regarding [respondent's] residency that are not entirely plausible," there was not sufficient evidence to "conclusively establish" that respondent did not reside at the Potomac property. The County Officers Electoral Board adopted the hearing officer's report and recommended decision. Respondent went on to win the Democratic primary in March 2012, and was elected in the general election on November 6, 2012. Respondent was sworn in as a judge and began serving her current term in December 2012. Her term expires in 2018.

On June 24, 2013, respondent submitted an application to AEM to refinance the Spaulding property in order to get a lower interest rate. In her loan application and accompanying documents, respondent represented that she currently resided at the Spaulding property and that she intended to occupy the Spaulding property as her principal residence within 60 days of executing the mortgage instrument. For example, in Section II of the mortgage application, respondent indicated that the Spaulding property would be her "Primary Residence." In Section III, respondent stated that the Spaulding property was her "Present Address." In Section IV, respondent represented under "Schedule or Real Estate Owned" that she owned the Spaulding property as her primary residence.

While doing a background check and credit report on respondent as part of the mortgage application process, representatives of AEM discovered that most of the documents accompanying respondent's application, including pay stubs and proof of employment, showed respondent lived at the Potomac property rather than the Spaulding property. On July 18, 2013, a mortgage broker for AEM sent respondent an email in which he asked her to explain why most of the documents she submitted with her mortgage application reflected the Potomac property as her primary residence. Respondent replied that the Potomac address is her "mother's address which is the address I use for all work related issues." Respondent also submitted two letters of explanation to AEM.

In the first letter, respondent stated the Potomac property "is my mothers [sic] address. I have all my work related bills go to her home. I have no ownership interest in the property." In the second letter, respondent described the Potomac property as a "former address" in which she has no ownership interest. On August 9, 2013, respondent completed and signed an occupancy certification provided by AEM. The certification provided three options and required respondent to certify her intended use of the property subject to mortgage: (1) primary residence; (2) secondary home; or (3) investment property. Respondent checked the box for primary residence. Respondent also completed a mortgagor's affidavit on the same date which certified, "I presently occupy, or intend to occupy, the subject property as my principal residence, and am not now considering any proposal to sell subject property to third persons." The mortgage was approved, but respondent continued to live at the Potomac property and maintain the Potomac property as her primary residence.

The stipulated testimony of Matthew Williams, an AEM loan officer, was presented to the Commission. Williams explained that when a borrower expresses an interest in obtaining financing through AEM, the borrower must complete a Uniform Residential Loan Application (URLA), an industry-standard document. The URLA calls for information regarding the borrower's intended use of the to-be mortgaged property because the manner in which a property is used dictates the lender's assessment of the level of risk attributed to the mortgage loan. Mortgages associated with primary residences are viewed as less risky than mortgages associated with investment and secondary properties because borrowers are more likely to default on mortgages associated with investment property and secondary residences. Accordingly, borrowers of primary residence home loans are typically able to borrow at a lower interest rate than borrowers of investment or secondary residence loans.

Williams further explained that the borrower's intended use of the property affects the amount of down payment required. Respondent's URLA (Exhibit A) shows she applied for a Federal Housing Administration loan (FHA), which allows borrowers to obtain a primary residence mortgage by putting as little as 3.5% down. FHA loans are only available to borrowers who intend to occupy the property as their primary residence.

In order to obtain a mortgage loan for an investment property, a borrower generally must make a down payment of 20% of the purchase price. Respondent would not have been eligible for an FHA loan if she indicated the Spaulding property would be used for investment purposes.

According to Williams, AEM sells its loans to other financial institutions after they are originated and represents to the purchasers of the loans it originates that the loans are free of defect. If a borrower represents a mortgage property will be his or her primary residence when in fact the borrower intends to use the property for investment purposes, the borrower's loan may be incorrectly priced and AEM's representation that the loan is free of defect may be called into question. Williams identified respondent's mortgage as having been electronically signed. He identified Exhibit B as a form entitled "Important Notice to Homebuyers," which states, "Do not falsely certify that a property will be used for your primary residence when you are actually going to use it as rental property." He identified Exhibit C as a form entitled "Consequences to Borrower of Providing Inaccurate Information," which informed respondent of the seriousness and consequences of making misrepresentations in the application regarding their intended use of the to-be mortgaged property. Respondent electronically signed both of those documents. Williams identified several other exhibits which confirm that respondent represented to AEM during the mortgage application process that she intended to use the Spaulding property as her primary residence.

The stipulated testimony of Chris Guccione, Vice President of Operations at AEM, was also presented. He explained AEM's underwriting practices and procedures and discussed how AEM identifies inconsistencies in the information reflected in a borrower's application, supporting documents, and credit report. When inconsistencies arise, Guccione testified an AEM underwriter will seek a "letter of explanation" from the borrower. The purpose of such a letter is to give a prospective borrower the opportunity to explain discrepancies provided in the URLA and the information contained in a credit report and an "LQI Report." An LQI Report describes the borrower's background and credit history. If AEM is satisfied with a borrower's representations in letters of explanation, the loan is approved.

Further evidence adduced at the hearing before the Commission showed that on December 4, 2013, WGN, a Chicago television station, aired a portion of a three part series titled "Who is Judging the Judges" which insinuated respondent did not live at the Potomac property. The expose' highlighted the fact that in respondent's 2013 Mortgage Agreement with AEM she represented she intended to occupy the Spaulding property as her primary residence and she claimed a homeowner's exemption on her property taxes on the Spaulding property in 2012. In light of the expose', respondent took two steps to attempt to rectify criticisms that were raised by the WGN series. First, she repaid the homeowner's exemptions; second, she notified AEM that she was not actually living at

the Spaulding property. Respondent testified that the first time she realized she signed mortgage documents that were inaccurate was when the WGN story aired.

Respondent testified she comes from a large Puerto Rican family. Her family includes three biological siblings and three adopted siblings. Her adopted siblings are biologically her cousins. Their biological parents' parental rights were terminated, and respondent's parents became their foster parents and, ultimately, their adoptive parents. Respondent is the only one of her siblings to graduate from college. She testified her adoptive sister lived at the Spaulding property from May 2011 until November 2011, and her adoptive brother lived at the Spaulding property from December 2011 until summer 2012. She testified she did not rent out the Spaulding property, but kept her furniture and some pets there and let family members live in the house. This testimony was in conflict with respondent's previous testimony before the Electoral Board wherein she testified that while none of her relatives signed a lease to live at the Spaulding property, they did pay her approximately $500 per month in cash to live there.

Respondent testified she relied on her tax advisor's advice that she could claim a homeowner's exemption on the Spaulding property because she was not renting it out. However, once she realized the negative implications of the WGN story, she paid back the homeowner's exemptions she previously claimed. Respondent also reached out to AEM and advised them she did not actually live at the Spaulding property.

Respondent testified the majority of her legal career, including her time on the bench, has been spent in the area of criminal law. She knows little about real estate law. Respondent testified she never deliberately intended to deceive AEM, but admitted she was "careless" in signing the mortgage documents. Respondent signed the 2013 mortgage documents in a room in the courthouse while she was on her lunch hour, and the entire process took only ten to fifteen minutes. She said she was rushed and did not actually read the documents, but just signed in the places she was required to sign. Respondent testified she has been humiliated and embarrassed by the incident, and she has been humbled. She testified her career has basically been ruined because she failed to read the mortgage papers prior to signing them.

AEM did not accuse respondent of fraud, but attempted to help her rectify problems resulting from her claiming the Spaulding property was her primary residence for purposes of refinancing that property. AEM did not require respondent to refinance. Instead, an AEM representative wrote her a letter in which it was confirmed that respondent notified AEM that the Spaulding property was being used as a secondary, not a primary residence, that it was not possible to refinance, and the mortgage would be left as is. Ultimately, respondent paid off the mortgage that is the subject of this case when she sold the Spaulding property for more than she owed on it. In June 2015, she purchased another home which lies within the Sixth Judicial Subcircuit. At the time of the hearing, she was "in between" her parents' house and the new house.

Five character witnesses testified on behalf of respondent, including three sitting judges and two attorneys. They all testified respondent is honest and possesses integrity. Larry Kugler, a retired public defender and a colleague of respondent's during her tenure at the public defender's office, testified respondent is one of the most honest people he has ever met.

It is important to note that most of the evidence was stipulated to and most of the facts of this case are not in dispute. There is no dispute that respondent had no intention of returning to live at the Spaulding property at the time she applied for and entered into the mortgage. The only issue in dispute is whether respondent intended to deceive AEM into thinking she resided at or would reside at the Spaulding property when she refinanced the Spaulding property in 2013.

ANALYSIS

The Board charged respondent with the following violations:

> "53. Through the above-described conduct, Judge Santiago failed to personally maintain high standards of conduct so that the integrity and independence of the judiciary may be preserved. In so doing, [respondent] violated the Code of Judicial Conduct, Illinois Supreme Court Rule 61 which provides:
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> > 'An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.'
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> 54. Through the above-described conduct, [respondent] failed to respect and comply with the law and conduct herself in a manner that promotes public confidence in the integrity of the judiciary. In doing so, [respondent] violated the Code of Judicial Conduct, Illinois Supreme Court Rule 62, Canon 2, which provides in pertinent part:
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> > '(A) A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.'"

Based upon our consideration of the uncontested facts noted above, we conclude the Board proved by clear and convincing evidence (see *In re Karns, Jr.,* 2 Ill. Cts. Com. 28, 33 (1982)) that respondent violated Rule 61 and Rule 62 of the Code of Judicial

Conduct. The documentary evidence substantiating our conclusion is not in dispute and the relevant facts for the most part are stipulated.

Questions arise in our analysis as to: (1) when respondent knew or should have known that her acts and omissions could constitute violations of the Judicial Canons, and (2) at that point, what actions were taken.

At a minimum, respondent knew or should have known of her residency problems when she faced a challenge to her candidacy for circuit judge of the Sixth Judicial Subcircuit in the 2012 election. Subsequent to that, however, the record shows that in her disclosures, in order to secure an FHA loan, she designated the Spaulding property residence as "primary." Respondent argued that her actions could be characterized as careless. Given, however, the highlighting of her residence problems in the electoral challenge to her candidacy, one could reasonably characterize her activities as reckless. In effect, respondent got trapped. Her response to her situation only made her situation worse. She could be charged with reasonable notice of her problem due to the electoral challenge; however, the documents that she executed and the representations she made to AEM aggravated rather than corrected the situation. Respondent argued that ultimately no harm was done to AEM as all obligations were paid in full as the house was sold for more than the original obligation. We note, however, that her actions, taken in order to qualify for an FHA loan as opposed to a regular residential loan and the subsequent financing resulted in financial benefit to her. We also note the corrective actions were taken only subsequent to exposure of her residency problems by the media.

As respondent essentially does not contest the Board's allegations of violations, the question before us is what sanction is appropriate. Respondent's counsel eloquently argued before us that respondent had not contested the facts and admitted that her actions and omissions constituted carelessness. Accordingly, he urged the Commission to issue a sanction of reprimand. His argument rested on the case of *In re Sklodowski*, No. 87 CC 4, 2 Ill. Cts. Com. 125, which he argued was sufficiently analogous to justify that disposition by the Commission.

The Board, in response, argued that the instant situation is not similar to *Sklodowski* on a number of points. Counsel argued there was no acknowledgement as in *Sklodowski* of what respondent did, but only a stipulation as to the facts of record. Specifically, counsel argued that there was not a full and frank disclosure by respondent of her actions and omissions so it raised a question of her candor. Following the current policy of the Board, he did not recommend a specific sanction.

We conclude that *Sklodowski* is distinguishable from the instant case.

Circuit judge Robert Sklodowski was charged by the Board with actions constituting willful misconduct in office and conduct that was prejudicial to the

administration of justice and brought the judicial office into disrepute. Specifically, Sklodowski was charged with knowingly and intentionally submitting to a savings and loan in Florida a purchase agreement, loan application, and closing statement which falsely claimed the existence of a $15,000 down payment towards the purchase of a condominium. The purpose of these actions was to obtain a mortgage for that purchase. Sklodowski testified that he was asked by his former partners, one of them his brother-in-law, to purchase a condominium as part of a hotel conversion in which his partners were engaged. After indicating he was not financially able to do so, he was told he would not have to make the indicated down payment and that payments would be made from rental incomes. With his wife's and others' urging, Sklodowski agreed to take these actions.

The bank subsequently foreclosed. No personal judgment was entered against Sklodowski, the bank ultimately did not sustain any loss on this loan, and Sklodowski did not personally gain from this transaction. Subsequent to this transaction, however, and as a result of it, Sklodowski pleaded guilty to a criminal information in Florida based on the preparation and delivery of these documents. The background of the charge was that the Federal Bureau of Investigation had investigated the condominium sale and, based on Sklodowski's cooperation with the Bureau, the United States Attorney's Office pursued misdemeanor charges in State court as to Sklodowski's actions. Sklodowski pleaded guilty to the information and was fined and assessed costs.

Awareness of Sklodowski's actions came to the attention of the Board when he was being considered for a federal district judgeship.

The Commission determined that the appropriate sanction was to reprimand. The basis stated by the Commission for its disposition was as follows:

> "We have examined the evidence in this case. The respondent has incurred substantial attorney fees, embarrassment, and inconvenience in extricating himself from his Florida problems. Additionally, he was, of course, no longer considered for the Federal judicial appointment. Both factors have already constituted a substantial penalty. Considering the nature and circumstances of the improper conduct, taken in context with the respondent's distinguished career as a jurist, and realizing the misconduct's degree of remoteness to the respondent's official duties, the appropriate sanction in this case is a reprimand." *In re Sklodowski*, 2 Ill. Cts. Com. 125, 130 (1988).

As compared to the record before us, there was not acknowledgement and acceptance by respondent of the actions she had taken in contrast to the actions taken by Judge Sklodowski. Additionally, there was not a full and frank explanation of actions and motivations as in *Sklodowski*. Respondent engaged in consistent hedging and her candor was reasonably in question. In *Sklodowski*, there was no personal benefit to the respondent. In the instant case, as noted above, there were benefits in obtaining financing

and the financial obligations of the type of financing obtained. It is not questioned in the record or by counsel that if the Spaulding property had not been designated as the primary residence, those financial benefits would not have accrued to respondent. As noted in our discussion of *Sklodowski*, there were severe adverse consequences to Judge Sklodowski: his plea to federal charges and elimination of the possibility of a federal district judgeship. Similar adverse consequences to respondent independent of any action this Commission might take, are not apparent to us on the record.

There are arguable factors in mitigation in favor of respondent. Her actions and omissions were not related to her official duties. Further, there is no indication in the record of any prejudicial impact to any litigant appearing before respondent. By contrast, in *In re Drazewski*, 14-CC-2 March 11, 2016, Judge Drazewski's actions had an impact on a litigant and attorney appearing before him in a civil case. Further, there was presented to the Commission substantial positive and credible testimony as to respondent's legal history, her legal abilities, and character in discharging her judicial duties. Also, there were no apparent adverse effects in the record before us on other judicial officers. This stands in contrast to the record in *Drazewski*. In *Drazewski*, the respondent's actions interfered with the discharge of his judicial duties by failing to recuse himself in a civil case and misleading his chief judge. There is no contest in the record that the actions of respondent are not likely to recur and the financing situation, as well as the question of residential qualification, appear to have been resolved.

Considering the uncontested record, the factors in aggravation and mitigation, and considering all of the factors noted above and the situations and dispositions in both *Sklodowski* and *Drazewski*, we conclude that censure is the appropriate disposition of this matter. Respondent's actions are of greater weight than the situation in *Sklodowski*, in particular concerning the effect that Sklodowski's actions had upon his judicial career. Respondent's actions, however, do not rise to the level of those taken by Judge Drazewski as noted above. The instant case falls in the middle between these two fact situations and sanctions and, accordingly, we conclude that censure is the appropriate sanction in this case.

Respondent censured.