

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-032
District Docket No. IIB-2009-0006E

IN THE MATTER OF :
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SAMUEL RAK :
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AN ATTORNEY AT LAW :
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Decided: June 4, 2010

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 IIB Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). Respondent grossly neglected and lacked diligence in a matter, failed to keep the client informed about the status of the case, and failed to cooperate with ethics authorities in the investigation of the grievance. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1985. He has no prior discipline.

Service of process was proper in this matter. On December 4, 2009, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent's office address, 135 Fort Lee Road, Leonia, New Jersey 07605.

According to the certification of service, the certified mail card was returned indicating delivery on December 4, 2009, bearing an illegible signature. The regular mail was not returned.

On December 29, 2009, the DEC sent respondent a "five-day" letter notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us pursuant to R. 1:20-4(f). The letter was sent by regular mail to respondent's office address, 135 Fort Lee Road, Leonia, New Jersey 07605. The certification is silent about the delivery status of the letter.

Respondent did not file an answer to the complaint.

The complaint charged respondent with violating RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to adequately communicate with the client and to reply to requests for information), and R. 1:20-3 (g) (3) and (4), more appropriately RPC 8.1(b) (failure to cooperate with ethics authorities).

In October 2007, M. Nasseripour retained respondent to represent him regarding a bankruptcy matter. On November 12, 2007, Nasseripour paid respondent \$1,350 for the representation. Respondent "cashed" Nasseripour's check the following day. However, it took respondent nine months (August 11, 2008) to file the bankruptcy "claim."¹

Nasseripour asked respondent several times for information about the status of his case. According to the complaint, sometimes respondent took the calls, but "screamed" at Nasseripour and "hung up" on him. On other occasions, respondent was "unavailable." The complaint does not indicate when those calls were placed.

On January 15, 2009, Nasseripour called the bankruptcy court and learned for the first time that his case had been dismissed. Further calls to respondent about the dismissal "yielded no results."

Nasseripour advised ethics authorities that respondent had "told him that he had 'taken care of everything' and had assured Nasseripour that the case was approved," after which Nasseripour waited three weeks, "but it had not been done." Nasseripour then filed a pro se motion to reopen the bankruptcy case. The

¹ Although not entirely clear, the complaint suggests that the "claim" is actually a reference to a corporate bankruptcy petition.

complaint does not indicate whether respondent's statement that he had "taken care of everything" was made before or after the dismissal. The complaint does not charge respondent with misrepresenting the status of the case to Nasseripour.

On March 17, 2009, the bankruptcy court held a hearing on the reopened bankruptcy case. Respondent appeared at the hearing.² According to the complaint, the court ordered respondent to "file all appropriate paperwork to complete the case, which is believed to be a corporate resolution authorizing the bankruptcy" filing. Still according to the complaint, when amending the pleadings after the hearing, respondent filed the wrong papers - the corporation's 2007 dissolution papers - instead of the requisite corporate resolution.

Meanwhile, on March 13, 2009, the DEC investigator sent respondent a copy of the grievance and requested a reply to it. Hearing nothing, on April 17, 2009, the investigator called respondent. Respondent acknowledged receiving the grievance and failing to reply to it. He blamed a former employee for a "ministerial" error that prompted the grievance and promised the investigator that he would send a reply, with supporting

² Although not reflected in the complaint, it is likely that the bankruptcy court ordered respondent's appearance at the hearing.

documentation, within a week. The investigator never received a reply to the grievance.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent was retained, in November 2007, to represent Nasseripour with regard to a corporate bankruptcy. It appears that, almost a year later, respondent filed something referred to as a claim, but more than likely a bankruptcy petition for Nasseripour's company.

When, in January 2009, Nasseripour learned on his own that his case had been dismissed, he tried to reach respondent for three weeks. Unsuccessful in his attempts to spur respondent to action, Nasseripour reopened the bankruptcy pro se. At the bankruptcy hearing that followed, respondent appeared and was ordered to file additional documents to complete the case. Respondent then filed the wrong documents with the court. There is no evidence that he ever took corrective action for that final mistake. We find respondent guilty of gross neglect and

lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Respondent also failed to communicate to his client important aspects of the case, including its dismissal. He also failed to answer his client's calls for three weeks, immediately following Nasseripour's discovery of the dismissal, prompting Nasseripour to file a motion pro se to reopen the case. In so doing, respondent violated RPC 1.4(b).

So, too, respondent failed to cooperate with the DEC investigation of the Nasseripour grievance, ignoring the DEC investigator's request for a written reply, even after having orally promised the investigator that he would do so. In this regard, respondent violated RPC 8.1(b).

In summary, respondent is guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.1(b).

Generally, in default matters, a reprimand is imposed for gross neglect and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Swidler, 192 N.J. 80 (2007) (in a default matter, attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004)

(attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to comply with the ethics investigator's requests for information about the grievance; the attorney also failed to communicate with the client).

There were no aggravating or mitigating factors for our consideration, other than the default nature of the proceeding, which was factored into the cited cases. For respondent's gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the ethics investigation, we determine that a reprimand is appropriate.

Member Wissinger 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, Chair

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


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Samuel Rak
Docket No. DRB 10-032

Decided: June 4, 2010

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger						X
Yamner			X			
Zmirich			X			
Total:			8			1


 Julianne K. DeCore
 Chief Counsel