SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-363 and
DRB 94-377

IN THE MATTER OF :
:
JOHN J. MAIORIELLO, :
:
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 16, 1994

Decided: January 5, 1995

Robert J. Maloof appeared on behalf of the District IIB Ethics Committee.

Respondent appeared pro se.

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

These two matters were before the Board based on a recommendation for public discipline and a recommendation for an admonition made by the District IIB and District IV Ethics Committees ("DEC"), respectively, which the Board determined to hear together. The formal complaint in the first matter, Docket No. DRB 94-363, charged respondent with violation of RPC 1.1(b) (pattern of neglect); 1.3 (lack of diligence); 1.4(a) and (b) (failure to keep client reasonably informed and to explain matter to client to allow informed decisions); 1.15(a) and (b)

(recordkeeping and prompt delivery of client funds to client or third person); 5.3(a) and (c) (failure to ensure that non-lawyer assistants' conduct is compatible with professional obligations of the lawyer and responsibility for non-lawyer misconduct]; 5.4(a) (fee-sharing with non-lawyer); 7.1(a)(1) (misleading communications); and 7.3(d) (compensation to others for prohibited client referrals). The alleged misconduct related to respondent's affiliation with a credit counselling company that advertised under his name and that obtained some customers who eventually became respondent's clients for bankruptcy matters.

The complaint in the second matter, Docket No. DRB 94-377, charged respondent with violation of R. 1:21-1 (bona fide office) and R. 1:28 (practicing law while on the ineligible list for failure to pay annual assessment to the Client Protection Fund).

Respondent was admitted to practice in New Jersey in 1989. He had law offices in Maywood, Newark and Haddonfield, New Jersey, as well as in Pennsylvania. He has no prior ethics history.

DRB 94-363 (Public Discipline Matters)

In late 1990, respondent replied to a newspaper ad by Synergy Management of Maryland ("Synergy") seeking an attorney to handle credit counselling and bankruptcy. In January 1991, respondent entered into an agreement with Synergy to establish business in New Jersey. Synergy advanced to respondent the funds to open offices in Maywood (Bergen County) and Newark, to supply equipment and staff and to advertise. Synergy billed expenses to respondent, who

was supposed to keep any revenues in excess of expenses. However, respondent testified that there was no excess revenue.

Advertising was effective in drawing 300 to 325 clients. Respondent made deposits of client funds in four New Jersey accounts: two in Newark and two in Maywood. (The record does not indicate whether these were trust or business accounts.) The bankruptcy case accounts were separate from the debt consolidation accounts. Respondent maintained the checkbooks and sent deposit slips weekly to Synergy via UPS. Synergy retained the original files in Maryland and sent copies daily to respondent via UPS.

Although Synergy hired the staff, respondent interviewed some of them, including Louis Villanueva and Sam Santiago, who usually met clients for initial conferences in the Maywood and Newark offices. These two employees often signed agreements for services on behalf of Maioriello Legal Services. The agreements, business cards and information sheets were prepared by Synergy. Synergy used the same or similar forms in Maryland, Virginia and Washington, DC. Respondent met with bankruptcy clients, clients with secured debts or wage garnishments and any clients with unsecured debts who requested appointments.

Parenthetically, the Committee on Attorney Advertising notified respondent that his ads for "Maioriello Legal Services" violated advertising rules by misleading the public and inferring that a financial lending institution was involved. (The record does not indicate the dates of the notification.) In March 1992, the Department of Banking also contacted respondent about the

misleading ads. Respondent stated that he revised the wording of the ads "to the satisfaction of that department."

At some point, it was brought to respondent's attention that, if he was "principally engaged as a debt adjuster," he could be violating N.J.S.A. 2C:21-20. It was then that he realized, after monitoring his caseload, that the debt consolidations had become a major part of his practice. (This may have been about June 1992, according to respondent's letter to the Office of Attorney Ethics ("OAE") on October 7, 1992. Exhibit P-11). Accordingly, respondent advised Synergy that he would be discontinuing debt consolidation work.

In his October 1992 letter to the OAE, respondent stated that Synergy advised him, in mid-August 1992, that it would phase out the Philadelphia office in thirty days, but continue with the New Jersey offices. Sometime later, a Synergy representative, Jim Moser, left a message on respondent's answering machine that respondent owed Synergy $32,000 (presumably for expenses), payable by the end of that day. Respondent could not pay it. The next day, Synergy "took all the files [from the Maywood and Newark offices] and locked the door." Respondent had no files and no way to contact clients. T13-14.[1] . (The record does not specify when the offices were closed, but, as shown below, it was shortly after a client's conference on August 21, 1992.)

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[1] T refers to the transcript of the DEC hearing on October 25, 1993. Please note that pages 111 through 120, inclusive, are out of order and appear at the end of the transcript.

To reconstruct records, respondent used weekly computer reports and contacted clients for whom he could locate addresses or phone numbers. Sometimes he had only client names. Respondent transferred all of the accounts to a nonprofit debt consolidation company in Philadelphia, which began to handle them in approximately August 1992. According to respondent, a Synergy representative told him that "you'll never find me. I'm going to go from state to state and you have fun with the Ethics Committee." The representative then hung up. Respondent later heard that attorneys in Maryland and Virginia were being investigated by their respective state ethics authorities for similar affiliations with Synergy.

The nine grievances, described below, are grouped as either bankruptcy or debt consolidation matters. The DEC filed a nine-count formal complaint on September 30, 1993. An amended complaint, dated January 5, 1994, added one count. One bankruptcy client and three debt clients (of whom two clients were married couples) testified at the DEC hearing: Anyoun, DePinto-Sattely, Henry, Dees.

A. BANKRUPTCY MATTERS

Counts six, seven and eight of the complaint allege that respondent failed to file bankruptcy petitions for three clients: Rose Boceski, Laureen Anyoun and Roy Buckman. For each matter, the complaint alleged violations of RPC 1.3 (lack of diligence) and 1.4(a) and (b) (failure to keep client reasonably informed and to explain matters to clients). In light of the multiple charges, the complaint also charged a violation of RPC 1.1(b) (pattern of neglect).

The Anyoun Matter

Laureen Anyoun retained respondent on August 4, 1992, after seeing his ad. She went to the Maywood office and met with "Lou," who described himself as respondent's assistant. On August 21, 1992, she met with respondent in the Newark office to discuss bankruptcy options. Anyoun paid respondent $100 towards a retainer of $850 and costs of $120, with the understanding that respondent would file the bankruptcy petition when one-half of the retainer was paid. When Anyoun called the Maywood office to ask where to send the second payment, she discovered that the Maywood phone had been disconnected. Similarly, there was no answer at the Newark number or at the Pennsylvania number listed on respondent's business card.

Eventually, Anyoun contacted the DEC and filed a grievance. Respondent called her after she filed the grievance to ask if she wanted him to continue to represent her or if he should refer her

to other counsel. Anyoun requested a refund of her money and retained another attorney. On December 1, 1992, she received a $100 refund from respondent.

The Buckman and Boceski Matters

The formal complaint alleged that Roy Buckman paid respondent $400 in August 1992, and that Rose Boceski paid respondent $650 between June 25, 1992 and August 7, 1992. In each case, respondent was retained to file a bankruptcy petition, but failed to do so. Also, Boceski was unable to locate respondent either at the Newark or Maywood office. Boceski requested a refund of the money by letter to respondent. Three days after she filed a grievance against respondent, she received a full refund of her payment. Thereafter, Boceski was no longer interested in pursuing her grievance. She retained other counsel to represent her in the bankruptcy matter.

The record does not indicate whether Buckman later filed for bankruptcy or received a refund of his money. In his answer to the formal complaint, dated October 25, 1993 (five months after his May letter to the DEC, Exhibit P-15) respondent stated that all the clients "either remained with the nonprofit company or were refunded the money due on their accounts." There is no reason to doubt this assertion.

B. DEBT CONSOLIDATION MATTERS

Counts one through five and nine of the complaint allege that respondent was not diligent, failed to communicate with his clients, did not keep required records and exhibited a pattern of neglect in six matters: DePinto, Maldonado, Talbert-Rice, Dees, Meighan and Henry.

DePinto, Dees and Henry testified at the DEC hearing, together with the husbands of DePinto and Dees.

The DePinto Matter

Stacy DePinto (now Sattely) saw respondent's ad and went to his Newark office, where she and Gary Sattely (now her husband) met with Sam Santiago. They listed seven creditors and signed an agreement for legal services, dated April 27, 1992, which called for the payment of a $350 service fee on that day and of $444 per month commencing on May 18, 1992. Exhibits P-1, 2, 3. Sattely testified that she sent the first payment to the Newark office and the second (presumably about June 18, 1992) to Maywood, pursuant to a notice of change of payment address. Before she made the third payment (presumably due about July 18, 1992), however, she received "harassing phone calls [from creditors] . . . made to my job, to my parents and neighbors." She had difficulty with access to a phone during business hours, as she was a teacher. Her few inquiries to respondent's office produced nothing but assurances by a receptionist not to worry.

Sometime in August 1992, Sattely learned that respondent's phone was disconnected. Eventually, she spoke to someone, using an "800" number from respondent's business card. She was advised that respondent was no longer in Maywood or Newark and that the files had been moved to another location. A couple of weeks later, her husband called a number, presumably the "800" number, and was advised that their recent payment of $444 had been received and would be returned. They later received a refund check of $445 from respondent. (There is no explanation in the record for the $1 difference.)

Sattely and her husband testified that they did not know of the affiliation between respondent and Synergy and that they did not hear of the name Synergy until the DEC hearing. Mr. Sattely testified that, at one point (presumably between May and August 1992), he and his wife were two months in arrears in their monthly payments of $444, prompting phone calls from the creditors. Mr. Sattely stated that, if respondent had sent them an accounting of payments to creditors, they probably would not have been as "upset." T35, 40, 42.

Respondent eventually reconstructed the receipts and disbursements in the this matter, which included two checks of $444 returned by the bank for insufficient funds and his refund to Sattely on October 10, 1992. Exhibit R-3. (The arithmetic is not clear and the accounting is incomplete, though it may represent all that was available to respondent without the files.)

The Henry Matter

Jacqueline Henry heard about respondent through her cousin, and spoke to "Lou" in the Maywood office, in February 1992. She paid a service fee of $350 and signed an agreement for services, dated February 28, 1992, for payments of $135 "every other Tuesday thereafter" for balances owed to four creditors. Henry wrote eight checks to respondent, between February 28 and August 19, 1992 (seven for $135 and one for $114). Exhibits P-6, 7, 8, T45-46, 49. She made no payments in May and June 1992. She personally delivered her checks to the Maywood office because she worked nearby. In late August 1992, when she tried to call respondent to explain that she would be late with the next installment, she learned that his phone had been disconnected. Eventually, her wages were garnished. A creditor called her at home and provided her with respondent's Philadelphia phone number, but she was unable to reach respondent immediately. Eventually she contacted respondent and requested an accounting. Exhibit R-2.

Henry, too, testified that she had not heard of Synergy before the DEC hearing.

The Dees Matter

Janie Dees also saw respondent's ad. She and her husband met "Lou" from respondent's office, when he accompanied an agent who came to their house to discuss life insurance. Mr. Dees later met "Lou" at the Maywood office and went there weekly to deliver payments of $124. Mr. Dees signed an agreement for services dated

August 9, 1991. Exhibit P-9. The service fee of $350 was to be paid from an allocation of several $124 weekly payments.

Mr. Dees testified that they paid about $4,700 between August 1991 and November 1992, although he missed a few weeks and later doubled the payments. Mrs. Dees testified that she received calls from creditors in May 1992, complaining about the lack of payments. (The record does not indicate when the missed payments occurred; it is possible that the calls followed the Deeses' missed payments.) Calls to the receptionist at respondent's office reassured Mrs. Dees that the creditors' calls and letters were a "tactic."

In December 1992, Mrs. Dees spoke directly to respondent, after she learned that his office had moved to Philadelphia in September 1992. Subsequently, she spoke to the nonprofit servicing agency in Philadelphia that handled respondent's account for her. She disputed the balances due in a letter to Financial Counseling Services, Inc., in Philadelphia, dated December 22, 1992. Exhibit P-9A. On January 28, 1993, she wrote to respondent requesting records of the $4,714 paid to respondent and of the payments from respondent to their five creditors. Exhibit 10A. A furniture store eventually sued the Deeses. When the Deeses filed for bankruptcy, the judgment was collectible against Janie Dees' brother, who had co-signed the note. T71, 73, 76. (The record does not indicate whether her brother paid the judgment.)

In response to the Deeses' request for an accounting, respondent reconstructed the Deeses' receipts and disbursements.

Exhibit R-1. He explained that the missed payments violated the agreements made with creditors.

The Maldonado, Talbert-Rice and Meighan Matters

The complaint alleged similar conduct in three other matters: Maldonado, Talbert-Rice and Meighan. The record includes the agreement of services with and checks from Maldonado, Exhibit P-16; letter and checks from and agreement of services with Meighan, Exhibit P-17, and no exhibits for Talbert-Rice. The clients did not testify at the DEC hearing.

* * *

Without relating each case or group of cases to the respective Rules of Professional Conduct, the DEC found violations of RPC 1.1(b), RPC 1.3 (1.13 is presumably a typographical error in the report), RPC 1.4(a) and (b), RPC 1.15(a), RPC 5.3(a), (c)(1) and (2), RPC 5.4(a), RPC 7.1 and 7.3. The report does not contain specific fact-findings. The DEC found that respondent had not violated RPC 1.15(b) (failure to deliver funds to client or third party).

The DEC recommended public discipline.

DRB 94-377 (The Admonition Matter)

Respondent's office in Haddonfield was used only occasionally to meet clients. In 1993, John W. Hargrave, Esq., was the bankruptcy trustee in one of respondent's matters in federal court in Camden. The bankruptcy petition, dated June 1, 1993, listed

respondent's Philadelphia office. When Hargrave could not locate respondent's office in the New Jersey Lawyer's Diary, he became suspicious. Hargrave then contacted the DEC and filed a grievance against respondent in or about February 1994.

At the DEC hearing, on June 15, 1994, respondent provided copies of his Haddonfield office lease and lease extension. He testified that he had shared space, staff and equipment with another attorney until that office had been closed in February 1994. Respondent's nameplate had been on the door to the office.

Respondent acknowledged that he practiced law without paying the 1993 annual assessment to the New Jersey Lawyer's Fund for Client Protection, but he contended that he had not received the notice that year.

* * *

The DEC found clear and convincing evidence that respondent practiced while on the ineligible list, specifically between September 1993 and June 1994. However, the DEC did not find clear and convincing evidence that respondent failed to maintain a bona fide office.

CONCLUSION AND RECOMMENDATION

After an independent, de novo review of the record, the Board is satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In the Synergy matters, respondent in essence allowed Synergy to use his name to advertise and attract customers. Respondent may have thought that the offices were his, but it evolved that Synergy had more control over the matters than he perceived. Synergy's control was such that it prevented respondent from fulfilling his professional obligations to his clients. Respondent clearly did not have accurate and thorough client records that, according to the rules, had to be maintained for seven years. Also, he could not supervise the Synergy staff because Synergy, not respondent, controlled the offices, equipment and files. He misled or, at best, gave an inaccurate impression to clients that he was in control of his files and his business.

In mitigation, it should be considered that respondent became involved with Synergy in January 1991, only a short time after his graduation from law school in 1989. He had attended law school in the evenings for four years while clerking at a Philadelphia firm. He set up a sole practice of law, taught at a paralegal school and believed that the affiliation with Synergy would help develop his practice.

The presenter, in closing, agreed with respondent that his intentions were good "from the very beginning, but naive and perhaps misled." T138. The bankruptcy clients received full refunds of partial retainers. The debt clients received credits and/or payments. In addition, some of the embarrassment and grief over creditors' calls were self-inflicted, inasmuch as the clients missed certain periodic payments to respondent's office. The

clients and respondent had difficulty contacting each other when Synergy closed down two New Jersey offices. Ultimately, with much effort expended by respondent, the clients were restored to their former positions as much as possible.

In addition, the clients in the three bankruptcy matters had not paid full retainers by the late summer of 1992, when Synergy closed the Maywood and Newark offices. In fact, two of the three clients were new matters in August 1992. Respondent explained that the "reason that the [bankruptcy] petition was not filed is because the fee had not been paid, not because of neglect." Answer at 5. The time between Synergy's closing of the offices (after respondent's conference with Anyoun on August 21, 1992) and the DEC's contact with respondent (before respondent's letter to the DEC dated October 7, 1992) was short: fewer than six weeks. Accordingly, the record in the bankruptcy matters does not sustain, by clear and convincing evidence, charges of lack of diligence, failure to inform and to explain the matter to the client, and pattern of neglect. The Board unanimously recommends the dismissal of these charges.

It is clear, however, that respondent did not have the requisite client records for the three bankruptcy matters. RPC 1.15(a) states, in part, that "complete records of such account funds shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record." Respondent violated this rule, although it appears that his conduct might not have been willful. Respondent should have been more

cautious about his affiliation with Synergy and should have kept copies of the files in a separate office fully under his control.

As to the six debt-consolidation matters, although the clients who complained of harassing creditors' calls acknowledged that they had missed a few periodic payments to respondent's office, respondent's duties should have included monthly monitoring of such files, at a minimum to inquire about the clients' missed payments. Respondent's conduct in these matters violated RPC 1.3 (diligence) and RPC 1.1(b) (pattern of neglect). Respondent also violated RPC 1.4(b), when he failed to inform his clients of his affiliation with Synergy.

On the other hand, the charges of RPC 5.3(a) and (c), 5.4(a), 7.1(a)(1) and 7.3(d) were not sustained by clear and convincing evidence. There is no proof in the record of non-lawyer misconduct, fee-sharing with non-lawyers or compensation for referrals. Respondent explained, rather cursorily, that he was billed by Synergy for his overhead. At some time, probably in late summer of 1992, Synergy told him that his outstanding balance was $32,000. There is nothing in the record to establish his average monthly overhead or the time period for which the balance was due (whether a week, a month or one and one-half years). Similarly, there is no specific reference about what communication contained a material misrepresentation of fact or law.

In short, in DRB 94-363, respondent violated RPC 1.15(b) (recordkeeping) in nine matters and RPC 1.3, RPC 1.1(b) and RPC

1.4(b) (lack of diligence, pattern of neglect and lack of communication) in six of those matters.

In the second ethics matter, too, the Board agrees with the findings of the DEC. It is undeniable that respondent practiced law in New Jersey while on the ineligible list. The record, however, does not sustain a finding that he failed to maintain a bona fide office at the time in question.

Based on the totality of the circumstances in both matters, a six-member majority of the Board recommends a public reprimand. See, e.g., In re Mahoney, 120 N.J. 155 (1990) (gross neglect in four matters failure to communicate in two of those matters, misrepresentation in one of those matters, failure to maintain trust account records in one of those matters); In re Clark, 118 N.J. 563 (1990) (lack of diligence and failure to communicate in four matters, and failure to return retainer in a fifth matter). One member would have imposed a three-month suspension, based on his conclusion that respondent was involved in a fraudulent scheme in the first matter. Two members did not participate.

The Board also recommends that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/5/1995

By: Raymond R. Trombadore
Chair
Disciplinary Review Board