SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-153
District Docket No. XIV-2014-0151E

IN THE MATTER OF	:
RAYMOND J. FARRELL	:
AN ATTORNEY AT LAW	:

Decision

Decided: December 21, 2015

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 Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The two-count complaint charged respondent with having violated RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to communicate with a client), RPC 1.16, presumably (d) (failure to properly terminate representation of a client), and RPC 8.1(b) (failure to cooperate with disciplinary authorities), mistakenly

recited in the complaint as RPC 8.4(b). For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. He has no history of final discipline. He has been ineligible to practice law since September 30, 2013 for failure to pay the annual fee to the Lawyers' Fund for Client Protection (CPF).

Service of process was proper in this matter. On February 10, 2015, in accordance with R. 1:20-7(h), the OAE sent a copy of the complaint, by regular and certified mail, to respondent at his office address listed in the records of the CPF. The certified mail was returned marked "Return to Sender." The regular mail sent to this address was not returned. On that same date, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's last known home address listed in the records of the CPF. Respondent signed for the certified mail; the regular mail sent to this address was not returned.

On April 15, 2015, the OAE sent a second letter to respondent by regular mail to both his office and his home addresses, advising that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the

imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The regular mail directed to both addresses was not returned.

As of April 30, 2015, respondent had not filed an answer to the complaint. Thus, the OAE certified the record to us.

Grievant, Lori Bindler, retained respondent to represent her in the purchase of property in Freehold, New Jersey from Jon Peter and Constance Zemak. On October 5, 2008, Bindler and the Zemaks executed a contract of sale for the purchase of that property. The contract provided for a closing date of November 24, 2008 and stated that Bindler was to provide a total deposit of $13,000 to be held in the non-interest bearing trust account of ERA Advantage (ERA) until closing.

By letter dated October 23, 2008, Edward Fradkin, Esq., informed respondent that he would be representing the Zemaks in the sale of their property. Fradkin further stated that he disapproved of the contract. Among other amendments, Fradkin proposed that the deposit funds be held in his noninterest bearing attorney trust account until closing. Respondent, on behalf of Bindler, signed page two of the October 23, 2008 letter, indicating Bindler's acceptance of the proposed amendments.

On November 2, 2008, Bindler issued a personal check for $10,000 to respondent as the additional deposit.[1] Respondent deposited the check into his attorney trust account and forwarded the full amount to Fradkin by way of a check from that account.

The closing did not occur as scheduled. Thus, in a December 2, 2008 letter, respondent scheduled the closing for December 15, 2008 and informed Fradkin that, if the closing did not take place on that date, the Zemaks would be in breach of the contract. Through various subsequent communications between respondent and Fradkin, the closing was rescheduled multiple times. Ultimately, in a letter dated February 17, 2009, a final closing date was scheduled for March 2, 2009. That closing, however, also did not take place. In a letter dated March 4, 2009, respondent informed Fradkin that the Zemaks were in material breach of the contract and that Bindler terminated the agreement.

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[1] Previously, on April 5, 2008, Bindler had issued an initial deposit check to ERA, for $1,000, for the anticipated purchase of the property. The record does not reveal why Bindler did not pay the entire $13,000 deposit required by the contract.

Thereafter, on April 6, 2009, Fradkin sent a letter to respondent claiming that Bindler had unlawfully moved tenants into the property and collected rent from those tenants for approximately three months. Further, Fradkin claimed that, at the Zemaks' request, police had removed the tenants from the property, and inspection of the property revealed that the tenants caused substantial damage. Fradkin stated that the Zemaks sought to be reimbursed by Bindler for the cost of the repairs. Fradkin specified that the Zemaks were attempting to have the cost of these repairs deducted from Bindler's deposit funds held in Fradkin's attorney trust account.

By letter dated April 9, 2009, respondent informed Fradkin that Bindler disputed the Zemaks' claims. On April 23, 2009, respondent sent an e-mail to Bindler enclosing Fradkin's letter outlining the Zemaks' position on the use of the property and indicated that he was obtaining a copy of the police report filed by the Zemaks.

Eventually, the Zemaks terminated Fradkin's services and retained Ralph Stubbs, Esq. On February 19, 2010, the Superior Court of New Jersey, Monmouth County, received a letter from

Stubbs, dated July 29, 2009, enclosing two copies of a summons and complaint, dated February 17, 2010.[2] The documents identified respondent as Bindler's attorney and were served on him at his office address in Matawan, New Jersey. They were also sent to Bindler directly, although to an incorrect address. By April 2010, Bindler had defaulted on the complaint.

One year later, on April 5, 2011, Stubbs retired from the practice of law. Soon thereafter, on June 22, 2011, Fradkin, who continued to hold the deposit monies in his attorney trust account, cautioned respondent that, if he did not hear from respondent within ten days, Fradkin would file a formal application with the court to resolve the dispute over Bindler's $10,000 deposit. On June 27, 2011, respondent replied that the deposit belonged to his client and that the funds must either be returned to her or maintained in Fradkin's trust account.

On August 29, 2011, Fradkin filed an order to show cause and a verified complaint with the Chancery Court seeking a ruling as to the disposition of the $10,000 held in his trust account. On September 22, 2011, the Honorable Joseph P. Quinn,

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[2] It is unclear why the letter predated the actual filing of the complaint and summons by seven months.

J.S.C., issued an order requiring Fradkin to serve a copy of the August 29, 2011 complaint on the Zemaks and Bindler within seven days; directing the Zemaks and Bindler to file responses by October 14, 2011; and scheduling a hearing on the Order to Show Cause for November 4, 2011.

On September 27, 2011, Fradkin sent a copy of his August 29, 2011 Order to Show Cause and Verified Complaint to the Zemaks by e-mail and to respondent and Stubbs by letter. On September 28, 2011, respondent signed the certified mail receipt for Fradkin's September 27, 2011 letter.

Soon thereafter, the Zemaks retained a third attorney, Michael Jacobus. On November 17, 2011, Jacobus obtained an order requiring Fradkin to transfer the $10,000 escrow held in his trust account to the trust account of Novins, York & Jacobus. Between November 2011 and April 2013, Jacobus filed an application for a Final Judgment by Default against Bindler; received Bindler's $10,000 deposit from Fradkin; and obtained an order stating that "a judgment be entered against Bindler for $9,057." Jacobus also received authorization from the court to disburse the funds to the Zemaks.

Bindler had repeatedly attempted to contact respondent during the course of the litigation, but he never returned her

calls. Notwithstanding that, and despite the string of events that occurred between August and November 2011, respondent told Bindler only that, based on the complaint that Stubbs had filed, he now had the proper contact information for the Zemaks and could pursue an action against them. He never informed Bindler that a civil matter was proceeding against her, which had resulted in the entry of a default and a judgment against her, and the release of her funds to the Zemaks.

On March 18, 2014, Bindler filed a grievance against respondent. On April 7, 2014, the OAE sent a copy of the grievance to respondent directing him to provide a written response by April 21, 2014. Respondent did not reply.

On May 5, 2014, the OAE notified respondent that a demand interview was scheduled for May 28, 2014. The OAE's multiple attempts to contact respondent on several occasions between May 5 and May 27, 2014 were unsuccessful. He neither replied to the grievance nor appeared for the May 28, 2014 demand interview, despite having received all of the OAE letters and phone messages.

Eventually, on June 11, 2014, respondent met with OAE personnel at his office and agreed to provide a written response to the grievance as well as the Bindler client file. The OAE

memorialized the request for the client file in a letter dated August 25, 2014, which directed respondent to provide the file by September 5, 2014. To date, respondent has provided neither a written reply to the grievance nor the client file.

The complaint alleges sufficient facts to support the charges of unethical conduct. Respondents' 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 appears to actively have been engaged in Bindler's matter until February of 2010 when Stubbs filed a complaint. At that point, and without explanation, respondent seemingly stopped all work on the matter. Due to his inaction, Bindler defaulted on the complaint.

Nonetheless, in June 2011, respondent replied to a letter from Fradkin defending his client's claim to the $10,000 deposit underlying the litigation. Fradkin eventually filed an order to show cause and complaint seeking an order declaring the rights to the disputed deposit. Respondent received that complaint by certified mail in September 2011. There is no indication that he took any action on behalf of his client in response to the filing.

Respondent neglected the matter and failed to act with diligence by continuing to let filings with the court go unanswered. Specifically, in November 2011, Jacobus, the third attorney hired by the Zemaks, obtained an order transferring the deposit to his trust account. Jacobus eventually filed an application for final judgment, which went unopposed. In November 2013, an order was issued allowing Jacobus to release Bindler's funds to the Zemaks. Respondent's conduct caused extensive financial damage to his client. Moreover, he never communicated with Bindler about the civil matter proceeding against her and ignored her attempts to contact him.

To make matters worse, respondent failed to cooperate with ethics authorities by ignoring the grievance Bindler filed against him. Despite eventually speaking with the OAE about the matter, he again failed to respond to the grievance in writing and failed to turn over his client file.

Although respondent also was charged with a failure to properly terminate representation of his client, the facts alleged in the complaint do not clearly and convincingly establish that respondent violated RPC 1.16. First, the complaint does not indicate which subsection of the rule respondent has violated. Presumably, the intended charge was

RPC 1.16(d) (failure to take steps to protect a client's interests on termination of representation). However, the facts alleged in the complaint do not support a finding that respondent terminated his representation of Binder. Certainly, gross neglect and lack of diligence, without more, cannot amount to an improper termination of representation under the rules.

In sum, respondent has violated 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, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Cataline, 219 N.J. 429 (2014) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator) and In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance).

Although respondent has no history of discipline in twenty-two years at the bar, we must consider, in aggravation, the very

serious financial harm respondent caused his client by allowing these matters to go unattended. Specifically, she lost her $10,000 deposit. Therefore, we determine to impose a censure.

Members Baugh and Clark 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raymond J. Farrell
Docket No. DRB 15-153

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Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark						X
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			6			2

Ellen A. Brodsky
Chief Counsel