

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-267, 02-353
and 02-354

IN THE MATTER OF
LUBA ANNENKO
AN ATTORNEY AT LAW

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

Decided: March 11, 2003

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

Pursuant to R. 1:20-4(f), the District IV Ethics Committee (“DEC”) certified the records in these matters directly to us for the imposition of discipline, following respondent’s failure to file answers to the formal ethics complaints.

The complaints alleged that respondent grossly neglected clients, failed to return unearned retainers and converted bankruptcy estate funds to her own use.

* * *

Respondent was admitted to the New Jersey bar in 1983. As seen below, she was suspended for six months on July 5, 2001. She remains suspended to date.

In 1988 respondent was privately reprimanded for gross neglect in a contract matter and failure to communicate with the client for approximately eighteen months, in violation of RPC 1.3 and RPC 1.4(a). In the Matter of Luba Annenko, Docket No. DRB 88-135 (May 19, 1988). Respondent received another private reprimand in 1992 for failure to file an answer on her client's behalf, resulting in a default judgment against the client. In the Matter of Luba Annenko, Docket No. DRB 92-075 (April 21, 1992). On May 6, 1999 respondent was temporarily suspended for failure to comply with a fee arbitration award and to satisfy a monetary sanction imposed by us. In re Annenko, 158 N.J. 184 (1999). She was reinstated on July 19, 1999. In re Annenko, 159 N.J. 564 (1999). On October 17, 2000 the Supreme Court issued an order suspending respondent for six months, effective November 13, 2000, for gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to return an unearned retainer and failure to cooperate with ethics authorities. In re Annenko, 165 N.J. 508 (2000). On February 6, 2001 respondent received a three-month consecutive suspension for gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with ethics authorities. In re Annenko, 166 N.J. 365 (2001). On June 5, 2001 respondent received a six-month consecutive suspension for gross neglect, lack of diligence, failure to communicate with the client, failure to return an unearned

retainer and failure to cooperate with ethics authorities. In re Annenko, 167 N.J. 603 (2001).

Even though respondent's last suspension expired in February 2002, she has not applied for reinstatement.

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I. **The Dunham Matter** - Docket No. DRB 02-267

On January 3, 2002 the DEC sent a copy of the complaint via certified and regular mail to respondent's residence/former office address at 104 Walt Whitman Boulevard, Cherry Hill, New Jersey. The cover letter stated that her failure to timely file an answer would cause the matter to be certified directly to us for the imposition of discipline. The certified mail receipt was returned, indicating delivery on January 19, 2002. The signature was illegible. The regular mail was not returned. Respondent did not answer the complaint.

On April 11, 2002 a second letter was sent to the same address by both certified and regular mail, advising respondent that, unless she filed an answer within five days of the date of the letter, the matter would proceed directly to us for the imposition of discipline. The outcome of the certified mail is unknown. The regular mail was not returned. Respondent did not answer the complaint.

On September 27, 2002 Office of Board Counsel received a September 25, 2002

letter from respondent in which she acknowledged receipt of our September 23, 2002 scheduling letter in this matter. Our letter also advised respondent of the deadline for filing a motion to vacate the default. Our scheduling letter was sent to respondent's address at 104 Walt Whitman Boulevard, the address she also used as her return address on her letter to Board Counsel. Respondent did not file a motion to vacate the default.

* * *

In or about August 2000 Joan M. Dunham, the grievant, contacted Alan D. Dashoff (a/k/a A. David Dashoff), a disbarred New Jersey attorney who had represented her in an unrelated matter sometime earlier, to discuss obtaining a bail reduction hearing for her fiancé, John McGuire. At the time, McGuire was incarcerated in the Camden County Jail.

On August 21, 2000 Dashoff brought respondent with him to a meeting at Dunham's house to discuss the bail matter. Although no retainer agreement was signed that day, respondent agreed to file a motion for bail reduction. Respondent quoted a \$1,200 fee. Dunham's friend, Faye R. Clark, wrote a \$500 check to "A. Dashoff + L. Annenko," which Dashoff later negotiated. That check represented the first installment under the retainer.

In September 2000 Dunham met respondent outside the jail and gave her an additional \$200 toward the retainer. In October 2000 Dunham again met respondent outside the jail and gave her another \$200 toward her fee.

From October 2000 onward, Dunham called respondent for information about the bail hearing. At first, respondent told her that she was “working on it.” Thereafter, respondent became unavailable to speak to Dunham and stopped returning her calls altogether. It is not known if, at that time, respondent had notice of the October 17, 2000 order of suspension. To that point, she had done nothing to obtain McGuire’s release on bail. In fact, she never visited McGuire in jail. Also, respondent did not inform Dunham that she had been suspended from the practice of law.

The complaint alleged that respondent violated RPC 1.3 (lack of diligence, RPC 1.4(a) (failure to communicate with client), RPC 1.5(b), more properly RPC 1.16(d) (failure to return unearned retainer), RPC 5.5(b) (assisting a non-attorney in the unauthorized practice of law), R. 1:20-20(a) (prohibited association with disbarred attorney), RPC 8.4(c) (misrepresentation) and RPC 8.1(b) (failure to cooperate with ethics authorities).

II. The Turner Matter - Docket No. DRB 02-353

On April 24, 2002 the DEC sent a copy of the complaint via certified and regular mail to respondent’s residence/former office address at 104 Walt Whitman Boulevard, Cherry Hill, New Jersey. The cover letter stated that, if she failed to timely file an answer, the matter would be certified directly to us for the imposition of discipline. The certified mail receipt was returned as “unclaimed.” The regular mail was not returned. Respondent did not answer the complaint.

On July 10, 2002 a second letter was sent to the same address by both certified and regular mail, advising respondent that, unless she filed an answer within five days of the date of the letter, the matter would proceed directly to us for the imposition of discipline. The certified mail was returned as "unclaimed." The regular mail was not returned. Respondent did not answer the complaint.

* * *

In the fall of 2000 Dawn Turner, the grievant, retained respondent to represent her in a bankruptcy matter. Although respondent had not represented Turner before, she did not utilize a retainer agreement or otherwise reduce to writing the terms of the representation. Respondent required a \$900 flat fee plus a \$160 filing fee.

On November 10, 2000 Turner paid respondent \$200. Three days later, on November 13, 2000, respondent began to serve her six-month suspension. When respondent took the \$200 from Turner, she was aware that her suspension would start three days later, since the Court order was dated October 17, 2002. Almost a month into the suspension, on December 8, 2000, respondent accepted an additional \$500 payment from Turner. At no time did respondent notify Turner of her suspension.

In or about January 2001, while respondent was still serving the six-month suspension, she had a telephone conversation with Turner. At that time, she misrepresented to Turner that

she could not work on her case because she had broken a toe. She also told Turner to call back in a week to discuss the case. One week later Turner called respondent, only to discover that respondent's office telephone had been disconnected. Thereafter, Turner attempted to reach respondent at her home phone number, but that number was unpublished. Respondent never contacted Turner again. Furthermore, respondent never returned Turner's \$700 retainer.

Between March and May 2001 the OAE sent respondent four letters requesting a written reply to the grievance. Respondent ignored those letters. In July 2001 respondent called the OAE and received an extension until July 27, 2001 to provide a written reply to the grievance. Nevertheless, respondent did not reply.

The complaint alleged that respondent violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.5(a) (unreasonable fee), RPC 1.5(b) (failure to utilize retainer agreement), RPC 1.16(d) (failure to return unearned retainer), RPC 5.5(a) (practicing law while suspended), RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(c) (misrepresentation) and R. 1:20-20 (failure to notify clients of suspension from the practice of law and to file affidavit with the OAE).

III. The Griffith Matter – Docket No. DRB 02-354

On April 24, 2002 the DEC sent a copy of the complaint via certified mail and regular

mail to respondent's residence/former office address at 104 Walt Whitman Boulevard, Cherry Hill, New Jersey. The cover letter stated that her failure to timely file an answer would cause the matter to be certified directly to us for the imposition of discipline. The certified mail receipt was returned as "unclaimed." The regular mail was not returned. Respondent did not answer the complaint.

On July 10, 2002 a second letter was sent to the same address by both certified and regular mail, advising her that, unless she filed an answer within five days of the date of the letter, the matter would proceed directly to us for the imposition of discipline. The certified mail was returned as "unclaimed." The regular mail was not returned. Respondent did not answer the complaint.

* * *

In or about September 1999 Steven Griffith, the grievant, retained respondent to represent him in a Chapter 13 bankruptcy matter. Although respondent had not previously represented Griffith, she did not prepare a retainer agreement or otherwise memorialize the terms of the representation. Respondent charged a \$500 flat fee for filing the bankruptcy petition plus a \$160 filing fee.

On October 1, 1999 respondent filed the bankruptcy petition. However, she failed to appear at Griffith's April 5, 2000 confirmation hearing in bankruptcy court. As a result,

Griffith's case was dismissed on April 12, 2000. Thereafter, respondent took no action to restore the petition.

On or about July 10, 2000 Griffith filed a motion to restore the petition, which was granted. On August 3, 2000 he retained another attorney, who, on that day, filed a motion in bankruptcy court for the return of Griffith's fee. The bankruptcy court ordered respondent to return the retainer to Griffith no later than August 14, 2000. The order also removed some language from the proposed Chapter 13 plan that would have allowed respondent to apply for additional fees later in the case. Respondent was served with the order, but never returned the fee.

On September 20, 2000 respondent executed a substitution of attorney, withdrawing from the case.

Griffith's case was ultimately dismissed again in November 2000 for reasons unrelated to respondent's actions, including Griffith's own failure to make payments to the Chapter 13 trustee, as required by the plan of reorganization. The dismissal order also directed the trustee to pay Griffith's attorney \$1,000 from funds on hand in Griffith's bankruptcy estate. Due to an administrative error, and unaware that respondent was no longer Griffith's attorney of record, on November 14, 2000 the trustee sent respondent a check for \$1,000. Although respondent knew that she was not entitled to the funds, on November 27, 2000 she cashed the check at a check-cashing facility.

In January 2001 Griffith's attorney contacted the trustee because he had not yet

received his fee. Upon discovering the error made the previous November, the trustee wrote two letters to respondent requesting the return of the \$1,000. Respondent ignored both letters, dated January 26 and February 13, 2001. She never returned the bankruptcy estate funds to the trustee.

Between April and June 2001 the OAE sent respondent three letters requesting a written reply to the grievance. Respondent ignored those letters. In July 2001 respondent called the OAE and received an extension until July 27, 2001 to provide a written reply to the grievance. Respondent never submitted a reply.

The complaint alleged that respondent violated RPC 1.1(a) (gross neglect) and (b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.5(b) (failure to utilize retainer agreement), RPC 1.15(a) (knowing misappropriation), RPC 1.15(b) (failure to turn over third party funds), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.4(b) (criminal act that reflects adversely on honesty of the lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made. Following a review of the record, we found

that the facts recited in the complaints support the charges of unethical conduct. Because of respondent's failure to file answers in these matters, the allegations of the complaints are deemed admitted. R.1:20-4(f).

In Dunham, respondent violated RPC 1.3 by her failure to take action in her client's behalf and RPC 1.1(a) by grossly neglecting the matter. Although she was not specifically charged with a violation of RPC 1.1(a), the facts in the complaint gave her sufficient notice of the alleged improper conduct and of the potential finding of a violation of that RPC. Respondent also violated RPC 1.4(a) by failing to reply to Dunham's repeated requests for information, RPC 1.16(d) by failing to return the unearned retainer,¹ RPC 5.5(b) by assisting Dashoff, a non-attorney, in the unauthorized practice of law, R. 1:20-20(a) both by her prohibited association with a disbarred attorney and failure to notify her client of her suspension, RPC 8.4(c) by misrepresenting to Dunham that she was working on the matter and RPC 8.1(b) for her failure to cooperate with ethics authorities.

In Turner, respondent accepted a \$200 retainer for a bankruptcy matter just days before November 13, 2000, the effective date of her six-month suspension from the practice of law. She had been aware of her suspension since October 17, 2000, the date of the Court's order. She accepted another \$200 after she began serving the suspension. She also failed to communicate with Turner; failed to prepare a retainer agreement; failed to refund Turner's

¹Although the complaint cited RPC 1.5(b), the applicable rule is RPC 1.16(d).

retainer; misrepresented to Turner that she could not work on her case because of a broken toe; did not disclose to Turner that she was suspended; and failed to cooperate with disciplinary authorities, thereby violating RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 1.16(d), RPC 5.5(a), RPC 8.1(b), RPC 8.4(c) and R. 1:20-20. The record is not clear, however, that the fee charged by respondent would have been unreasonable if she had performed the work required. Therefore, we dismissed the allegation of a violation of RPC 1.5(a).

In Griffith, respondent violated RPC 1.1(a) and RPC 1.3 by failing to appear at the bankruptcy court hearing, allowing the case to be dismissed and, thereafter, failing to take steps to restore the petition or to take other action on Griffith's behalf; RPC 1.4(a) by failing to communicate with Griffith²; RPC 1.5(b) by failing to utilize a retainer agreement with Griffith, whom she had not previously represented; RPC 3.4(c) and RPC 8.4(d) by refusing to comply with the bankruptcy court's order to return Griffith's retainer; and RPC 8.1(b) by failing to cooperate with disciplinary authorities.

One of respondent's most serious ethics offenses took place in Griffith. Respondent retained a \$1,000 check that had mistakenly been sent to her, instead of Griffith's new attorney. Respondent's calculated decision to cash the trustee's check — knowing that it was

²Although respondent was not specifically charged with a violation of RPC 1.4(a), the facts in the complaint gave her sufficient notice of the alleged improper conduct and of the potential finding of a violation of that RPC.

not intended for her — constituted conversion of funds, in violation of RPC 8.4(b) and RPC 8.4(c).³ On August 3, 2000 the bankruptcy court directed that respondent receive no fee for representing Griffith. That order states, in part, as follows:

[Respondent] is to return \$500 to [Griffith]. Said funds are to be delivered to [Griffith] no later than August 14, 2000. The trustee is ordered not to distribute any funds to [respondent] as proposed in the Chapter 13 plan.

The court specifically prohibited respondent from later collecting fees through the Chapter 13 plan, which is administered by the Chapter 13 trustee. Given the specificity and clarity of the order, as well as the circumstances under which respondent exited the case — having allowed its dismissal for her failure to attend a court hearing, never attempting to cure that defect, and having been ordered previously to return Griffith’s unearned retainer — no room remains for respondent’s interpretation that she was entitled to the \$1,000. She intentionally converted those funds to her own use, ignoring the trustee’s repeated requests for their return.

In summary, respondent committed numerous egregious ethics violations in these matters. In Dunham, she enlisted a disbarred attorney to help “fleece” a client out of a retainer intended to obtain a bail hearing for a woman’s incarcerated fiancé. Instead, respondent abandoned the case and never visited the fiancé in jail or took any action to free him. Additionally, shortly after she was retained, respondent was suspended from the practice

³The complaint charges that respondent’s failure to return the \$1,000 to the trustee also violated RPC 1.15. However, respondent’s conduct is more appropriately encompassed by RPC 8.4(b) and RPC 8.4(c).

of law. There, too, she did not advise her client of the suspension so that other arrangements for the fiancé's bail reduction could be made. Furthermore, respondent shared her spoils with the disbarred attorney.

In Turner, respondent accepted a \$200 retainer for a bankruptcy matter just days before November 13, 2000, the effective date of her six-month suspension from the practice of law. She had been aware of her suspension since October 17, 2000, the date of the Court's order. She accepted another \$200 after she began serving the suspension. She also failed to communicate with Turner; failed to prepare a retainer agreement; failed to refund Turner's retainer; misrepresented to Turner that she could not work on her case because of a broken toe; did not disclose to Turner that she was suspended; and failed to cooperate with disciplinary authorities.

In Griffith, respondent failed to appear at the bankruptcy court hearing, causing the dismissal of the petition; failed to take action to restore the petition; failed to communicate with her client and, in fact, abandoned him; failed to prepare a retainer agreement; failed to obey the bankruptcy court order for the refund of Griffith's retainer; failed to cooperate with disciplinary authorities; and last but not least, converted the \$1,000 in bankruptcy funds to her own use.

In aggravation of respondent's serious conduct there is her lengthy ethics history to consider. She has had a steady succession of run-ins with the disciplinary system over the past fourteen years, resulting in two private reprimands, a three-month suspension and two six-month suspensions.

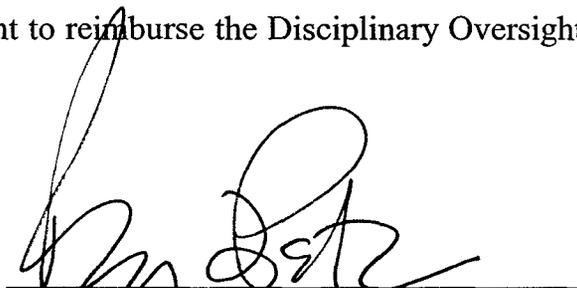
Respondent's conduct in these matters convinced us that her character is unsalvageable. No amount of redemption, counseling or education will overcome her outrageous conduct. Her conduct was so offensive and obnoxious both to common decency and to principles of justice that there can be no other result but disbarment:

Disbarment is reserved for the case in which the misconduct of an attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession. Disbarment is a guarantee to the public that the attorney will not return to the profession.

[In re Templeton, 99 N.J. 365, 376 (1985)]

Like the attorney in Templeton, this respondent's conduct has demonstrated that her professional character and fitness have been permanently and irretrievably lost. We, therefore, unanimously recommended that she be disbarred. Three members did not participate.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.



ROCKY L. PETERSON
Chair
Disciplinary Review Board

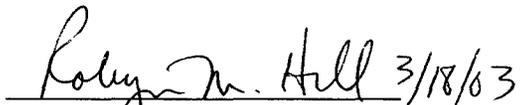
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Luba Annenko
Docket Nos. DRB 02-267, 02-353 and 02-354

Decided: March 11, 2003

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>	X						
<i>Maudsley</i>							X
<i>Boylan</i>							X
<i>Brody</i>	X						
<i>Lolla</i>	X						
<i>O'Shaughnessy</i>							X
<i>Pashman</i>	X						
<i>Schwartz</i>	X						
<i>Wissinger</i>	X						
Total:	6						3


Robyn M. Hill 3/18/03
Chief Counsel