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Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 95-454

IN THE MATTER OF

HARRY J. GREENBAUM

AN ATTORNEY AT LAW

Decision of the
Disciplinary Review Board

Argued: January 31, 1996

Decided: July 15, 1996

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Herman Osofsky appeared on behalf of respondent.

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

This matter was before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's two-year suspension in the State of New York for two instances of professional misconduct.

Respondent has been a member of the New Jersey bar since 1974 and the New York bar since 1975. Respondent was previously admonished in New York in 1990 for commingling funds and privately reprimanded in New Jersey in 1986 for utilizing his New Jersey trust account as a personal account. On July 13, 1995, the Appellate Division of the Supreme Court of New York, First Judicial

Department, ordered respondent suspended for two years for unethical conduct in two cases: a personal injury matter and a business transaction with a former client.

Respondent failed to notify the OAE of his New York suspension, in violation of R. 1:20-14(a)(1). His suspension was discovered in September 1995, after a routine review by the OAE of recent New York disciplinary decisions. On November 1, 1995, the New Jersey Supreme Court temporarily suspended respondent.

The New York hearing panel summarized respondent's two instances of misconduct as follows:

> In 1983, respondent was retained to represent an infant in a personal injury matter. Later the same year, respondent filed notices of claim with the school and municipality where the injury occurred and attended the General Municipal Law 50-h examination. Respondent then failed to take any action until December 1989, approximately six years later, when he served the summons and complaint. Thereafter, respondent took no further steps to prosecute the action.
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> During these periods of inaction, respondent twice told the [infant's] father that the matter was progressing, but would take time. On the second occasion, respondent sent the father an updated copy of the complaint. HPR at 29-35. The panel found that 'respondent purposely left the complaint undated and failed to send DiSalvo [the father] the summons, which was dated, because he wanted to conceal from DiSalvo that, contrary to his representations, he had not served the summons and complaint until December 1989.' HPR at 34.
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> In 1988, grievant Sondra Stein began a business relationship with respondent and New York attorney Michael Kane in which they suggested mortgage investment opportunities to Stein. In September 1989, respondent induced Stein and her friend to invest $35,000 in a purported $62,500 first mortgage in an apartment building. HPR at 8. Respondent did not inform Stein that he represented the mortgagor. Nor did he inform her of the apartment building's recent troubled financial history, including a prior foreclosure action against the property, proceedings by the City Department of Housing for various violations and a rent strike. Rather,

respondent told her that the investment 'sounded very secure.' HPR at 5-6.

At the time of the investment, respondent said that the $62,500 mortgage had priority over a $125,000 mortgage held by the mortgagor's sister. HPR at 5-6. However, in January 1992, Stein learned that she had actually invested in part of a $187,500 mortgage rather than a $65,000 mortgage. At that time, respondent promised Stein that although the mortgage did not so provide, she would be repaid before the mortgagor's sister. HPR at 10-11.

In January 1990, approximately three months after the investment, the mortgagor stopped making payments on the mortgage. Respondent assured Stein that he was aware of the problem and was working on it. In March 1990, two months later, respondent filed a bankruptcy petition on behalf of the mortgagor. In June 1990, Stein learned from Kane, respondent's business partner, that respondent represented the mortgagor and had filed a bankruptcy petition for him. HPR at 9. When contacted about the representation and bankruptcy, respondent continued to reassure Stein that her investment was safe. HPR at 10.

In December 1991, during the pendency of the mortgagor's bankruptcy, the city took title to the mortgaged property for non-payment of property taxes. In August 1992, respondent was advised by the city that because of the bankruptcy automatic stay provision, it would terminate its proceedings and vacate its title to the property. HPR at 11-12. Knowing that the city had terminated its proceedings, respondent wrote to Stein, misrepresenting that the mortgage would be extinguished by the city if the back taxes were not paid. Respondent incorrectly stated that Stein held a '2/3 interest' in the mortgage and requested that, therefore, she pay 2/3 of the $140,745 in back taxes. HPR at 12-13.

Ultimately, the mortgage was foreclosed upon and an auction date was scheduled. Respondent promised to notify Stein of the date of the auction, but failed to do so. Because she was not notified, Stein did not attend the auction. The property was purchased by the Audobon Company, which was owned in part by Kane, respondent's business partner, for the outstanding taxes plus $5,000. Audobon offered the mortgage investors present at the auction the opportunity to purchase shares of the property by putting up a pro rata share of the outstanding taxes and the $5,000. Stein was not given an opportunity to purchase a share. Respondent's wife purchased twenty-five percent of the property. HPR at 13-15.

[OAE's letter-brief at 2.]

Additionally, the New York hearing panel found some aggravating factors, such as respondent's prior ethics history; his selfish motivation for failing to tell Stein of the City's relinquishment of title and the auction date; his pattern of misconduct in both cases; his false testimony before the disciplinary committee; and his failure to acknowledge any wrongdoing.

The OAE has requested the imposition of a reciprocal suspension for two years.

* * *

Upon a review of the full record, the Board determined to grant the OAE's motion. The Board adopted the factual findings of the Appellate Division of the Supreme Court of New York, First Judicial Department. In re Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which directs that:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates

> or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the misconduct established warrants substantially different discipline.

There is nothing in the record to indicate any conditions that would fall within the ambit of subparagraphs (A) through (E).

As found by the New York disciplinary authorities, respondent's misconduct consisted of willfully failing to advise Stein of the financially troubled history of the mortgage company prior to Stein's investment in the company; making false representations regarding the soundness of the investment; willfully failing to advise Stein that the City's title to the premises had been vacated; failing to advise Stein of the date of the auction; falsely representing that a matter was pending; and neglecting a case and intentionally failing to carry out a contract of employment.

Similar misconduct has resulted in two-year suspensions. See In re Harris, 115 N.J. 181 (1989) (attorney induced a client to make a loan to another client for the development of a real estate

project without disclosing the severe financial trouble of the project); In re Humen, 123 N.J. 289 (1991) (serious misconduct in business transaction with client).

Although Stein was not a current client of respondent at the time of the misconduct, it is well-settled that an attorney must act in his business transactions with high standards and his professional obligations reach all persons who have reason to rely on him even though not strictly clients. In re Katz, 90 N.J. 272, 284 (1982), citing In re Lambert, 79 N.J. 74, 77 (1979); In re Genser, 15 N.J. 600, 606 (1956).

In light of the foregoing, the Board unanimously determined to suspend respondent for a period of two years, retroactive to the date of his New Jersey temporary suspension, November 1, 1995. One member did not participate.

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

Dated: 7/15/96

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board