SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-414

IN THE MATTER OF :
:
PATRICIA N. ADELLE :
:
AN ATTORNEY AT LAW

Decision

Argued: February 13, 2004

Decided: April 14, 2004

JoAnn G. Durr appeared on behalf of the District XI Ethics Committee.

Respondent 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 based on a recommendation for discipline filed by the District XI Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), and RPC 8.1(b) (cited as R.1:20-3(g)(3) (failure to cooperate with disciplinary authorities), arising out of her handling of a real estate closing. Respondent filed an answer to the complaint, but did not attend the DEC hearing, despite proper notice.

Respondent was admitted to the New Jersey bar in 1993. She has previously been disciplined on two occasions. In February 2002, she received a reprimand in a default matter for lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities. In re Adelle, 170 N.J. 601 (2002). Subsequently, she received a three-month suspension, effective November 1, 2002, in a second default matter. Respondent sent a copy of a fabricated notice of motion, which contained inaccurate statements and which was never filed with the court, to the defendant in a litigated matter, in an attempt to compel the defendant to execute a certification of parentage. In addition, she failed to cooperate with disciplinary authorities. In re Adelle, 174 N.J. 348 (2002).

Respondent stated in her answer to the complaint that she closed her law office on October 1, 2002. Previously, she maintained a practice in Wayne, Passaic County.

Count One

Respondent represented Kenneth D. and Rosetta Kroll in the purchase of real property. The closing of title took place on September 28, 2001. Prior to closing, respondent advised the Krolls to bring in excess of $7,000 to closing. At closing,

there were a number of modifications made to the HUD-1.[1] Approximately one to two weeks after closing, respondent advised Mr. Kroll that he might receive a refund of about $300. Subsequently, the Krolls placed three or four telephone calls to respondent seeking information about the refund. She did not reply to the messages.

In respondent's June 24, 2002 reply to the Krolls' grievance, she stated that she "continue[s] to hold all of the closing papers in my file as I continue to discuss with Interfirst Whole Sale Mortgage Lending the status of funds they claim are owed on the closing. Therefore, I am unable to release Mr. Kroll's remaining balance until this matter is resolved with Interfirst." Mr. Kroll testified that, in fact, in May or June 2002, he had spoken with a representative of Interfirst Wholesale Mortgage Lending, and was advised that there were no outstanding funds on the account.

In or about early 2003, the Krolls attempted to refinance their mortgage, for which they retained the services of Robert E. Minogue, Esq. During the refinancing process - and after the ethics complaint in this matter had been filed - Minogue learned that the mortgage and deed to the Krolls' property had not been

[1] In its report, the hearing panel noted that the bank's itemization of the amount financed did not match the items and amounts set forth on the HUD-1.

recorded.[2] The record includes a letter from Minogue to respondent, dated February 20, 2003, in which he stated that he had left two messages for her, to which she had not replied. In addition, he stated that a title insurance policy had not been issued, due to an outstanding $65 invoice, and that the deed and mortgage had not been recorded. Minogue was able to obtain a duplicate executed deed from the seller's attorney, which he sent for recording in June 2003. The Krolls incurred $600 in legal fees, and $1,109 in costs to remedy the situation.

As of the date of the DEC hearing, twenty-two months after the closing, the Krolls had not received their refund, and respondent had not advised them about the disposition of the funds. The HUD-1 states that $1060 was to be paid from closing proceeds for the realty transfer tax fee and $30 was to be paid for the deed recordation.

The complaint charged respondent with a violation of RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate with a client).

In her answer, respondent admitted all of the allegations of the complaint, except that she may have overcharged the Krolls for fees and escrows in connection with the loan. She also raised two affirmative defenses and mitigating

[2] The record does not reveal why the ethics complaint was not amended prior to the hearing to reflect the newly discovered information.

circumstances. In her first affirmative defense, she stated that she had deposited $238,096.70 in her trust account for the closing, had disbursed $237,781.61, and continued to hold $315.09 as funds due the grievants.[3] In respondent's second affirmative defense, she purported to attach to her answer a letter from the Krolls' lender stating that an additional $902.93 was due from the Krolls on the closing. She failed to attach a copy of the letter.

By way of mitigation, respondent stated that she had made one or two attempts by telephone to contact Interfirst about the amount owed on the closing, but was unable to resolve the issue. She also stated that, in May 2001, she had relocated her practice to a private home to better care for an aging parent, but was required, in January 2002, to vacate the property, with her mother and her law practice. She further stated, "This unavoidable set of circumstances, combined with the fact that I was also pursuing a teaching career and practicing law, led to my overlooking my responsibilities to Mr. & Mrs. Kroll."

[3] Respondent stated that a stop payment had been issued on an Interfirst escrow check because the amount the company had requested was incorrect. She failed to state if a replacement check had been issued or how the stop payment affected the balance in her account.

Count Two

As noted above, respondent replied to the Krolls' initial grievance. She failed, however, to comply with subsequent requests for information from the presenter.

The complaint charged respondent with a violation of R.1:20-3(g)(3) [more properly, a violation of RPC 8.1(b)] (failure to cooperate with the DEC).

The DEC found that respondent violated RPC 1.3, RPC 1.4, and RPC 8.1(b) (mistakenly cited as RPC 1.8).

The panel recommended that respondent be suspended for a period of three months, noting that she had twice been previously disciplined. In addition, the panel "strongly urge[d]" the Office of Attorney Ethics to conduct an audit of respondent's trust account in connection with the Krolls' transaction.

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

Respondent failed to communicate with the Krolls, failed to turn over the money allegedly due to them as a refund, and failed to cooperate with disciplinary authorities. Under ordinary circumstances, that conduct, standing alone, would

merit the imposition of a reprimand. See In re Halpern, 117 N.J. 678 (1989) (reprimand for gross neglect and lack of diligence in failing, for thirteen months, to remit real estate proceeds to pay off an existing mortgage and failing to maintain proper trust and business account records). There are, however, several aggravating factors that call for the imposition of more serious discipline. Specifically, nearly two and a half years have passed since the date of the Krolls' closing, and respondent still has not turned over the funds due to them, a situation that she could easily have remedied. In addition, there was substantial harm to the clients, who were forced to pay $1,109 in costs and $600 in legal fees to have the mortgage and deed recorded after respondent failed to do so. Finally, respondent has been previously disciplined on two occasions. Although that discipline was imposed after the date of the Krolls' closing, her pattern of misconduct has continued uncorrected, despite her knowledge that her actions have been improper.

In light of the aggravating factors in this matter, we unanimously determine to impose a three-month suspension.

One more point warrants mention. Although, as noted above, in her answer respondent stated that she was holding $315.09 in her trust account, by letter dated February 6, 2004, she advised

us that she was holding $1,109 in her account, representing the recording and realty transfer fees. It is possible that the funds have remained in her trust account, in which case, in addition to the above findings, she is guilty of, inter alia, failing to turn over funds belonging to a third party. On the other hand, respondent may be guilty of something far more serious with far reaching consequences. Accordingly, we determine that the Office of Attorney Ethics should conduct an audit of respondent's trust account.

Two members did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

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 Patricia N. Adelle
Docket No. DRB 03-414

Argued: February 13, 2004

Decided: April 14, 20041

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan		X					
Holmes		X					
Lolla							X
Pashman							X
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		7					2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel