SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-283
District Docket No. XIV-06-130E;
XIV-06-131E; XIV-06-132E;
XIV-06-133E; XIV-06-134E;
XIV-06-135E; XIV-06-136E;
XIV-06-137E; XIV-06-220E;
and XIV-06-221E

IN THE MATTER OF	
MARVIN BRANDON	
AN ATTORNEY AT LAW	

Decision

Argued: January 18, 2008

Decided: April 9, 2008

Christina Blunda Kennedy 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 came before us on a disciplinary stipulation, filed by the Office of Attorney Ethics ("OAE"). Respondent stipulated that he failed to properly supervise his non-attorney employees, a violation of RPC 5.3(b), and that he allowed these employees to treat the recipients of payment-demand letters in a

discourteous manner, a violation of RPC 3.2, had the misconduct been committed by the lawyer.

The OAE recommended a reprimand. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1986. He has no prior discipline.

Between 2002 and 2004, respondent was employed by a California attorney, Jack H. Boyajian, to operate Boyajian's New Jersey law firm, JBC and Associates, P.C., and later, JBC Legal Group, P.C. (jointly, "JBC"). Boyajian was not licensed to practice law in New Jersey.

JBC was a high-volume debt collection law firm that employed a staff of more than 100 non-attorneys as well as attorneys.

Between 2002 and 2004, in eleven matters, respondent (a) allowed non-lawyer employees to treat recipients of demand letters in an "abusive, unprofessional and discourteous manner;" (b) permitted those employees to operate in violation of the Fair Debt Collections Practices Act ("FDCPA")[1]; (c) failed to

[1] The FDCPA sets the ground rules for the type and degree to which debtors may be contacted about the collection of debts. It also prohibits certain conduct including harassment, abuse, misrepresentations and other unfair practices and collection tactics.

provide recipients of demand letters with copies of documents underlying their debts; (d) allowed the employees "to threaten and/or harass" debtors; (e) in six of the matters, failed to investigate the legitimacy of the debt obligations; and (f) allowed a "culture to exist," within which the unethical conduct was not discovered or corrected.

I. The Dohm Matter – District Docket No. XIV-06-130E

On February 21, 2003, JBC sent Marie Dohm, a collection letter for a $208.71 dishonored check to Bradlees Department Store. Thereafter, a JBC representative, "Mr. Stewart," called Dohm, claiming to be an attorney. Mr. Stewart demanded an immediate $400 credit card payment, or "the amount demanded would increase to $700 and legal action" would be immediately initiated.

Dohm immediately authorized a $400 credit card payment, but later retained an attorney to stop payment on the credit card. The attorney also wrote to JBC, on April 12, 2003, and informed it that its practices were improper.

At no time did JBC have an attorney in house named "Mr. Stewart."

II. The Coger Matter – District Docket No. XIV-106-131E

In 2002, Dal Coger was contacted by JBC personnel about his wife's December 1996 check to Bradlees for $34.89. JBC demanded that amount plus a $25.00 check-return charge. Coger complied with JBC's request in January 2003, with a $59.89 check to JBC that cleared his bank on January 22, 2003.

Despite having satisfied that old obligation, Coger received over 100 dunning "contacts" from JBC thereafter, demanding payment. Ultimately, JBC acknowledged receipt of the funds, but demanded an additional $104.67. When Coger retained an attorney to represent him, JBC ceased its collection efforts.

III. The Hill Matter – District Docket No. XIV-06-132E

On April 2, 2003, JBC sent a collection letter to a "Mr. Hill," regarding a check he had allegedly drafted on a First Union Bank account, in the amount of $138.59. On April 8, 2003, Hill contacted JBC and advised a Robert King that he never held an account with that bank. He also requested a copy of the check in question.

The same month, Hill sent an affidavit to JBC, to the effect that he was the wrong party and had not written the check in question. First Union sent JBC a notarized letter to that effect. On May 1, 2003, First Union sent JBC a second letter,

stating that Hill had never held an account with the bank, that it should correct JBC's record, and refrain from damaging Hill's ability to obtain credit.

JBC never sent Hill a copy of the dishonored check. Instead, it threatened him with criminal prosecution, incarceration, and credit ruination. In addition, Hill was called "several disparaging names by JBC employees during these conversations."

IV. The Whalen Matter – District Docket No. XIV-06-133E

In September 2003, James Whalen, received numerous telephone calls from JBC staff regarding the outstanding debt of a "John Jones." Whalen repeatedly advised JBC that he bore no relation to the debt in question, and that he was the wrong party. Whalen asked JBC to cease its collection efforts. However, Whalen continued to receive "rude and abusive phone calls from JBC" staff into January 2004.

V. The Lonergan Matter – District Docket No. XIV-06-134E

On October 30, 2003, Kathleen Lonergan received an October 25, 2003 letter from JBC regarding an outstanding check that she had written over ten years earlier for $157.49.

Lonergan immediately contacted JBC and requested a copy of the check in question. Hearing nothing, on November 11, 2003, she called JBC and again requested a copy of the check. Instead of arranging to send a copy of the check, JBC personnel threatened to "take her to court and ruin her credit" if she did not pay them. Lonergan wrote JBC a letter the following day, demanding a copy of the check, but never received it.

Only in December 2003, when the OAE investigated the grievance did JBC relent and close the collection matter. Thereafter, respondent acknowledged that JBC's file in the matter "was incomplete and did not contain the name of the payee or a copy of the check.

VI. The Pettengill Matter – District No. XIV-06-135E

In October 2003, Andrea Pettengill received a collection letter from JBC about a dishonored check allegedly written by her husband nine years earlier. Later, JBC personnel telephoned Pettengill about the alleged debt. On several occasions when JBC called, Pettengill requested a copy of the check at issue. On January 21, 2004, she wrote a letter to JBC, disputing the debt and again requesting a copy of the check. Undaunted, JBC personnel continued calling her with demands of payment and threatening court action for "receiving stolen property." On

other occasions, JBC personnel hung up when Pettengill answered the phone.

VII. The Jacobs Matter – District Docket No. XIV-06-136E

In May 2003, Todd Jacobs received a collection letter from JBC, demanding payment for a $95.30 dishonored check, drawn on a Commerce Bank account. Although Jacobs requested a copy of the check, JBC personnel refused to send him a copy. Jacobs was told that he would receive a copy when JBC filed a suit against him.

When Jacobs later contacted Commerce Bank, the bank advised him that it had no record of such a check. Nevertheless, JBC continued its collections efforts into November 2003, when it sent Jacobs a letter demanding payment of $411.20, over three times the original amount.

According to the stipulation, during this time, JBC employees placed "harassing" telephone calls to Jacobs and to his wife, both at home and at their jobs, threatening to ruin their credit if they did not accede to its demands.

VIII. The Scanella Matter – District Docket No. XIV-06-137E

On January 21, 2004, JBC sent Maria Scanella a collection letter about a check to Jysk Linen & Bath, in the amount of $1,313. On January 29, 2004, Scanella's bankruptcy attorney

wrote to JBC attorneys, advising them that Scanella had previously received a July 25, 2003 bankruptcy discharge of her debts. Despite the notice of bankruptcy discharge, a Jason Cohen from JBC "used rude and offensive language and threats of jail" in efforts to collect the debt from Scanella. According to the stipulation, JBC continued to harass Scanella through telephone calls until March 2004.

IX. The Price Matter – District Docket No. XIV-06-220E

On October 11, 2003, Sandra Price received a JBC collection letter, demanding payment for a dishonored check to Kay Jewelers for $74.35. Price contacted JBC and informed it that she had not written such a check and did not reside in Lakeland, Florida, at the time (presumably, where the jeweler or bank account was located).

Thereafter, on October 13, 2003, Price both called and wrote to JBC, requesting a copy of the check. Two days later, a JBC representative advised Price that she needed to file a police report in Lakeland, Florida, in order to obtain the information. When she did so and a Lakeland police sergeant called JBC for the information, JBC employees refused to disclose their identities or other information to the police.

On a subsequent occasion, Price contacted JBC to resolve the matter. She was refused access to a supervisor or to an attorney. She was told instead to send a copy of the Lakeland police report, which she did. JBC only agreed to close their collection matter after Price filed an ethics grievance against respondent.

X. The Kennealy Matter – District Docket No. XIV-06-221E

On April 17, 2002, Rae Kennealy received a collection letter about dishonored checks to Acme, totaling $291.49. On May 22, 2002, Kennealy wired the funds to JBC. Nevertheless, four months later, on September 22, 2002, JBC renewed its demand, this time for $700.

Kennealy contacted JBC and advised a representative, Lori Brown, that she had already paid the debt. Brown, however, "hung up" on her. When Kennealy called back, another JBC employee spoke to her in an "extremely rude" fashion. Thereafter, JBC placed "almost daily" calls to Kennealy with harassing remarks, such as plans to "issue a warrant for her arrest" or "suspend her driver's license."

Respondent confirmed to ethics authorities that JBC had received Kennealy's payment in May 2002, but had failed to close the file on the matter.

Respondent stipulated that the actions of the JBC employees in all of the matters violated RPC 3.2 and the FDCPA, and that, as supervising attorney for the office, his inaction constituted a violation of RPC 5.3(b).

After an independent review of the record, we are satisfied that the stipulation contains clear and convincing evidence of unethical conduct on respondent's part.

While acting as the supervising attorney at Boyajian's New Jersey law office, respondent allowed JBC personnel to use unfair collection techniques, such as threats of criminal action or jail, and credit ruination. Respondent also allowed employees to ignore debtors' legitimate requests for information about the nature of the debts. Respondent stipulated that those actions violated the provisions of the FDCPA.

Respondent also stipulated that the conduct of JBC's employees violated RPC 3.2 (a lawyer shall treat with courtesy and consideration all persons involved in the legal process), had they been committed by an attorney. Because respondent failed to properly supervise the non-attorney employees, he ran afoul of RPC 5.3(b), which provides that:

> With respect to a nonlawyer employed or retained by or associated with a lawyer:
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure

that the person's conduct is compatible with the professional obligations of the lawyer.

The stipulation does not reveal the extent to which respondent may have been aware of the extreme tactics being used by his collection agents. Yet, he allowed employees to treat recipients of collection letters in a manner that included not only abusive language, but also threats and harassment; failed to ensure that JBC provided recipients of demand letters with copies of documents underlying their debts; and, in six of the matters, failed to investigate the legitimacy of the debt obligations. Indeed, several debtors presented JBC with proof that the debts were either paid or without merit, but JBC continued its collection efforts, undeterred. As the attorney in charge of JBC's operation, he failed to properly supervise its non-lawyer staff, a violation of RPC 5.3(b).

There remains the issue of the appropriate sanction for respondent's misconduct. Attorneys who fail to supervise their nonlawyer staff are typically admonished or reprimanded. See, e.g., In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife, which resulted in paralegal's forging client's name on a retainer agreement and, later, on a release and a $1,000 settlement check in one matter and on a settlement check in another matter; the funds

were never returned to the client; mitigating factors included the attorney's clean disciplinary record, and the steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 4, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds; mitigating factors included the attorney's cooperation with the OAE, including entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failing to supervise non-attorney employees, which led to unexplained misuse of client trust funds and negligent misappropriation; the attorney also committed recordkeeping violations); In re Riedl, 172 N.J. 646 (2002) (attorney reprimanded for failing to supervise his paralegal, allowing the paralegal to sign trust account checks, and gross neglect of a real estate matter by failing to secure a discharge of mortgage for eighteen months after it was satisfied); In re Bergman, 165 N.J. 560 (2000) and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager who embezzled almost $360,000 from the firm's business and trust accounts, and from a guardianship account; the

attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement); and In re Hofing, 139 N.J. 444 (1995) (reprimand for failure to supervisor bookkeeper, which resulted in the embezzlement of almost half a million dollars in client funds; although unaware of the bookkeeper's theft, the attorney was found at fault because he had assigned all bookkeeping functions to one person, had a signed blank trust account checks, and had not reviewed any trust account bank statements for years; mitigating factors included his lack of knowledge of the theft, his unblemished disciplinary record, his reputation for honesty among his peers, his cooperation with the OAE and the prosecutor's office, his quick action in identifying the funds stolen, his prompt restitution to the clients, and the financial injury he sustained).

Here, respondent's misconduct encompassed eleven collection matters and resulted in a culture of corrupt practices by his underlings. Although we were immensely troubled by the treatment of the debtors, some of whom were totally innocent, we also consider that respondent admitted his wrongdoing, there is no clear and convincing evidence that respondent had actual knowledge of the underlying acts, and respondent has no prior

discipline in over twenty years at the bar. We determine, however, that, even in the absence of prior discipline, the broad scope of respondent's abdication of authority and the widespread nature of the abuse in this office warrant the imposition of a more severe sanction than a reprimand. We, therefore, voted to impose a censure.

Chair O'Shaughnessy and members Lolla, Baugh, and Neuwirth 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
Louis Pashman, Vice-Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marvin Brandon
Docket No. DRB 07-283

Argued: January 17, 2008

Decided: April 9, 2008

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
O'Shaughnessy						X
Pashman			X			
Baugh						X
Boylan			X			
Frost			X			
Lolla						X
Neuwirth						X
Stanton			X			
Wissinger			X			
Total:			5			4

Julianne K. DeCore
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Chief Counsel