SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-055
District Docket Nos. IV-2010-0049E;
IV-2010-0050E; IV-2011-0002E; and
IV-2011-0019E

IN THE MATTER OF	:	
EFTHEMOIS D. VELAHOS	:	
AN ATTORNEY AT LAW	:	Decision

Argued: May 15, 2014

Decided: September 4, 2014

William Nash appeared on behalf of the District IV Ethics Committee.

Respondent's counsel 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 by way of a disciplinary stipulation between the District IV Ethics Committee ("DEC") and respondent. Respondent admitted violating RPC 5.3 (failure to supervise a non-lawyer); RPC 5.4(a) (sharing legal fee with a non-lawyer); RPC 5.4(b) (partnership with a non-lawyer in the practice of law); R. 1:21-1B(a)(4) (failure to maintain liability insurance while practicing as a limited liability company), which is deemed

a violation of RPC 5.5(a)(1) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice). The DEC recommended "a censure or such lesser discipline as the Board deems warranted." We determine that a censure is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1991. He has no history of final discipline.

THE MILLS MATTER - IV-2010-0049E

On August 21, 2009, Donna Mills retained The National Foreclosure Consultant Group ("TNFCG") to modify the mortgage loan on her Georgia residence. TNFCG is owned by respondent's wife, a non-lawyer. The written documents between Mills and TNFCG listed the names of various TNFCG employees, along with respondent's name as TNFCG "representative." They also listed the address of respondent's law firm.

TNFCG demanded a payment of $2,000 to begin the process. Mills contended that, after making payments to TNFCG, she became frustrated because TNFCG stopped returning her phone calls and was not working on her loan modification. Mills demanded a refund several times. At one point, TNFCG promised to refund her monies, but never did so.

The stipulation also stated that, at certain relevant times, respondent engaged in the practice of law through a New Jersey limited liability company called "The Velahos Law Firm, LLC," but failed to maintain a policy of lawyers' professional liability insurance, as required by R. 1:21-1B.[1]

Respondent stipulated that he violated RPC 5.4(a), RPC 5.4(b), RPC 5.5(a)(1), and RPC 8.4(c).

THE DONARUMA MATTER - IV-2010-0050E

Sometime in 2008, Benedict Donaruma received an unsolicited telephone call from a representative of Hope 4 Solutions ("H4S"), offering to modify the mortgage loan on his Delaware residence.

[1] This stipulated fact is applicable to all counts of the stipulation. To avoid repetition, it will not be mentioned in this decision's factual recitation of the subsequent counts.

Respondent's wife, a non-lawyer, owns H4S. On November 23, 2008, Donaruma retained H4S to modify his mortgage loan, for which H4S required an upfront payment of $2,200 to begin the process.

On December 16, 2008, Donaruma paid the $2,200 to H4S. H4S provided Donaruma with a pamphlet, identifying its address as that of respondent's law firm. Moreover, according to the stipulation, the written documents between Donaruma and H4S "identified respondent." The stipulation does not explain how respondent was identified.

After Donaruma made payments to H4S, he did not hear from anyone regarding the status of his file for approximately five months. According to Donaruma, he submitted his completed application to H4S on November 23, 2008, but his application was not sent to his lender until April 2009. His file was then transferred to National Foreclosure Consulting Group ("NFCG"), a business also owned by respondent's wife.[2]

---

[2] The record is unclear as to whether TNFCG and NFCG are the same company or separate entities. The record does make clear that in either instance, the company or companies are owned by respondent's wife.

On November 23, 2009, NFCG presented Donaruma with an "Authorization Form" for his signature. That document listed NFCG's address as that of respondent's law firm and included a telephone number that rang at respondent's law firm. The document further identified various NFCG employees, along with respondent, as a "representative" of NFCG who was authorized to communicate with Donaruma's lender/servicer in connection with the loan modification.

Donaruma contended that his second mortgage was not modified, even though it was his understanding that it would be. He eventually learned from his lender that his loan modification was denied for not having received timely documentation.

Respondent stipulated violations of RPC 5.4(a), RPC 5.4(b), RPC 5.5(a)(1), and RPC 8.4(c).

THE RUDD MATTER - IV-2011-0002E

On January 31, 2010, Robin Rudd retained TNFCG to modify the mortgage loan on her North Carolina residence. TNFCG demanded an upfront payment to begin the process. North Carolina's Debt Adjusting Act, N.C. GEN. STAT. § 14-423(2) (2007), however, prohibits the collection of any advance fee for loan modification services. The services must be fully performed, before any fee

may be collected. The advance fee prohibition has been in effect since December 31, 2005. Pursuant to N.C. GEN. STAT. § 14-424 (1994), the violation of North Carolina's Debt Adjusting Act is a criminal misdemeanor.

As in the other matters, documents from TNFCG contained the address of respondent's law firm and listed him as a "representative" of TNFCG.

Rudd complained that, although she paid TNFCG to modify her mortgage, TNFCG failed to do so. She then took over the loan modification by dealing directly with her lender. Rudd demanded a refund from TNFCG, but "Respondent/TNFCG" failed to refund her fee.

On May 7, 2010 and November 22, 2010, the Office of the Attorney General of the State of North Carolina informed TNFCG and respondent that demanding an upfront payment to perform mortgage loan modifications is unlawful in that state.

Respondent stipulated violations of RPC 5.4(a), RPC 5.4(b), RPC 5.5(a)(1), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

THE VAVREK MATTER - IV-2011-0019E

On October 12, 2010, James Vavrek retained NFC Lawyers ("NFCL") to modify the mortgage loan on his New Jersey home.[3] Vavrek signed a "Debt Relief and Agreement" with NFCL, which contained NFCL's address as that of respondent's law firm. NFCL presented Vavrek with an "Authorization Form" for execution, which listed several employees, including respondent, as a "representative" of NFCL.

Vavrek complained that, although he paid NFCL to modify his mortgage loan, a non-lawyer employee of NFCL holding himself out to be an attorney demanded that payment be made directly to that employee. Respondent stipulated violations of RPC 5.3, RPC 5.4(a), RPC 5.4(b), RPC 5.5(a)(1), and RPC 8.4(c).

* * *

The stipulation contains sufficient evidence to support a finding that respondent's behavior was unethical and that he violated the cited RPCs, with the exception of RPC 5.3(b), RPC 5.4(a), and RPC 8.4(d), as seen below.

---

[3] The stipulation is silent as to who owned NFCL.

In these matters, not only was respondent listed as a representative of various loan modification companies owned by his wife, a non-lawyer, but his law firm's address and telephone number were listed as the contact information for these companies.

In New Jersey, loan modification services constitute the practice of law. Joint Opinion No. 716 of the Advisory Committee on Professional Ethics and Opinion No. 45 of the Committee on the Unauthorized Practice of Law, 197 N.J.L.J. 59 (July 6, 2009). In Opinion 716, the ACPE found that a New Jersey attorney may not provide legal advice to customers of a for-profit loan modification company, whether the attorney be considered in-house counsel to the company, formally affiliated or in a partnership with the company, or separately retained by the company.

The stipulation is silent on the details of the relationship between respondent and his wife's companies and on the sharing of fees. Nonetheless, respondent's affiliation with his wife's entities was clearly established, given that the phone number provided to customers, when they executed the authorization forms, rang directly at respondent's law firm and that his law firm's address was listed on those documents. He was also identified as the companies' representative.

Furthermore, during the course of respondent's relationship with TNFCG, that business demanded an upfront payment to perform loan modification services on behalf of grievant Rudd, a resident of North Carolina. In that state, such conduct constitutes a criminal misdemeanor.

It matters not that respondent was not convicted of violating the North Carolina law prohibiting an upfront charge for a loan modification. A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. In re Gallo, 178 N.J. 115, 121 (2002) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime); and In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

Moreover, even though respondent violated the law of another jurisdiction, he can still be held culpable in New Jersey. RPC 8.5(a) states that "[a] lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs."

Additionally, respondent stipulated that he violated RPC 8.4(c) by allowing his law firm's address and telephone number, as well as his name, to be listed in the documents that the loan

modification companies provided to their clients. The use of this information may have been intended to indicate that respondent was merely the attorney for the loan modification company, which is permissible, under the above-cited Committee opinions. It is impermissible, however, to be involved in the business itself, as respondent represented to be. By lending his name to these companies, respondent led the customers to believe that he, as an attorney, would be handling their loan modification agreements.

Finally, respondent stipulated that he operated his law firm, an LLC, without liability insurance, contrary to the requirements of R. 1:21-1B(a)(4) and a violation of RPC 5.5(a)(1).

We are unable to find, however, the stipulation clearly and convincingly demonstrated violations of RPC 5.3(b), RPC 5.4(a), and RPC 8.4(d). First, as to RPC 5.3(b), there is no evidence that respondent directly supervised the companies' employees. It is true that respondent was improperly affiliated with them, but the stipulated facts do not support a finding that he was the employees' direct supervisor and, therefore, responsible for ensuring that their conduct was compatible with his obligations as a lawyer.

Second, the stipulated facts do not contain any reference to respondent's having shared a fee with non-lawyers, that is, his wife's businesses.

Third, nothing in the factual portion of the stipulation indicates that respondent's prohibited association with the companies, improper as it was, impeded or prejudiced the administration of justice. We, therefore, find no violations of RPC 5.3(b), RPC 5.4(a), and RPC 8.4(d).

What remains is the appropriate quantum of discipline for respondent's stipulated violations of RPC 5.4(b), RPC 5.5(a)(1), RPC 8.4(b), and RPC 8.4(c).

An attorney who assisted a loan modification business in the unauthorized practice of law and did not maintain professional liability insurance recently received a censure. In re Aponte, 215 N.J. 298 (2013). There, the attorney's conduct was more serious than respondent's, in that the attorney also shared fees with a non-lawyer and committed recordkeeping violations. In a separate disciplinary matter, the attorney exhibited gross neglect, lack of diligence, and a pattern of neglect in his representation of fifteen clients. The censure for the totality of Aponte's offenses in both matters was justified by strong mitigating circumstances, such as Aponte's contrition, his quick

admission of wrongdoing, the correction of his office practices, and the absence of injury to any clients or creditors.

Stronger discipline (a three-month suspension) was warranted in In re Malat, 177 N.J. 506 (2003), because the attorney had a disciplinary history – a reprimand and a three-month suspension. Malat entered into an arrangement with a Texas corporation to review estate planning documents on behalf of the corporation's clients, for which he received a fee.

Even more severe discipline (one-year suspension) was imposed in In re Hecker, 205 N.J. 263 (2011), where the attorney assisted a collection agency in the unauthorized practice of law by allowing the company to use his name to lend clout to its collection efforts. The attorney was also found guilty of misrepresentation by allowing the company to send collection letters on his letterhead and to use a stamp with his signature, so that the debtor would take the company's collection efforts "more seriously." The attorney had been previously suspended for six months and for three months.

Respondent's conduct was akin to that displayed by Aponte in one of the two matters that led to his censure. As indicated previously, Aponte received a censure for the totality of his infractions in two separate matters, one of which involved

assisting a business in the unauthorized practice of law, not maintaining professional liability insurance for his law practice, and sharing a fee with that business, and the other involving the mishandling of fifteen client cases. Only the compelling mitigation present in Aponte spared him from stronger discipline.

In this matter, in addition to assisting the companies in the unauthorized practice of law, misrepresenting his actual role in them, and failing to have malpractice insurance, respondent violated RPC 8.4(b) by his involvement in a business that required an upfront payment for a North Carolina client seeking a loan modification. Nevertheless, that transgression is counterbalanced by Aponte's fee-sharing, his recordkeeping violations, and his mishandling of no fewer than fifteen client matters. It is true that Aponte presented compelling mitigation but, nonetheless, his overall conduct was more serious than that of respondent.

In light of the above considerations, we find that a censure, too, as in Aponte, is the right degree of discipline for respondent's violations.

Member Gallipoli did not participate.

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 Efthemois D. Velahos
Docket No. DRB 14-055

Argued: May 15, 2014

Decided: September 4, 2014

Disposition: Censure

Members	Disbar	Suspension	Censure	Disqualified	Did not participate
Frost			X		
Baugh			X		
Clark			X		
Gallipoli					X
Hoberman			X		
Singer			X		
Yamner			X		
Zmirich			X		
Total:			7		1

Ellen A. Brodsky
Chief Counsel