SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-011
District Docket No. IIIB-04-015E

IN THE MATTER OF	:
JAY M. LONDON	:
AN ATTORNEY AT LAW	:

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

Decided: March 23, 2006

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

This matter was before us on a certification of default filed by the District IIIB Ethics Committee (DEC) pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1988. At the relevant times, he maintained an office for the practice of law in Mount Laurel, New Jersey. Since September 15, 2003, respondent had been ineligible to practice law for failure to

pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. He has no disciplinary history.

On February 22, 2005, the DEC first certified this matter to us as a default. On April 11, 2005, the Office of Disciplinary Review Board Counsel received respondent's motion to vacate the default. At our April 21, 2005 session, we determined to grant respondent's motion to vacate and remanded the matter to the DEC for a hearing.

On May 18, 2005, Julianne K. DeCore, Chief Counsel to the Disciplinary Review Board, wrote to the DEC Chair, Jeffrey S. Apell, and informed him of our decision. Ms. DeCore further advised Mr. Apell that the hearing was to take place after respondent filed a verified answer to the formal ethics complaint, which he was required to do within thirty days of the date of Ms. DeCore's letter. Mr. Apell was advised that, if respondent failed to meet the deadline, the matter was to be recertified to us as a default. A copy of Ms. DeCore's letter was sent to respondent and was not returned.

As of November 29, 2005, respondent had failed to file a verified answer to the complaint. On that date, the DEC re-certified the matter to us, and the case was scheduled for reveiw on February 16, 2005.

On February 6, 2006, the Office of Board Counsel received respondent's motion to vacate the default. Although, ordinarily, a motion to vacate a default is liberally granted, we denied the motion on the ground that respondent had failed to establish excusable neglect in failing to file an answer after his first motion to vacate had been granted.

The two-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information) in two client matters, with additional charges of RPC 4.1(a)(1) (false statement of material fact or law to a third person), RPC 8.1(a) (false statement of material fact to disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in one of the two matters.

The ethics charges arise out of respondent's representation of A & S Home Improvement, Inc. (A & S) in two cases. Myron Schiff and Don Addis were the principals of A & S.

The Baxter Matter (First Count)

In 1999, Schiff retained respondent on behalf of A & S for the purpose of instituting suit against Kent and Vicki Baxter (the Baxter matter). According to Schiff, the Baxters owed A & S $12,500 for work performed on the Baxter home.

Respondent failed to file suit against the Baxters. Nevertheless, for the next four years, he assured Schiff and Addis that suit had been filed and that the matter was proceeding in due course. Respondent also misrepresented that the matter was listed for trial and that the court had postponed the trial date.

In addition to these acts, respondent fabricated a letter dated September 23, 2003, in which an attorney named Mark Bridge purportedly replied to a letter that respondent had written to him a week earlier. Bridge denied having any involvement in the Baxter matter and sending the September 23 letter to respondent.

Based on these allegations, the first count charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 4.1(a)(1), RPC 8.1(a), and RPC 8.4(c).

The Smalley Matter (Second Count)

On May 22, 2000, respondent and A & S entered into a fee agreement. Pursuant to the agreement, respondent was to

institute suit against Karey and Irene Smalley for the presumed breach of a contract for A & S's performance of modifications to the Smalley home. After the parties entered into the agreement, however, respondent led Schiff to believe that he would institute suit against contractors Gino DiBattista and Vince McGrath, who were paid for, but did not perform, the work on the Smalley home (the Smalley matter).

As with the Baxter matter, respondent informed Schiff that he would pursue the claim; however, he failed to file suit against DiBattista and McGrath. Nevertheless, respondent assured Schiff that the matter was proceeding in due course. Beyond this misrepresentation, respondent then failed to communicate with Schiff about the status of the claim and did not return the client's telephone calls.

Based on the allegations in the complaint, the second count charged respondent with having violated RPC 1.1(a), RPC 1.3, and RPC 1.4(a).

Inasmuch as this matter comes before us as a default, the allegations in the complaint are deemed admitted. R. 1:20-4(f). We find that the allegations set forth in the complaint support the conclusion that respondent engaged in unethical conduct.

In the Baxter matter, respondent engaged in gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3) when he failed to file a complaint on behalf of A & S. Respondent also engaged in conduct involving dishonesty and misrepresentation (RPC 8.4(c)) when he (1) told Schiff that the matter was proceeding in its ordinary course and (2) fabricated the letters to and from Mark Bridge.

The complaint contains no allegations with respect to respondent's alleged failure to communicate with the client. To the contrary, the allegations establish that respondent did communicate with Schiff, although the communications were false. Therefore, we dismiss the RPC 1.4(a) charge.

In addition, we dismiss the RPC 4.1(a)(1) (false statement of material fact or law to a third person) and RPC 8.1(a) (false statement of material fact to disciplinary authorities) charges because the complaint does not identify (1) a "third person" to whom respondent made false statements or (2) the false statement(s) of material fact that respondent allegedly made to disciplinary authorities.

In the Smalley matter, respondent engaged in gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3) when he failed to file a complaint on behalf of A & S. Although RPC 8.4(c) was

not charged in the complaint, respondent violated the rule when he informed Schiff that the matter was proceeding apace. While the complaint did not charge RPC 8.4(c), the allegations gave respondent sufficient notice of a potential finding of a violation of this rule and the conduct upon which the violation could be sustained.

Finally, after respondent misrepresented to Schiff that the matter was proceeding as it should, he then failed to return Schiff's telephone calls "to advise of the status of the claim," a violation of RPC 1.4(a).

In summary, in the Baxter and Smalley matters, respondent violated RPC 1.1(a), RPC 1.3, and RPC 8.4(c). In addition, respondent violated RPC 1.4(a) in the Smalley matter.

There remains the determination of the quantum of discipline to be imposed for respondent's ethics violations. The Court "has consistently held that intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). This is typically the discipline imposed even where, in addition to the misrepresentation, the attorney has engaged in gross neglect and lack of diligence and has failed to communicate with the client -- so long as the attorney has not defaulted and has no ethics

history. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and conduct involving dishonesty, fraud, deceit or misrepresentation in one client matter where he was hired to investigate a personal injury claim for the purpose of a possible lawsuit but failed to return phone calls and told the client that he had filed suit when he had not, and the statute of limitations had expired); and In re Porwich, 159 N.J. 511 (1999) (reprimand imposed upon attorney who admitted to gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with ethics authorities in two client matters; we also found that the attorney engaged in conduct involving misrepresentation based on the attorney's representation to client that he had filed suit when he had not).

Here, if respondent had not defaulted, a reprimand would have been the appropriate discipline. However, in a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (conduct meriting reprimand upgraded to three-month suspension due to default; no ethics history). In the ordinary case, a

censure would be warranted under the circumstances. In this case, however, after respondent's first default, we granted his motion to vacate. Yet, respondent never filed an answer, resulting in the second default. We, therefore, determine that, in light of respondent's willful disregard of the disciplinary system, and his failure to participate in this proceeding after his motion to vacate had been granted, a three-month suspension is the appropriate measure of discipline.

Member Lolla did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for the costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jay M. London
Docket No. DRB 06-011

Decided: March 23, 2006

Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy	X				
Boylan	X				
Holmes	X				
Lolla					X
Neuwirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	8				1

Julianne K. DeCore
Chief Counsel