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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-308

IN THE MATTER OF :
:
CHARLES J. SABELLA :
:
AN ATTORNEY AT LAW :
:

Decision
Default [R. 1:20-4(f)]

Decided: May 10, 2000

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics ("OAE") certified the record directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On August 2, 1999 the OAE forwarded a copy of the complaint to respondent at 161 Prospect Street, Ridgewood, New Jersey by regular and certified mail.¹ The certified mail receipt was returned as "unclaimed." The regular mail was not returned.

¹ The OAE's investigative report states that this address functions as the Sabella family residence and the physician's office of J.C. Sabella, M.D., respondent's father. It also served as respondent's law office until his ineligibility.

Respondent did not file an answer to the formal ethics complaint. The record was certified directly to the Board for the imposition of discipline, pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1986. At all relevant times, he maintained a law office at 161 Prospect Street, Ridgewood, New Jersey.

Since September 15, 1997, respondent has been ineligible to practice law in New Jersey for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). There is no allegation that respondent practiced law while ineligible.

The complaint charged respondent with violations of RPC 1.1(a)² (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a)³ (failure to communicate), RPC 1.15 (negligent misappropriation) and RPC 1.15(d)⁴ and R. 1:21-6 (failure to maintain required records).

In or about March 1996, respondent was engaged by Mr. and Mrs. Robert L. Rosenberg to represent them in the mortgage refinancing of their home.⁵ On July 12, 1996,

² The complaint charged respondent with a violation of RPC 1.1, generally. The included comment concerning "gross neglect" implies that the DEC intended to charge a violation of RPC 1.1(a).

³ The complaint does not enumerate a specific subsection. However, the language of the complaint, "failure to respond to . . . reasonable requests for information," implies that a charge of RPC 1.4(a) was intended.

⁴ The complaint does not cite a specific subsection. However, the recordkeeping charge implies that a charge of RPC 1.15(d) was intended.

⁵ According to the investigator's report, the Rosenbergs are close friends of respondent's father. Respondent handled this mortgage refinance, as well as prior matters, as a courtesy to them.

after a four-month delay, respondent completed the closing. Respondent never provided the Rosenbergs with a satisfactory reason for the delay.

On numerous occasions, beginning after the July 1996 closing, Mr. Rosenberg requested that respondent furnish him with copies of the closing documents and the title insurance policy. To date, respondent has not provided Mr. Rosenberg with copies of the closing documents or purchased a title insurance policy.

The complaint states that the check that respondent issued for the title insurance policy was returned for insufficient funds. The trust funds that respondent maintained for the title insurance premium in his attorney trust account were depleted by bank service charges that were incurred, unbeknownst to respondent.⁶ The trust account balance fell from \$730.29 in July 1996 to \$121.39 in March 1999. During this period respondent left most bank statements unopened because he was not actively engaged in the practice of law and believed that there was no activity in his trust account. Thus, the title policy was never issued.

Since the closing in July 1996, respondent has failed to reply to the Rosenbergs' requests for information and has failed to purchase the title insurance policy, despite repeated demands by both the Rosenbergs and the OAE.

⁶ Respondent opened his attorney trust account with Citizens First Bank ("Citizens"), which did not impose a service charge. Fleet Bank ultimately bought out citizens and began to charge a \$20 per month service fee. Exhibit 6 A-C.

* * *

Service of process was properly made in this matter. Following a review of the complaint, we find that the facts recited therein support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent's failure to finalize this simple mortgage refinancing for four years and to return the Rosenbergs' calls violated RPC 1.1(a) and RPC 1.4(a), respectively. Respondent also violated RPC 1.15 (negligent misappropriation) and RPC 1.15(d) and R. 1:21-6 (recordkeeping deficiencies). The funds that respondent held in trust for the Rosenbergs were used to pay respondent's bank fees. His attorney trust account records reveal that there were insufficient funds in the account to cover the expense of the title insurance check he had issued. Although respondent did not intentionally misappropriate those funds, he had a duty to monitor his account.

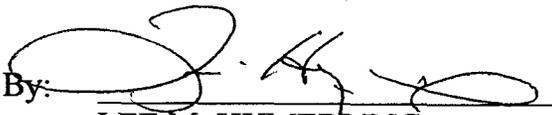
Generally, discipline limited to an admonition or a reprimand has been imposed where nothing more than a negligent misappropriation occurred and the client did not sustain financial loss. See In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition where attorney failed to prepare quarterly reconciliations of client trust ledgers resulting in a negligent misappropriation); In re Goldstein, 147 N.J. 286 (1997) (reprimand where attorney negligently misappropriated client funds and failed to maintain proper trust and business account records). However, suspensions have resulted where

attorneys have been grossly negligent in safeguarding trust funds, clients sustained financial loss or the attorneys committed other ethics infractions. In re Whitefield, 146 N.J. 480 (1996) (three-month suspension where attorney negligently misappropriated trust funds, commingled fee and trust funds, failed to keep adequate records, improperly engaged in a business transaction with a client, failed to communicate with a client and failed to handle a client matter with diligence) and In re Diaz, 151 N.J. 318 (1997) (three-month suspension where attorney negligently misappropriated client funds and entered into an improper business transaction with a client).

Because respondent failed to file an answer to the complaint, allowing this matter to proceed as a default, enhanced discipline is required. Accordingly, we unanimously determined to impose a three-month suspension in this matter.

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

Dated: 5/10/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Charles J. Sabella
Docket No. 99-308**

Decided: May 10, 2000

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Cole		x					
Brody		x					
Boylan		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Wissinger		x					
Total:		9					

Robyn M. Hill 5/22/00
Robyn M. Hill
Chief Counsel