SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-124

IN THE MATTER OF	:
SANTO J. BONANNO,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 23, 1993

Decided: November 30, 1993

Brenda J. McAdoo appeared on behalf of the District IIA Ethics Committee.

Barry A. Knopf appeared on behalf of respondent.

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

This matter was before the Board based upon a recommendation for public discipline filed by the District IIA Ethics Committee (DEC). The formal complaint charged respondent with violation of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 5.3 (responsibility regarding non-lawyer assistants), RPC 5.5(b) (unauthorized practice), RPC 7.1 (communications concerning a lawyer's service), RPC 7.5 (firm names and letterheads) and RPC 8.1(a) (bar admission and disciplinary matters). This matter was referred to the DEC by the Honorable William C. Meehan, J.S.C.

Respondent was admitted to the practice of law in New Jersey in 1981 and has been in private practice in Oakland, Bergen County. He has no history of discipline.

In 1985, respondent hired Gregory Russo to work for him as a legal assistant. Russo was not admitted to the practice of law in any jurisdiction. Russo claimed to have graduated from law school and to be a candidate for the New Jersey bar examination. Respondent testified that it was his belief that Russo failed the bar examination approximately ten times (T40).[1] At all times during Russo's employment, respondent was aware that Russo was not admitted to the New Jersey bar. Russo worked for respondent until August 1991, at which time respondent learned that Russo had not graduated from law school and was not a candidate for the bar.

During the time that Russo was employed, respondent's office had approximately 300 open files (T58-59). Russo worked on a variety of legal matters (the record is silent as to how many), including matters brought into the office by respondent and by Russo. Respondent did not supervise Russo's activities and Russo did not supply written status reports. After respondent became confident of Russo's abilities, they stopped having regularly scheduled meetings (T23). Respondent testified that he only questioned Russo about a file if the client had an inquiry about the status (T24). Russo was allowed to handle files and apparently held himself out and was perceived by others as an attorney (T34). In fact, respondent was even unaware that the office represented a particular client until he found the file in Russo's drawer (T61-63). Ultimately, it was learned that Russo appeared at a

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[1] T refers to the transcript of the hearing before the DEC on October 25, 1992.

deposition as an attorney, attended an arbitration hearing as an attorney, signed retainer agreements, failed to timely appeal an arbitration award, forged documents and embezzled approximately $32,000 in client funds. According to respondent's testimony, Russo either removed checks from the mail, the opening of which was Russo's responsibility, or obtained the checks directly from clients.

Respondent's office letterhead during the time of Russo's employment read "Santo J. Bonanno and Associates." It did not list the names of any associates, however. Russo apparently signed letters without any indication after his name that he was not an attorney.

This matter came to light when respondent argued a motion before Judge Meehan to reopen the case of Kathleen Weickel (now Weickel-Kahyaoglu). Weickel was the client on whose behalf Russo appeared at the deposition and the arbitration; he later absconded with $150 she had paid to appeal the arbitration award. Weickel testified that she was aware that Russo was not an attorney (T94). It was her understanding that Russo would assist her until the matter went to court. Weickel believed that Russo "did the paperwork for [respondent]" (T89).

Respondent signed a retainer agreement with Weickel in November 1989 (T16); the complaint was filed in December 1989. Respondent testified that, for one and one-half years, he had no further contact with the file, except to review the interrogatories (T49). With regard to the arbitration hearing held in May 1991,

respondent testified that Russo never told him about it (T25). Although respondent knew about the deposition, he stated that he must have been told that it was canceled or he would have been there (T52-53). He further stated that he was unaware that Russo would be there and that, had he known, he would not have permitted it (T28).

Respondent learned of Russo's misconduct when Weickel telephoned the office requesting information on her case, in October 1991 (T103). Respondent reviewed the file and sent a letter to opposing counsel stating that the matter was ready for trial and suggesting that they discuss a settlement. Opposing counsel then informed respondent that the matter had been dismissed after arbitration for failure to meet the verbal threshold (T30-31). Respondent had Weickel's matter reinstated and it has since been settled (T94).

* * *

Respondent's letterhead contains the phrase "Admitted in New York, New Jersey, Pennsylvania and Connecticut." Respondent is not admitted to practice in Pennsylvania. He testified that he had an associate from late 1986 or early 1987 until the end of 1991, who was admitted in Pennsylvania. During at least some of the time that respondent used this letterhead, there was no attorney in his office who was admitted in Pennsylvania. Respondent testified that it did not occur to him that the letterhead would be misleading,

because all of his clients came from referrals and his letterhead was sent only to existing clients (T51).

The complaint filed in this matter alleged that respondent's letterhead designation "and Associates" would lead a reasonable person to believe that respondent employed at least two attorneys, besides himself. As the record reveals, respondent employed no associates after the above mentioned attorney left his firm. Respondent testified that he did employ per diem attorneys who maintained offices within his office complex (T38).

It was alleged in the complaint that respondent's conduct, taken as a whole, demonstrated gross negligence and a pattern of neglect, in violation of RPC 1.1(a) and RPC 1.1(b).

Respondent's written response to the grievance filed against him stated that, in August 1991, while Russo was on vacation, individuals who respondent was not even aware were clients telephoned his office. However, respondent had signed a retainer agreement with one of those clients.

The complaint also charged respondent with a violation of RPC 8.1(a), in that his written response to the grievance contained a false statement. The DEC, however, did not find clear and convincing evidence of a violation in this regard.

The DEC found that respondent violated RPC 1.1(a), RPC 1.1(b), RPC 5.3, RPC 5.5(b), RPC 7.1 and RPC 7.5. The DEC recommended public discipline and, in addition, that respondent repay his clients for any lost funds not reimbursed by the banks or by insurance.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the finding of the DEC that respondent is guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC found respondent guilty of a violation of RPC 1.1(a) and (b). The Board disagrees with the finding of a violation of RPC 1.1(b). The record does not contain very specific information on any matters, other than Weickel. The Board determined that the record does not reveal clear and convincing evidence that respondent was guilty of a pattern of neglect, given the lack of evidence about the specific number of cases Russo was allowed to handle on his own. However, the evidence presented on the Weickel matter alone provides clear and convincing evidence of gross neglect, in violation of RPC 1.1(a). Respondent impermissibly delegated his professional responsibilities to his law clerk. Indeed, respondent was even unaware that the Weickel matter had been dismissed.

In the past, attorneys have been publicly reprimanded for aiding in the unauthorized practice of law. In In re Silber, 100 N.J. 517 (1985), Silber had instructed his law clerk to accompany a client to court and answer a calendar call that he was unable to attend. The clerk had passed one bar exam but was not yet sworn in and was awaiting the results of the New Jersey and patent bars. Although the clerk was instructed to telephone Silber as soon as he

was required to be in court, she failed to do so. The clerk negotiated with opposing counsel and then appeared in court on the client's behalf. Silber had not authorized her actions and was unaware of them until the clerk and the client returned to Silber's office and so informed him. Despite this knowledge, Silber failed to notify the court of what had transpired. Subsequently, when Silber received a copy of the proposed order, which identified his clerk as an attorney, he still took no action and, in fact, allowed the order to be signed. The Court stressed the opportunities Silber had to correct the problem and concluded that he had aided in the unauthorized practice of law. The Court also found that his failure to take action was prejudicial to the administration of justice.

Although Silber may be distinguished from the matter now before the Board – if respondent may be believed that he did not have actual knowledge of Russo's activities – respondent should have been fully aware of all cases being handled in his office as well as of the activities of his employees. Although the record may not support a finding of affirmative conduct aiding the unauthorized practice of law, it is unquestionable that respondent should have exercised greater control over Russo and should have had regular status conferences with him to learn the progress of the cases he was handling, whereupon he would have undoubtedly discovered Russo's improprieties. Respondent's conduct in this regard violated RPC 5.5(b). See also In re Gottesman, 126 N.J. 361 (1991) (public reprimand for aiding in the unauthorized practice of

law by allowing a non-attorney to advise clients and to exercise sole discretion in formulating and accepting and rejecting offers of settlement. Gottesman was also guilty of sharing legal fees with a non-attorney).

In addition to his violation of RPC 5.5(b), respondent failed to properly supervise Russo's activities. In In re Barker, 115 N.J. 30 (1989), in addition to committing several recordkeeping improprieties, the attorney was found guilty of failing "to exercise proper supervision over his bookkeeper so as to ensure that regular reconciliations were being performed, as mandated by R.1:21-6(b)(8)." Id. at 35. Barker, who was representing himself in the purchase of a house, planned to use personal funds left in his trust account as part of the money due at closing, specifically, a fee owed to him by a client. Due to an error by his bookkeeper, Barker was misinformed as to the balance of the fee from that client. Instead of reviewing the client's ledger card, Barker relied on his bookkeeper's statement to him. In fact, even if Barker had examined the card, he would still have been unable to determine the correct balance, due to the bookkeeper's failure to reconcile the trust account with the ledger cards on a regular basis. After taking into account several mitigating factors, including the lack of harm to any client, the Court publicly reprimanded Barker. See also In re Goore, 127 N.J. 246 (1992) (public reprimand for, inter alia, failure to properly supervise a non-lawyer assistant).

It is possible that no amount of supervision would have prevented Russo's actions. Respondent, however, should have taken a more active role in supervising Russo, if for no other reason than to remain apprised of the status of his clients' matters. Respondent should have made reasonable efforts to ensure that Russo's conduct was compatible with respondent's professional obligations. His failure to adequately supervise Russo violated RPC 5.3(b).

With regard to respondent's letterhead, there is no doubt that the Pennsylvania designation was misleading because no attorney in respondent's office was admitted to practice in that jurisdiction. Respondent's use of the letterhead violated RPC 7.1(a)(1) and RPC 7.5(e). If respondent was reluctant to dispose of his letterhead, he should at least have blacked out the inaccurate portions.

Further, even if respondent employed an associate who was admitted in Pennsylvania, the letterhead was still misleading. Because of the lack of specific designations as to the jurisdictions in which respondent was admitted, the letterhead appeared to indicate that respondent was admitted in all four listed jurisdictions. Opinion 558, 115 N.J.L.J. 613 (1985) and the supplement to Opinion 558, 117 N.J.L.J. 394 (1986) refer to identifying lawyers not admitted in New Jersey on firm letterhead. That opinion is also interpreted to require all letterhead to indicate the jurisdictions where attorneys are admitted. In addition, by the use of the word "Associates" respondent's

letterhead clearly misled the public to believe that he employed at least two associates.

The Board considered, in mitigation, that respondent has corrected his practices and that these errors will likely not occur again. Accordingly, the Board's view is that a public reprimand is sufficient discipline for respondent's misdeeds. The Board unanimously so recommends. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 1/30/[illegible]

By: [signature]
Raymond R. Trombadore
Chair
Disciplinary Review Board