
IN THE MATTER OF :
LUBA ANNENKO :
AN ATTORNEY AT LAW :

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

Decided: January 22, 2001

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

Pursuant to R. 1:20-4(f)(1), the District VI Ethics Committee (“DEC”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

On May 12, 2000, the DEC mailed a copy of the complaint by regular and certified mail to respondent’s last known address, 104 Walt Whitman Boulevard, Cherry Hill, New Jersey 08034. The letter informed her that, if she did not reply within twenty-one days, the

matter would be certified to the Board for the imposition of sanctions and that the allegations of the complaint would be deemed admitted. Neither the regular mail nor the certified mail return receipt card was returned. Respondent has not filed an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1983. At the relevant times she maintained an office in Cherry Hill, New Jersey. Respondent is currently ineligible to practice law in New Jersey for failure to pay her annual assessment to the New Jersey Lawyer's Fund for Client Protection.

Respondent was temporarily suspended on May 6, 1999 for failure to comply with a fee arbitration award and to satisfy a sanction imposed by the Disciplinary Review Board. In re Annenko, 158 N.J. 184 (1999). She was reinstated on July 19, 1999. In re Annenko, 159 N.J. 564 (1999).

In 1988, respondent was privately reprimanded for neglecting a contract matter and for failing 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).

There are currently two matters pending against respondent. In two matters, DRB Docket Nos. 99-180 and 00-087, the Board recommended a six-month suspension and a three-month consecutive suspension, respectively. These matters are pending with the

Supreme Court.

The formal ethics complaint alleges two counts of unethical conduct.

The first count charges respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(a) (unreasonable fee) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). Specifically, in or about May 1997, respondent filed a bankruptcy petition on behalf of the grievant, Michael L. Seigerman. The grievant's bankruptcy petition was discharged on January 20, 1998. In October 1998, grievant contacted respondent to request that Keystone Leasing Company be added as a creditor to the bankruptcy. Respondent was previously aware of Keystone, but had decided not to list them in the original bankruptcy petition because they held a lease on the truck that grievant used for his business.

On December 30, 1998, grievant paid respondent \$630 to file a post-petition motion to re-open and amend the bankruptcy. On numerous occasions between December of 1998 and May 1999, grievant tried to contact respondent by telephone in order to obtain information about the status of his case. During this time, respondent telephoned grievant only twice, and advised grievant that the motion to re-open the bankruptcy needed to be "resubmitted" or "refiled." In fact, after the discharge of the original bankruptcy, respondent never did any work on the file or file a motion to re-open the bankruptcy petition.

The second count of the complaint charged respondent with a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities). In connection with its investigation

of the grievance, the Office of Attorney Ethics (OAE) attempted to contact respondent on numerous occasions to solicit her reply to the grievance. Despite numerous telephone messages, letters and extensions of time, respondent failed to timely reply to the grievance.

* * *

Service of process was properly made by regular mail. Therefore, the matter may proceed as a default. Pursuant to R. 1:20-4(f)(1), the allegations of the complaint are deemed admitted.

In this case, although respondent accepted \$630 from her client, she did no work on the file. Respondent never filed a motion to re-open the bankruptcy petition. By failing to perform the legal service for which she was retained, respondent violated both RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence). Moreover, respondent's failure to refund an earned retainer violated RPC 1.16(d). Although the complaint did not specifically cite this RPC, the facts as therein stated did put respondent on notice of a possible finding of this violation. In re Logan, 70 N.J. 222, 232 (1976).

Respondent also failed to keep grievant informed about the status of his case, calling him only twice over a five-month period. Respondent's failure to reply to grievant's numerous requests for information violated RPC 1.4(a) (failure to communicate).

On the two occasions respondent did contact grievant, she informed him that the motion to re-open the bankruptcy needed to be “refiled,” when, in fact, respondent never did any work on the case.

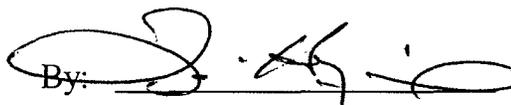
Finally, respondent never submitted a reply to the grievance, despite numerous contacts from the OAE. Respondent ignored time extensions granted to her for the submission date. In the end, respondent was given every opportunity to reply to the grievance, but chose not to cooperate, in violation of RPC 8.1(b).

In cases with a similar factual and procedural background, a three-month suspension has been imposed, absent prior discipline of the attorney. In re Hoffmann, 156 N.J. 579 (1999) (default case; three-month suspension where the attorney failed to reply to five motions to dismiss a case, resulting in its dismissal, and lied about the status of the case to client; the attorney also failed to reply to investigator’s request for information) and In re Kubulak, 157 N.J. 74 (1999) (default case; three-month suspension for misconduct involving lack of diligence, gross neglect, failure to communicate, failure to cooperate with ethics authorities and conduct involving dishonesty, fraud, deceit or misrepresentation). However in a default case, where misrepresentation and failure to cooperate are coupled with a significant disciplinary history, greater discipline is required. In re Dudas, 162 N.J. 101 (1999) (default case; six-month suspension where the attorney failed to file claim, misled the client regarding this failure, failed to turn over the client’s file to new counsel and refused to cooperate with the committee investigation; increased discipline because of two

prior suspensions). Here, because of respondent's ethics history, we unanimously determined to impose a six-month suspension, which is to be served at the expiration of the most recent suspension imposed. Two members did not participate in the hearing of this matter.

We further direct that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/22/01

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

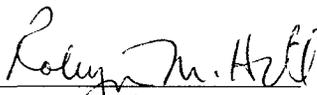
**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Luba Annenko
Docket No. DRB 00-240**

Decided: January 22, 2001

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson							X
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz							X
Wissinger		X					
Total:		7					2


Robyn M. Hill
Chief Counsel