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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-283

IN THE MATTER OF :
SIXTO L. MACIAS, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 20, 1991

Decided: May 6, 1991

Gregory Diebold appeared on behalf of the District VI Ethics Committee.

Armando C. Hernandez appeared on behalf of respondent.

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

This matter is before the Board based upon a recommendation for private reprimand filed by the District VI Ethics Committee, which recommendation the Board determined to hear as a presentment.

Respondent was admitted to the New Jersey bar in 1980. He is currently engaged in the practice of law in Union City, New Jersey.

The Sanchez Matter (District Docket No. VI-89-21E)

On September 30, 1987, Pedro Sanchez retained respondent to represent him in a civil action. On April 19, 1988, Sanchez paid respondent \$300 and respondent filed an answer on Sanchez' behalf. On June 14, 1988, the answer was suppressed for failure to answer interrogatories upon order of the court. In fact, respondent had

filed answers to the interrogatories, and the order was apparently entered inadvertently. Thereafter, respondent took no action to vacate the order or to reinstate the answers, as a result of which a default judgment was entered against Sanchez. Sanchez testified that he had no notice of the judgment until a title search revealed a lien on his property. Respondent, in turn, testified that he learned of the judgment from Sanchez.

The Solares Matter (District Docket No. VI-89-24E)

Irma Solares retained respondent in October 1987 to file an action against her former landlord. A complaint was filed in March 1988. Respondent testified that he told Solares and her husband that there was some difficulty in locating the defendant. According to respondent, the Solareses had told him that they would look for the defendant. In 1988, the Solareses moved to Florida. They asked their son, Lazaro, to obtain information about their case from respondent.¹ Lazaro Solares, after numerous attempts, was able to see respondent, who told him he was having difficulty in locating the defendant landlord. In late 1988 or early 1989, Marcel Plaut, Esq. who was representing Lazaro Solares in another matter, began calling respondent on Lazaro Solares' behalf to ascertain the status of the matter.² The telephone calls were not returned. Respondent did, however, answer a letter from Plaut.

¹Lazaro Solares testified at the hearing before the committee on behalf of his parents.

²This second attorney now represents the Solareses in the action against their former landlord.

The complaint in the landlord/tenant matter was dismissed on June 6, 1988 for lack of service upon the defendant. The court told respondent that the case could be reinstated within one year, if service was effectuated. Respondent was unable to locate the defendant and, unaware that he was permitted to serve the town clerk, took no further action. Respondent testified that he relied on the Solareses' representation that they would obtain the defendant's address, which they failed to do. He testified that he was also told that retainer monies would be sent to him, which did not occur. In December 1988, respondent sent the Solareses a letter stating that he no longer wished to represent them.

The Falcon Matter (District Docket No. VI-89-27E)

Lazara Falcon retained respondent on June 6, 1983 to represent her in a criminal action against her husband, Vincente Soto.³ Soto assaulted Falcon on April 18, 1983. Falcon paid respondent \$300 and respondent appeared in municipal court in the matter. In July 1983, respondent was retained to file a personal injury action against Soto. A civil action was filed in July 1985. Although Soto defaulted, respondent failed to obtain a judgment on Falcon's behalf. In January 1987, the case was dismissed for lack of prosecution. In October 1987, respondent filed a motion to have the case reinstated, but then took no further action in the matter.

³There was considerable confusion at the ethics hearing as to whether respondent was retained to file a criminal or civil action. Respondent testified, and the panel so found, that he was retained to file a criminal action.

Respondent testified that he explained to Falcon that Soto had no assets and that, in his view, there was nothing to be gained by pursuing the action. Respondent admitted that Falcon did not agree with him.

Falcon testified that she had difficulty obtaining information from respondent with regard to the status of her case. Falcon's daughter, Rufina Alvarez, testified that she went to respondent's office to obtain information on her mother's case. She met briefly with respondent, who told her he would send her a letter with the information. When she received no letter, Alvarez wrote to respondent, who again failed to answer her request.

The Gonzalez Matter (District Docket No. VI-89-27E)

In 1984, Armando Gonzalez retained respondent to represent him in an action arising from an automobile accident. Respondent filed suit on Gonzalez' behalf on July 3, 1985. After he failed to receive any information from respondent for three years, Gonzalez requested that another attorney, Thomas E. Weinstock, Esq., contact respondent for information. Gonzalez signed a letter authorizing respondent to discuss the matter with Weinstock. The authorization letter was sent to respondent on December 13, 1988, with a request for information on the case, including the docket number, the opposing party, and the trial date. Respondent failed to reply to the letter. Two additional similar letters were sent to respondent on January 19, 1989, and February 7, 1989. On February 18, 1989, respondent wrote to Weinstock, explaining that suit had been filed

and was still pending. By letter dated February 27, 1989, Weinstock again requested the docket number of the case and, subsequently, the return of the file. Respondent did not comply with either request. On March 22, 1989, Weinstock sent respondent a letter, enclosing an authorization from Gonzalez requesting the file. Respondent did not forward the file. Weinstock then, on April 22, 1989, wrote to the secretary of the ethics committee, forwarding a copy of the letter to respondent. Still, respondent did not comply with Weinstock's request. Weinstock then obtained a court order, directing respondent to release the file. An order was issued July 21, 1989, and respondent complied, releasing the file. Respondent indicated that he did not turn the file over to Weinstock because he did not believe that Gonzalez wanted to change attorneys.

A review of the file indicated that the case had been dismissed on February 17, 1989 for failure to answer interrogatories. Once again respondent had provided the answers; the dismissal order was entered in error. Respondent did file a motion to reinstate the matter.⁴ Ultimately, Weinstock had the order vacated and the case was settled.

The committee found that respondent violated RPC 1.1(b) in that a pattern of neglect was exhibited in his handling of the four

⁴Although the record is not clear, it appears that the case was reinstated and dismissed a second time when Gonzalez failed to appear for an arbitration hearing.

above discussed matters. The committee found no gross neglect and no dishonest conduct.⁵

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence.

When retained, respondent owed his clients a duty to pursue their interests diligently. See In re Smith, 101 N.J. 568, 571 (1986); In re Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1,5 (1982). The Board finds that respondent violated DR 7-101 and superseding RPC 1.3, by failing to act with diligence in these matters.

It is clear to the Board that respondent's conduct is not an isolated incident or aberration but, rather, a pattern of behavior. Accordingly, the Board agrees with the finding of the committee that respondent violated DR 6-101(A)(2) and superseding RPC 1.1(b), by exhibiting a pattern of neglect in the handling of client

⁵In the Sanchez matter, the grievant testified that respondent misrepresented to him that the matter was proceeding smoothly. The hearing panel did not find clear and convincing evidence of said violation.

matters.⁶

In determining the appropriate quantum of discipline to be imposed, the Board has considered In re Mahoney, 120 N.J. 155 (1990), where the Court determined that a public reprimand with a one-year proctorship was the appropriate discipline for an attorney who neglected four matters.⁷ The Board has also taken into account respondent's prior public reprimand.⁸

In view of the foregoing, the Board recommends that respondent be publicly reprimanded. In addition, the Board recommends that respondent be required to practice under the guidance of a proctor for one year. One member dissented, contending that a three-month suspension was the appropriate discipline, based upon respondent's prior public reprimand.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: August 6th, 1991

By: Raymond R. Trombadore
 Raymond R. Trombadore
 Chair
 Disciplinary Review Board

⁶The Rules of Professional Conduct replaced the Disciplinary Rules effective September 1984. Respondent's conduct in the Falcon and Gonzales matters began prior to, and continued beyond, that time. Therefore, both the Disciplinary Rules and the Rules of Professional Conduct apply in those matters.

⁷The attorney in Mahoney was also found to have violated RPC 1.4, RPC 1.15, and RPC 8.4

⁸Respondent was publicly reprimanded on September 27, 1990, for failing to file an answer to an ethics complaint and for failing to cooperate with the Office of Attorney Ethics. In re Macias, 121 N.J. 243 (1990).