SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-407
District Docket No. XIV-2013-0468E

IN THE MATTER OF	
BENNETT ELLIOT LANGMAN	
AN ATTORNEY AT LAW	

Decision

Argued: March 20, 2014

Decided: June 2, 2014

Hillary Horton appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, following respondent's February 2013 disbarment by consent in Pennsylvania after his resignation from

that bar.[1] The rules violated in Pennsylvania were the equivalent of New Jersey RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 1.4(c) (failure to explain a matter to the extent necessary to allow the client to make informed decisions about the representation), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 4.1(a) (false statement of material fact or law to a third person), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

---

[1] Under Pa.R.D.E. 215, if an attorney submits a resignation while allegations of unethical conduct are pending, the Supreme Court shall issue an order for disbarment on consent. Attorneys disbarred pursuant to Pa.R.D.E. 215(a) can apply for reinstatement five years after the effective date of the disbarment. Pa.R.D.E. 218(b).

The OAE urged us to recommend respondent's disbarment. We agree with the OAE that respondent must be disbarred.[2]

Respondent was admitted to the Pennsylvania and New Jersey bars in 2005 and 2007, respectively. He has no history of discipline in New Jersey. As noted above, he was disbarred by consent in Pennsylvania, in February 2013.

On August 22, 2012, the Pennsylvania Office of Disciplinary Counsel (the ODC) filed a petition seeking to institute a disciplinary proceeding against respondent. On December 12, 2012, respondent filed his verified statement of resignation from the practice of law with the Supreme Court of Pennsylvania. On February 14, 2013, that court accepted respondent's resignation. The ODC petition charged respondent with four counts of misconduct.

---

[2] Respondent did not file a brief in reply to the OAE's motion. Therefore, the measure of discipline that he is seeking is unknown. In waiving oral argument, however, respondent indicated that he does not agree with "the conclusions and recommendations of the trier of fact."

CHARGE ONE

The Pennsylvania petition alleged that respondent failed to change his "public access address" with the Office of Attorney Registrar, as mandated by Pa. Rule of Disciplinary Enforcement 219 (d)(3). Respondent failed to report his address change, after he left the law firm of Mayfield, Turner, O'Mara, Donnelly & McBride (the Mayfield firm), in May 2011.

CHARGE TWO

The charges in count two resulted from respondent's representation of ThyssenKrupp Elevator Corporation (ThyssenKrupp) in a number of matters, as follows:

I. THE BULLOCK MATTER

Beginning in or around February 2009, the Mayfield firm assigned respondent to represent ThyssenKrupp in a personal injury matter filed by Melissa Bullock. On May 14, 2010, respondent agreed with Bullock's counsel, Marc Vogin, to submit the matter to binding arbitration. Prior to this agreement, respondent did not consult with ThyssenKrupp or its legal department about settling the case through binding arbitration.

On May 14, 2010, Vogin sent a letter to the Honorable Howland M. Abramson, with a copy to respondent, informing the judge that the parties had agreed to resolve the matter in binding high/low arbitration. On May 17, 2010, the judge ordered that the matter be removed from the docket and transferred to arbitration. ThyssenKrupp and its legal department were unaware that the case had been transferred to arbitration.

On June 23, 2010, respondent agreed to allow attorney Peter A. Dunn to preside as sole arbiter.

On November 30, 2010, respondent agreed to settle the Bullock matter for $80,000, without first requesting permission from ThyssenKrupp. In addition, he did not notify ThyssenKrupp's legal department of the settlement.

Respondent failed to deliver Bullock's settlement proceeds by December 20, 2010, as required by Pa.R.Civ.P. 229.1, thereby neglecting his legal duty to ensure that ThyssenKrupp paid the settlement in a timely manner. Vogin sent respondent emails, on January 19, January 28, and February 8, 2011, requesting payment. Respondent replied to Vogin by several emails, stating that

a. [he] planned to "light a fire" under his client to get the settlement paid "ASAP;"

b. ThyssenKrupp "is slow," but thanking Mr. Vogin for being "great to work with" and promising to get the money ASPA [sic] and

c. [he] was "[t]remendously sorry and embarrassed by [his] client" and reported that payment "will be soon."

[OAEb2.][3]

The record provides no indication that ThyssenKrupp knew about the settlement. On February 17, 2011, Vogin filed a motion "to Deliver Settlement Funds with the Court of Common Pleas." Respondent did not discuss the motion with ThyssenKrupp or file a response.

On March 15, 2011, Judge Abramson found that ThyssenKrupp failed to timely pay Bullock and ordered ThyssenKrupp to pay simple interest of 4.25% on the $80,000 settlement, from December 21, 2010 until payment. The judge also ordered ThyssenKrupp to pay $500 towards Bullock's attorney's fees.

On March 16, 2011, Vogin filed a praecipe for entry of judgment against ThyssenKrupp, in the amount of $81,292.20. On

---

[3] OAEb refers to the OAE's brief.

May 16, 2011, respondent finally informed ThyssenKrupp's legal department about the November 30, 2010 settlement.

II. THE MURRAY MATTER

In November 2008, the Mayfield firm assigned respondent to represent ThyssenKrupp in a personal injury matter filed by Nancy and James Murray. Respondent agreed with plaintiff's counsel, Richard C. Senker, to resolve the matter through binding arbitration. Respondent did not obtain permission from ThyssenKrupp or its legal department, before submitting the matter to binding arbitration.

On July 1, 2010, Senker sent a letter to Judge Abramson, with a copy to respondent, informing the judge that the parties had agreed to binding hi/low arbitration and had chosen Dunn (the arbitrator in the Bullock matter) as the sole arbiter. On July 12, 2010, Judge Abramson removed the matter from his docket and transferred it to binding arbitration.

Respondent did not inform ThyssenKrupp's legal department that the court had transferred the case to binding arbitration. Instead, respondent told ThyssenKrupp's legal department that he had an agreement with the plaintiffs to "participate [sic] non-binding mediation."

On December 2, 2010, without ThyssenKrupp's approval, respondent participated in binding arbitration, where the parties presented evidence and witness testimony. On December 29, 2010, the arbitrator entered an award in favor of the Murrays, in the amount of $220,000.

Thereafter, respondent misrepresented to ThyssenKrupp's legal department that "it was a non-binding settlement amount recommended by a mediator." Respondent also falsely informed ThyssenKrupp's legal department that he had "hired a doctor to review the Murray's [sic] records" and that the "report was unfavorable." Respondent continually asked ThyssenKrupp for settlement authority in this matter, but neglected to "inform ThyssenKrupp that the arbitrator's Report and Award mandated that ThyssenKrupp make payment within twenty days from ThyssenKrupp's receipt of the Report and Award."

Senker sent respondent e-mails, on January 4, January 18, January 24, January 31, and February 10, 2011, requesting payment. In reply, respondent sent the following e-mails to Senker, on January 18, February 2, February 10, and February 14, 2011:

> a. I will light a fire under my client to get it processed (if it hasn't been already) so we can both close the file;

b. I'm working the client hard for you. You were a gentleman throughout the case so I'm trying to get this ASAP;

c. No excuse, truly understand your aggravation. I'm told it will be soon and I will have it hand delivered the instant it arrives; and

d. Have several calls in, will advise check date immediately upon hearing.

[OAEb at 4-5.]

Respondent did not tell ThyssenKrupp that its payment to the Murrays was overdue. Also, he knew that his e-mail responses to Senker were false.

On February 16, 2011, Senker filed a motion to deliver settlement funds. Respondent did not reply to the motion.

On March 14, 2011, Judge Abramson found that ThyssenKrupp had not paid the $220,000 award to the Murrays within twenty days of receiving the arbitrator's report and award. As a result, the judge ordered that ThyssenKrupp pay simple interest of 4.25% on the $220,000, from January 24, 2011 to the delivery of the settlement funds. The judge also ordered ThyssenKrupp to pay $500 toward Senker's legal fees. Respondent did not notify ThyssenKrupp that a $221,806.43 judgment had been entered against it.

On May 3, 2011, the Murrays initiated execution proceedings against ThyssenKrupp for enforcement of the judgment. Gloria Schultz, the litigation manager and corporate compliance officer in the ThyssenKrupp legal department, contacted W. Thomas McBride, a Mayfield firm partner, about the execution proceedings against ThyssenKrupp. When McBride questioned respondent, he denied that there was a valid judgment against ThyssenKrupp or that he had agreed to participate in binding arbitration. Respondent also drafted "a weak motion" to vacate the Murray judgment.

On May 16, 2011, McBride and Schultz had a conference call, during which respondent "admitted to engaging in a pattern of deceptive and fraudulent behavior in his handling of the ThyssenKrupp matters." As a result, the Mayfield firm entered into an agreement with ThyssenKrupp for the payment of $250,000 to settle the dispute arising from respondent's mishandling of the Bullock and Murray matters.

III. FALSE BILLING OF THYSSENKRUPP

Respondent submitted inaccurate time sheets to the Mayfield firm in sixteen ThyssenKrupp matters. Specifically, he billed for drafting documents that he did not draft, court appearances

that were not scheduled, depositions that he did not attend, telephone calls that he did not have, research that he did not conduct, preparation of witnesses for depositions that he did not perform, and travel expenses that he did not incur. Relying on respondent's false time sheets, the Mayfield firm printed draft bills for McBride's review, printed the bills in final form, and then sent them to ThyssenKrupp.

ThyssenKrupp paid the firm $80,715.20 for legal work that respondent falsely represented that he had performed in sixteen matters. The overpaid amounts ranged from $387.50 to $12,896. As a result of respondent's conduct, the Mayfield firm arranged for an independent audit of respondent's billing records and reimbursed $330,719.20 to ThyssenKrupp.

CHARGE THREE

I. THE COLBURN, KAUFFMAN AND CAMACHO MATTERS

The charges in count three arose from respondent's conduct during his representation of Otis Elevator Company (Otis), as follows:

In March 2009, respondent was assigned to represent Otis in a matter against three plaintiffs, Colburn, Kauffman, and Camacho. On May 21, 2010, without permission from Otis or its

legal department, respondent settled the matter by agreeing to give each of the plaintiffs $21,500. Respondent did not notify Otis of the settlement.

On June 4, 2010, respondent sent to plaintiffs' counsel, John C. Capek, executed releases and other documents that he had signed without Otis' permission. Thereafter, Capek contacted respondent by phone, letters, and email, seeking the payment of the settlement funds. Respondent failed to reply to Capek's communications. Also, he did not notify Otis that Capek was seeking payment of the settlement funds.

On July 23, 2010, Capek filed a motion to deliver settlement funds. Respondent did not object to the motion.

On September 7, 2010, Judge Sandra Mazer Moss found that Otis did not make payment within twenty days of receiving the executed releases. The judge ordered Otis to pay 3.25% simple interest on each $21,500 settlement, from June 24, 2010 to the date of delivery of the settlement funds. Otis was also ordered to pay $500 toward Capek's fees. Respondent never informed Otis of this order.

On November 22, 2010, Capek filed a motion for sanctions and contempt. The motion stated that Otis had failed to comply with the court's September 7, 2010 order and that respondent had

not answered telephone calls or letters from "the plaintiff" (presumably, from plaintiff's counsel). The motion sought sanctions against Otis and the entry of judgment as to each $21,500 settlement. Respondent received a copy of the motion, but failed to inform Otis about it.

On December 13, 2010, respondent replied to the motion with false information. He claimed that "answering defendant encountered unforeseen financial difficulties that made paying any such settlements impossible," that "the moving defendant has worked tirelessly to extricate themselves from financial problems" and have not availed itself of "bankruptcy protections;" and that, "[h]ad moving defendant been forced to enter bankruptcy plaintiff's [sic] settlement would have been held until such times that the bankruptcy would have been resolved." Respondent told the court that, "[b]y the end of the fiscal year moving defendant expects to be solvent enough to issue settlement drafts in a number of matters including this one." Respondent asked the court to provide Otis with sixty days to issue the settlement checks.

Contrary to respondent's contention, Otis was not facing any financial difficulties that would have prevented prompt payment.

Respondent falsely told a member of the Otis legal department that he had settled each matter for $23,000, not $21,500. The extra $1,500 per plaintiff was designed to cover the fees imposed, after Otis failed to pay the settlements promptly.

In December 2010, respondent received settlement checks from Otis in the amount of $23,000 per plaintiff and "distributed the funds."

On January 7, 2011, as a result of respondent's "deceitful conduct," Judge Moss ordered Otis to pay the settlement funds within sixty days and gave the plaintiffs an opportunity to request sanctions at a later time.[4]

II. FALSE BILLING TO OTIS

Respondent was also responsible for twelve hourly-rate and eight flat-rate cases involving Otis. According to Pennsylvania disciplinary authorities, during the course of his work on those

---

[4] It is unclear why Judge Moss ordered Otis to pay the settlement funds, which, apparently, had been paid the prior month.

twenty matters, respondent submitted false time sheets to the Mayfield firm, stating that he had

> a. attended a mediation session, had a settlement conference, and drafted correspondence regarding a settlement offer on a case after the case had already settled;
>
> b. drafted protective orders, answers, motions, replies, letters, and summaries, when in fact, Respondent failed to draft these documents;
>
> c. prepared for depositions, prepared witnesses for depositions, and attended depositions, when in fact, the depositions were never scheduled;
>
> d. attended conferences, court hearings, oral arguments, and site inspections, when in fact, Respondent did not attend;
>
> e. had telephone conferences with Otis, expert witnesses, and opposing counsel, when in fact, Respondent never had these telephone calls; and
>
> f. incurred travel and litigation expenses that Respondent did not incur.
>
> [Ex.A at 25 to 26.][5]

---

[5] Ex.A includes the Pennsylvania petition for discipline.

Based on respondent's false billing, the Mayfield firm printed draft bills for McBride to review, which were then sent to Otis. Otis paid $30,419.24 for legal services that were not provided.

On October 12, 2011, the Mayfield firm reimbursed Otis $34,919.24 for the overpayments made as a result of respondent's false statements in the Coburn matter and his false billing.

CHARGE FOUR

FAILURE TO TIMELY ANSWER PETITION

The charges in count four arose from respondent's failure to file a timely answer to the ODC's Petition for Discipline. On November 21, 2011, the ODC served respondent, via certified mail, with a DB-7 Request for Statement of Respondent's Position. The following day, the ODC e-mailed respondent a copy of the DB-7. Respondent did not claim the certified mail.

On December 12, 2011, the ODC hand-delivered the DB-7 to respondent's Cherry Hill residence, where an agent accepted

delivery. Respondent failed to submit an answer to the DB-7 within 30 days, as required by Pa.R.D.E. 203(b)(7).[6]

The OAE summarized the totality of respondent's conduct:

> Respondent was disbarred by consent in Pennsylvania for false billing, failing to consult with a client before settling matters or sending them to binding arbitration, failing to act with reasonable diligence and promptness in representing clients, failing to keep clients reasonably informed about the status of their matters, failing to explain a matter to the extent reasonably necessary to permit clients to make informed decisions regarding the representation, making false statements of material fact or law to a tribunal, making false statements of material fact or law to a third person, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and engaging in conduct prejudicial to the administration of justice.
>
> [OAEb12.]

According to the OAE, respondent's unethical conduct in Pennsylvania equated to violations of New Jersey RPC 1.2(a)

---

[6] Pa.R.D.E. 203(b)(7) states that "[f]ailure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position" shall be grounds for discipline.

(failure to abide by a client's decisions about the scope and objectives of representation); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about a matter); RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 4.1(a) (false statement of material fact or law to a third person); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

As indicated previously, the OAE urged us to recommend respondent's disbarment.

Following a review of the full record, we determine to grant the OAE's motion.

Respondent resigned from the Pennsylvania bar in the face of numerous charges against him. Pennsylvania disciplinary authorities found him guilty of misrepresentations to his clients, the court, his adversaries, and his law firm; failure to communicate with clients; lack of diligence; settling cases without the clients' authorization; and conduct prejudicial to

the administration of justice, presumably by wasting judicial resources.

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

> The Board shall recommend 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:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (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;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

The OAE argued that respondent's misconduct in Pennsylvania was so egregious that disbarment is the appropriate discipline in New Jersey. In support of its recommendation, the OAE cited In re Denti, 204 N.J. 566 (2011). In that case, Denti, while a partner at two law firms, submitted falsified entries in the firms' time-keeping systems, in an effort to mislead them that he was performing legal work. His intent was to ensure the continuation of his agreed compensation. Denti also engaged in a conflict of interest by entering into an intimate relationship with a divorce client and submitted vouchers for meals with individuals who he alleged were either potential clients or potential sources of client referrals. In reality, they were women he was dating.

Although we found Denti's lack of a disciplinary history a mitigating factor, we concluded that it was outweighed by many aggravating factors, including the length and breadth of Denti's dishonesty, the premeditated nature of the misconduct, the fiduciary relationship that he abused, his refusal to admit that his conduct was unethical, his incredible testimony at the ethics hearing, his lack of remorse, his experience as a member of the bar for more than twenty years, and the self-interest by which he was motivated. Moreover, at a minimum, Denti had

permitted, if not persuaded, others to submit false certifications or testimony on his behalf.

In disbarring Denti, the Court agreed with us that

> [a]lthough respondent's conduct did not constitute criminal theft and although he was not charged with knowing misappropriation of law firm funds, he carried out a longstanding and pervasive scheme of defrauding two law firms of which he had been a partner, thereby violating his fiduciary obligation to the members of those law firms. By preparing fictitious time sheets, fabricating clients, and submitting phony expense vouchers, respondent engaged in an insidious plot that, coupled with his obvious untruthful testimony, shows a deficiency of character that compels disbarment[.]
>
> Id. at 567.

The OAE also cited In re Siegel, 133 N.J. 162 (1993). In Siegel, during a three-year period, the attorney converted more than $25,000 in law firm's funds by submitting false disbursement requests to the firm's bookkeeper. Although the disbursement requests listed ostensibly legitimate purposes for the funds to be disbursed, they represented actual expenses incurred by either Siegel personally (landscaping services, tennis club fees, theatre tickets, dental expenses, sports memorabilia, etc.) or by others (his mother-in-law's mortgage service fee). The Court concluded that knowing misappropriation

from one's partners is just as wrong as knowing misappropriation from one's clients and ordered the attorney's disbarment.

This case is factually distinguishable from Denti and Siegel. There, the attorneys acted for their own financial gain, whether by submitting false disbursement requests or vouchers to pay for their personal expenses or false time records to ensure the continuity of their level of compensation. Here, the record is devoid of any motivation for respondent's actions. There is no indication that he embarked on his conduct for financial gain. Thus, Denti and Siegel do not serve as precedent to support a conclusion that respondent should be disbarred.

In considering the appropriate measure of discipline for respondent, we recall In re Alterman 126 N.J. 410 (1991), where a two-year suspension was imposed for an attorney who, during the course of working for two separate multi-member law firms, committed serious infractions, including settling cases without the clients' consent and lying to his superiors that the cases were still ongoing. Alterman was overwhelmed by the work responsibilities assigned to him and was simply unable to say "no" to his supervisors.

Here, respondent has provided no evidence to us that he was unable to keep up with his work assignments. It is possible that he was simply overwhelmed by his workload or inexperienced and/or unwilling to ask his employer for help or guidance. He entered into his course of misconduct in 2008. He had been admitted to the Pennsylvania bar in 2005 and to the New Jersey bar in 2007. This may well be a case of a young attorney who was simply in over his head or in a "sink or swim" situation. That being said, the burden of going forward with a defense or mitigation falls on respondent. He has provided no indication that he has any defense to his actions or factors tending to mitigate them.

The record shows that, in addition to his false billing practices, respondent was guilty of an assembly of various forms of deception. Setting aside, for the moment, his fraudulent billing, we find that he is guilty of misrepresentations to his clients, his adversaries, his law firm, and the court. He has displayed a pattern of duplicity that evidences a serious deficiency in his character. He also settled cases without his clients' authorization, lacked diligence in his representation of their interests, failed to communicate with his clients, and

engaged in conduct prejudicial to the administration of justice by wasting judicial resources in resolving his clients' matters, without authorization to do so, and causing additional judicial action to be required.

Moreover, he failed to advise New Jersey disciplinary authorities of his Pennsylvania disbarment by consent, as required by R. 1:20-14(a)(1).

In short, despite the fact that respondent's motive was not financial gain, that he was a new attorney at the time, and that he does not have a disciplinary record, his deceptive conduct toward clients, employers, adversaries, and the court indicates to us that he is unfit to practice law in New Jersey. Such a deficiency of character requires his disbarment and we so recommend.

Vice-Chair Baugh and members Clark, Doremus, and Zmirich voted for a three-year suspension and for a proctorship, upon respondent's reinstatement and until further order of the Court.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bennett E. Langman
Docket No. DRB 13-407

Argued: March 20, 2014

Decided: June 2, 2014

Disposition: Disbar

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli	X					
Hoberman	X					
Singer	X					
Yamner	X					
Zmirich		X				
Total:	5	4				

Ellen A. Brodsky
Chief Counsel