SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-482

IN THE MATTER OF

LARRY A. LUBIN

AN ATTORNEY AT LAW

Decision

Argued: January 23, 1997

Decided: October 15, 1997

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

Respondent failed to appear despite proper notice of the hearing.[1]

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 disbarments in California and New York.

Respondent was admitted to the New Jersey, New York, and California bars in 1984, 1985, and 1991, respectively. He has no prior disciplinary history in New Jersey.

On September 24, 1994, respondent was suspended in the State of California for four years. Service of the suspension was stayed, however. Respondent was placed on probation for four years on the condition that he serve a two-year suspension. Respondent was further ordered to comply with rule 955 of the California Court Rules, requiring him to file an affidavit of compliance within

[1]Notice of the Board hearing was sent by certified mail. The return receipt card, signed by respondent, is dated January 10, 1997.

a prescribed amount of time. When respondent failed to comply with the order, he was disbarred in California on October 4, 1995. In a reciprocal discipline action, the Appellate Division of the Supreme Court First Judicial Department of the State of New York disbarred respondent in that state on September 26, 1996.

Respondent failed to notify the OAE of his California and New York disbarments, as required by R. 1:20-14(a)(1). The OAE was notified of the disbarments by the disciplinary agencies of those states. On October 15, 1996, the OAE filed a motion for respondent's temporary suspension, which the Court denied on December 10, 1996.

The facts that give rise to respondent's discipline in California are as follows:

Markley Matter

On or about March 29, 1992, respondent was retained by William S. Markley to represent him in connection with charges for driving under the influence of alcohol. During the course of his representation, respondent made numerous misrepresentations to Markley. Respondent encouraged Markley not to attend any court proceedings, stating that it was not unusual for an attorney to appear without the client. Nevertheless, respondent himself failed to appear at Markley's pretrial hearing, resulting in the issuance of a bench warrant for Markley's arrest. The warrant was subsequently withdrawn when respondent appeared at the arraignment. Subsequently, another bench warrant was issued for Markley's arrest when respondent again failed to appear at another pretrial hearing.

Additionally, respondent provided Markley with a document purporting to be a temporary driver's license, as Markley's license had been suspended as a result of his arrest. The license, which was fabricated, displayed forged signatures of representatives of the District Attorney's Office

and the Department of Motor Vehicles. Thereafter, respondent continuously misrepresented to Markley that his driver's license had been re-issued and that his criminal case had been diverted. In fact, Markley's driving privileges were still suspended and his criminal case was still pending. Also, respondent failed to appear at scheduled meetings with Markley. Markley learned later that respondent had left California.

The California Bar Court found that respondent had violated section 6106 of the California Business and Professions Code, which proscribes "the commission of any act involving moral turpitude, dishonesty or corruption . . . ." The Bar Court further found that respondent had violated Rule 3-110-(a), which prohibits an attorney from intentionally, recklessly or repeatedly handling matters in an incompetent fashion and Rule 3-700(A)(2), which requires an attorney to follow certain procedures in withdrawing from representation.

Seebold Matter

On or about March 25, 1991, Louise Seebold retained the law offices of Cochran & Pirtle, where respondent was employed as a paralegal. Respondent agreed to represent Seebold in a civil suit. However, at that time respondent was not yet admitted to the bar in California. Thereafter, Seebold made numerous unsuccessful attempts to contact respondent. Finally, in early June 1991, William F. Pirtle, Esq., a partner at the firm, wrote to Seebold advising her that respondent was no longer employed by the firm. Seebold then contacted respondent, who agreed to continue to represent her.

Despite the fact that respondent failed to perform any work on Seebold's case, he stated to her that her case had been settled and that he had the settlement check at his office. In fact, that was

untrue; respondent had not settled the case. On at least two occasions Seebold traveled to respondent's office to collect the funds. On the first occasion, respondent was not in his office. During the second scheduled meeting, respondent explained to Seebold that the check was in a bank in Los Angeles and that he was unable to retrieve the funds because of the Los Angeles riots. Thereafter, respondent continuously misrepresented to Seebold that her check would be forwarded to her. Finally, in September 1992 Seebold was informed that respondent had left California.

The California Bar Court found that respondent had violated sections 6068(a), 6106, 6125, 6126, and Rules 3-110(a), 3-700(A)(2) and 3-700(D)(1). Section 6068(a) requires attorneys to support the Constitution and laws of the United States and the state. Section 6106 proscribes "the commission of any act involving moral turpitude, dishonesty or corruption . . . ." Section 6125 prevents an attorney from engaging in the unauthorized practice of law. Section 6126 prevents anyone from advertising or holding himself out as a practicing attorney who is not an active member of the bar. Rule 3-110-(a) requires an attorney to perform legal services competently. Rule 3-700(A)(2) prohibits an attorney from failing to properly withdraw from representation. Rule 3-700(D)(1) requires that an attorney return the file and property of a client promptly.

Finally, respondent failed to cooperate with the California State Bar's investigation of the grievances filed against him. In fact, respondent's whereabouts are currently unknown by either the California or the New York disciplinary systems.

The OAE urged the Board to suspend respondent for two years.

* * *

Upon review of the full record, the Board determined to grant the OAE's motion for reciprocal discipline. The Board adopted the factual findings of the California Supreme Court. 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), which directs that

> [t]he 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 upon 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;
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> (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 the presence of any conditions that fall within the ambit of subparagraphs (A) through (D). As to subparagraph (E), respondent's misconduct ordinarily would not result in disbarment in New Jersey.

As stated above, respondent's disbarment in California stemmed from his failure to comply with the Court Order requiring him to file an affidavit of compliance. Although respondent was disbarred in California and New York, those disciplinary systems allow disbarred attorneys to petition for reinstatement five and seven years after the effective date of disbarment, respectively. In New Jersey, however, a disbarred attorney may never seek reinstatement to the bar. For the reasons stated below, the Board determined not to impose discipline identical to that meted out in California and New York, but instead to impose a period of suspension.

In New Jersey respondent's misconduct constitutes violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.16(d) (improper termination of representation), RPC 5.5(a) (unauthorized practice of law), R. 1:21-1(a) (practice of law without a proper license), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Cases involving similar misconduct have resulted in a two-year suspension. See In re Grosser, 143 N.J. 561 (1996) (two-year suspension for gross neglect, lack of diligence, conduct involving dishonesty, deceit, fraud or misrepresentation, failure to cooperate with disciplinary authorities and conduct designed to limit liability to a client for malpractice); In re Depietropolo, 127 N.J. 237 (1992) (two-year suspension for gross neglect, lack of diligence, failure to communicate, misrepresentations, charge of unreasonable fees, and failure to cooperate with disciplinary authorities).

In light of the foregoing, the Board unanimously determined to suspend respondent for two years.

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

Dated: 11/16/17

By: LEE M. HYMERLING
Chair
Disciplinary Review Board