Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-200

IN THE MATTER OF	:
MUHAMMED IBN BASHIR,	:
AN ATTORNEY AT LAW	:

Decision of the
Disciplinary Review Board

Argued: July 19, 1995

Decided: November 14, 1995

William J. Riina appeared on behalf of the District VA Ethics Committee.

Respondent appeared pro se.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board based upon a recommendation for discipline filed by the District VA Ethics Committee (DEC). The complaint charged respondent with misconduct in a civil suit arising out of a real estate transaction. Specifically, respondent was charged with a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate). Although respondent did not file an answer to the complaint, he was not charged with misconduct in that regard. Respondent was present at the DEC hearing.

Respondent was admitted to the New Jersey bar in 1987. He has an office for the practice of law in Elizabeth, Union County. Respondent has no history of discipline.

On April 1, 1988, Teresa Ramos, the grievant herein, and Dr. Robert Belfon ("Buyers"), signed a contract to purchase real estate from Charles and Dorothy Aronowitz ("Sellers"). Buyers were represented by Peter Lederman, Esq. Ms. Ramos paid a $10,000 deposit, which was held by Mr. Lederman.

The contract contained a mortgage contingency clause and did not contain an insect infestation contingency clause. In fact, by way of an addendum to the contract, dated May 26, 1988, the parties specified that the property was being purchased "as is" and Buyers waived their rights to obtain a home inspection report and an insect infestation report, in exchange for a reduction in the sale price.

At some point, the mortgage lender indicated that it would be easier to approve the mortgage loan to Ms. Ramos alone. Therefore, by way of a letter-amendment dated June 14, 1988, Dr. Belfon was deleted as a party to the transaction.

The mortgage company's commitment had been conditioned on Buyers' obtaining a satisfactory insect inspection report or upon satisfactory completion of the repairs. In fact, there was insect infestation and damage to the property and Ms. Ramos was unable to provide the necessary inspection certificate. Therefore, the mortgage company withdrew the loan commitment. Thereafter, the parties attempted to negotiate an agreement to proceed with the transaction, to no avail. Ms. Ramos then unsuccessfully sought the

return of her $10,000 deposit. Buyers became dissatisfied with Mr. Lederman's representation and, in July 1989, retained respondent. (Despite the fact that Dr. Belfon was no longer a party to the contract of sale, he remained involved in the transaction). In August or September 1989, Mr. Lederman deposited the $10,000 escrow funds with the court.

Respondent was unsuccessful in his attempts to obtain the return of the $10,000. Subsequently, in November 1989, Sellers filed a civil action against Buyers, Mr. Lederman and the realtors. Sellers had sold the property in question and sought to recover the $40,000 deficiency between the actual sale price and the contract price with Buyers.

Respondent filed an answer and counterclaim in behalf of Buyers. According to Buyers, on several occasions they requested that respondent have Dr. Belfon's name removed from the lawsuit. They believed that Dr. Belfon had been named because Sellers were seeking a "deep pocket" and that, if he was eliminated as a party, "the whole thing might go away." 2T 77.[1] See also Exhibit G-14. Respondent failed to do so. He contended that this was part of his strategy and that he would raise the issue at trial.[2]

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[1] 1T refers to the transcript of the hearing before the DEC on January 5, 1995. 2T refers to the transcript of the hearing before the DEC on January 12, 1995. 3T refers to the transcript of the hearing before the DEC on January 26, 1995.

[2] There were allegations in the civil matter that Buyers are married and that there might have been fraud in connection with the transaction. Ms. Ramos testified that they have never been married. Their relationship, other than that of employer/employee, is neither clear from the record nor relevant to this matter, but might explain the difficulty in having Dr. Belfon's name removed from the suit.

Respondent also failed to serve interrogatories on the plaintiffs. He testified that, in light of his own difficulty in getting Buyers to answer the plaintiffs' interrogatories, he did not believe it would be fruitful to serve any on the plaintiffs. Respondent testified that he spoke with opposing counsel, who agreed that interrogatories were not necessary and that the issues could be resolved at the depositions. Also, respondent did not serve requests for the production of documents. He contended, however, that he communicated with potential witnesses and obtained documents from them and furthermore, that their names and documents were provided to the plaintiffs.

Respondent also failed to obtain Buyers' file from Mr. Lederman, their previous attorney. Although there is some controversy in the record as to respondent's attempts to get the file, it appears that he obtained the necessary documents from Ms. Ramos and from other sources and that, ultimately, she got the full file for respondent in December 1991.

Buyers agreed that they discussed the matter with respondent on a regular basis. According to Dr. Belfon, he met with respondent at least several times per month. Ms. Ramos, who works in Dr. Belfon's office, also met with respondent, although less frequently.

The record contains transcripts of depositions held in the underlying civil matter. Buyers were deposed on December 13, 1990. (Although the record does not contain that portion of the transcript, Ms. Ramos testified that the realtors were also deposed

on that date). Respondent attended that deposition. There was, however, an earlier deposition held on July 25, 1990 of, among others, the plaintiffs. Respondent was not present. A review of that transcript reveals statements by counsel for one of the realtors that respondent had sent a letter requesting a change in the sequence of the depositions because Buyers were unavailable in the morning. In accordance with his letter, they were scheduled for a deposition at two o'clock. Counsel also noted that they had tried to reach respondent, who was in court. Respondent testified that he had also asked that the Buyers' deposition not begin until he arrived. Deposition of some of the parties proceeded. Counsel later said that respondent's office had telephoned to state that he was still in court and would not be coming and instructed that "if his clients come they are not to be deposed." Exhibit R-14 at 48. Buyers, however, had never appeared at the deposition. They contended before the DEC that they had never been informed that the deposition had been scheduled and did not know it had taken place until they reviewed documents provided by the DEC. However, as pointed out by respondent, there is a reference to the July deposition in the transcript of Dr. Belfon's December deposition. Exhibit R-15 at 61.

Respondent testified that, when he learned of his scheduling conflict for the date of the July deposition, he contacted another attorney to see if he could attend either the deposition or the other trial in his place. (Respondent did not recall with certainty but believed that he was unable to have the deposition

rescheduled). That attorney, however, wanted $300 or $500 for the day, a sum respondent could not afford. In addition, according to respondent, Buyers wanted him to reschedule their deposition instead. Respondent testified that he obtained a copy of the deposition transcript as soon as possible and reviewed it with Buyers.

The case was scheduled for trial on Monday, December 16, 1991, before the Honorable Leonard Arnold, A.J.S.C. Buyers testified that they met with respondent the previous Friday evening to discuss the case. There is disagreement, however, as to the substance of the conversation. Buyers contended that respondent told them that he was seeking to have a settlement conference in the matter. Buyers added that, although they specifically asked about a trial date, respondent replied that he did not know if and when there would be a trial. He stated that he would call them over the weekend if a trial was scheduled for the following week. Respondent did not call them, however. Buyers vigorously denied having been told about a December 16, 1991 trial date. They made it clear in their testimony that they had been waiting for their day in court and that, had they known about it, they would have "been there with bells on...." 2T 116.

Contrarily, respondent testified that their meeting was for last-minute trial preparation and that Buyers clearly knew they had to be in court on Monday morning. He claimed that none of the parties to the suit believed that the trial would actually begin – hence his settlement discussions with Buyers – but that it was

clear to Buyers that they had to be present and ready to begin the trial. He stated that he had called Buyers the previous Monday, December 9, to explain that they had to meet that week to prepare for trial. Although he was uncertain, respondent's recollection was that he received notice of the trial date that day. His file, however, contained a trial notice dated October 24, 1991. He explained that he had not meant to give the impression that Friday was the first time the trial date had been discussed with the clients and, although he did not recall a specific conversation with his clients, he surmissed that he must have spoken with them earlier about the trial. There was no testimony, however, about any discussions regarding the trial prior to the Monday discussion noted above. (The DEC rejected the inference respondent tried to raise i.e., that he might have spoken with Buyers earlier about the trial). Respondent admitted that he did not provide Buyers with written communication about the trial date and conceded that he should have.

Respondent testified that, on December 16, 1991, he arrived in court forty minutes late. (He stated that he had called the court to advise that he was on his way). Buyers were not in court. By the time respondent arrived, the court had imposed a $100 sanction against him and a $912.60 sanction against Buyers and ordered the entry of a default judgment.[3] According to Buyers, respondent telephoned them at approximately 10:30 A.M. and asked why they were

[3] Sellers, who were residents of Canada, traveled to New Jersey for the trial. Hence the sanction in the amount of $312.60. The $600 balance was for counsel fees.

not in court. They were unable to come at that time. According to Buyers, respondent spoke with them several days later, explained the sanctions to them and assured them that he would take care of the situation. Dr. Belfon testified that he believed that respondent had the order vacated. In fact, although respondent was successful in having the default judgment vacated, he was unable to have the sanctions lifted. They have not yet been paid.

Respondent informed Buyers that the trial might be rescheduled for January 1992. They had made vacation plans for January that had to be rescheduled for February. The trial was, in fact, scheduled for January, but because of respondent's scheduling conflict in a criminal case, the trial was adjourned and carried on a week-to-week basis. Respondent testified that he wrote to the court asking that the matter be scheduled after Buyers' arrival from vacation. The trial, however, was rescheduled for February 19, 1992, which date conflicted with Buyers' vacation plans. Further, respondent learned that he had a criminal trial scheduled for that same date. Accordingly, respondent sought an adjournment in the civil case. The court refused. Respondent telephoned Buyers and informed them that someone had to appear in court. Buyers explained that their vacation could not be postponed any further. Respondent then contacted the other counsel in the case, believing that, collectively, they could obtain the adjournment. Their request, however, was refused. Respondent contacted Buyers who had, by that time, left on vacation. His request for an adjournment in the criminal matter was also denied.

On February 19, 1992, respondent appeared for the criminal trial. At respondent's request, the law clerk for the judge in that matter apparently telephoned the civil court judge at 9:30 A.M. to explain where respondent was. By that time, a default judgment had already been entered against Buyers in the amount of $41,662.60, along with sanctions of $3,843. That judgment was entered by order dated February 28, 1992.[4] In evidence and in support of his testimony as to the within events is respondent's subsequent brief to vacate the default, stating that he had explained the conflict in scheduling to his clients, who had left the country in reliance on his representation that the criminal matter would take precedence over their matter. Exhibit R-20.

Buyers returned on February 21, 1992. A couple of days later, respondent informed them of the sanctions. (Although it may be assumed that respondent did so, it is unclear if he told them of the default judgment). According to Ms. Ramos, she did not know of the trial date until she learned of the sanctions. She testified that respondent explained that there was a misunderstanding and that he would take care of the situation. She took that to mean that he would talk to the judge and have the sanctions removed or that he would pay them. She informed respondent that she refused

[4] Although the record is not clear, it appears that the civil judge had attempted to confirm that respondent had had a prior commitment in criminal court on an earlier date. However, the wrong county was contacted, giving the appearance to the judge that respondent had not been in trial that day. Thus, the civil court required confirmation of respondent's whereabouts from the criminal court.

to pay the sanction. Ms. Ramos did not recall further communication with respondent after that time.

Respondent filed a motion to vacate the default on April 22, 1992. The motion was removed from the list because he failed to file a brief, as required by R.4:50-1. The motion was refiled on May 11, 1992 and, on June 3, 1992, the court entered an order vacating the default, conditioned on Buyers' payment, within thirty days, of $3,843.70, representing plaintiffs' fees and costs. That amount was never paid. The court thereafter vacated the order vacating the default. Buyers' substituted counsel filed a motion to vacate the default. That motion was granted by order dated September 25, 1992, subject to the payment by Buyers of $6,243.70. That amount was not paid and, apparently, the judgment remains in place. (On an undisclosed date, the $10,000 deposit was released to offset the judgment).

Respondent explained that the reason for his delay in filing the motion to vacate the default was that, in late February or early March, he had been contacted by Arthur N. Martin, Jr., Esq., who was taking over the representation of Buyers. Respondent contacted Mr. Martin in or about April after not hearing from him. Mr. Martin explained that he had not yet been retained, whereupon respondent filed the motion. Mr. Martin obtained Buyers' file from respondent in June, but a substitution of attorney was not provided to respondent until August. By letter dated October 5, 1992, Mr. Martin sought payment of the $6,243.70 from respondent.

Testimony was offered before the DEC about respondent's fee in this matter. There was no retainer agreement. Respondent stated that Buyers had agreed to pay a $5,000 fee. (Ms. Ramos, contrarily, claimed to have no knowledge of that figure and Dr. Belfon thought the fee was $2,500). Buyers paid respondent $1,000 in three installments. There were additional payments of $400-$500 by way of dental fees used to offset respondent's fees (Dr. Belfon was respondent's children's dentist) and Ms. Ramos recalled that Dr. Belfon made additional payments. Ms. Ramos did not recall seeing any bills from respondent. Respondent contended at the DEC hearing that the $1,000 payment was for another matter he had handled for Ms. Ramos. He further claimed that his ability to take action in Buyers' behalf, that is, filing motions and appealing denied motions, was limited because they had not provided him with the financial resources to do so. 2T 120, 161. In addition, respondent contended that, when he had represented Buyers previously on an individual basis, they had failed to appear for trial dates.

Respondent also briefly mentioned a period of hospitalization for "stress" in or about March 1992. 3T 14. It is unclear if he offered this by way of mitigation and/or explanation. It also appears that this was respondent's first civil suit of this nature.

The DEC determined that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4. The DEC was concerned by the fact that respondent did not appear to grasp the wrongfulness of his actions. For example, he did not see a problem with allowing a deposition to be

conducted outside his presence and did not appear to understand the unfairness of sanctioning Buyers for his derelictions. The DEC also found that fault for the December 16, 1991 and February 19, 1992 rulings rested with respondent. Further, the DEC found that, although respondent communicated with Buyers, he failed to convey key information to them, such as notice of the December 16, 1991 trial and the need to have an attorney present at the plaintiffs' deposition.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The DEC found that Buyers as well as respondent were credible witnesses. The DEC concluded, however, that, wherever there was a conflict between their testimony, Buyers were more convincing and found that respondent had violated RPC 1.1(a), RPC 1.3 and RPC 1.4.

The Board agrees with the DEC's finding that respondent violated RPC 1.1(a) and RPC 1.3. The Board disagrees, however, with the DEC's finding that respondent violated RPC 1.4. Respondent communicated on a regular basis with his clients. The difficulties apparently arose because respondent did not adequately communicate to Buyers the import of the information he conveyed or his communications were not clear. Indeed, much of this case does not make any sense, unless viewed as the result of simple miscommunication. As the DEC noted in connection with the December

16, 1991 trial, "whatever was discussed, Ms. Ramos and Dr. Belfon did not come away from that Friday meeting with a clear understanding that their presence was required in court on December 16, 1991." This is not a case where an attorney failed to communicate, but rather where he failed to communicate clearly.

What is clear is gross neglect and a lack of diligence on the part of respondent. Respondent's actions, however, do not evidence an indifference to his clients as the Board often sees, but instead a lack of comprehension of what needed to be done. For example, respondent failed to propound interrogatories or seek discovery, did not attend the plaintiffs' deposition, failed to convey dates of trials and depositions to his clients in writing and, according to his testimony, failed to take certain actions because Buyers had not given him the financial resources to do so. Respondent's derelictions were likely the result of youth and inexperience. His behavior was, nevertheless, inappropriate.

Ordinarily, gross neglect and lack of diligence in one matter, without more, result in the imposition of an admonition. The difficulty in this matter, however, was the level of harm to the parties. Among other things, respondent failed to inform his clients of crucial dates for trial and depositions and, thus, allowed the entry of more than one default judgment against them, caused large sanctions to be imposed against them and, in the end, allowed the entry of a $41,000 judgment against them. The judgment is now over $30,000 and Buyers have lost the $10,000 deposit.

Respondent, however, has recognized his misconduct, noting that at that time he was overextended and placed his personal relationship with Buyers ahead of his professional responsibilities. Respondent acknowledged that he should have conveyed information to his clients in writing and stated before the Board that he has changed his methods of practice. Accordingly, the Board unanimously deemed a reprimand appropriate discipline. See In re Clark, N.J. (1995) (where the attorney was reprimanded for gross neglect and lack of diligence in a civil matter. The attorney allowed over a year to pass with no information from the court regarding his client's case, resulting in the dismissal of the matter). One member did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/14/95

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board