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Order
4/29/99

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-184

IN THE MATTER OF	:
BARRY J. BELMONT	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 23, 1998

Decided: December 11, 1998

Charles F. Kenney appeared on behalf of the District VA 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 the Board based on a recommendation for discipline filed by the District VA Ethics Committee ("DEC"). The eight-count complaint charged respondent with violations of *RPC* 1.5(c) (improper contingent fee), *RPC* 1.15(a) (failure to deposit client funds in a New Jersey bank), *RPC* 1.15(c) (improper endorsement of a settlement

check), *RPC* 1.16(d) (failure to turn over file to client), *RPC* 5.5(a) (failure to maintain a *bona fide* office) and *RPC* 5.5(b) (assisting a person not a member of the bar in the performance of activity constituting the unauthorized practice of law).

Respondent was admitted to the New Jersey bar in 1973. He has no disciplinary history.

* * *

Because respondent admitted virtually all of the allegations of the complaint, the facts are not in dispute. They are as follows:

Respondent practiced law with Michael S. Gressen in a partnership known as Belmont & Gressen ("the firm"). Gressen was admitted in Pennsylvania, but not in New Jersey. Respondent was not admitted in Pennsylvania. According to the letterhead, the firm had offices in Philadelphia and King of Prussia (Pennsylvania) and Wayne (New Jersey). Respondent acknowledged in his answer and at the ethics hearing that the New Jersey office was not a *bona fide* office, but the residence of his parents.

According to the complaint, Belmont & Gressen represented eight personal injury clients in New Jersey. The allegations concerning these matters are substantially similar: the firm incorrectly calculated its one-third contingent fee in all eight personal injury cases. Although *RPC* 1.5(c) requires attorneys to calculate their contingent fees from the net award

after deducting costs, Belmont & Gressen calculated its fees from the gross amount of the settlements. As a result, the firm overcharged its clients a total of $2,152.34. In addition, although respondent maintained an attorney trust account with an approved New Jersey banking institution, upon settlement of the eight personal injury actions, Belmont & Gressen deposited the settlement checks in a Pennsylvania attorney trust account, disbursing the proceeds to the respective clients from that account. In all cases, the settlement checks were endorsed by someone from the firm, in some cases without the client's written authorization, and deposited in the Pennsylvania bank account.

Although respondent was aware that Gressen was not a member of the New Jersey bar, respondent permitted Gressen to handle New Jersey matters. A discussion of each matter follows:

The Ralston Matter

Carmen Ralston retained the firm on June 5, 1990 to represent her in a claim for personal injuries sustained in an automobile accident in Fairfield, New Jersey. After respondent filed a complaint, Gressen attended an October 17, 1994 settlement conference at the Essex County courthouse. Without the client's authorization, Gressen endorsed a $97,850 settlement draft on November 14, 1995 and deposited the funds in the firm's Pennsylvania attorney trust account. On the same day, Ralston received a $64,123.91 net

settlement check from the Pennsylvania account. The firm overcharged Ralston $1,369.81 by failing to deduct costs of $1,190.42 and failing to include a $1,000 credit.

Also, although Ralston made repeated requests for her file, the firm did not turn over the file to her for more than eighteen months.

This count of the complaint charged respondent with violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), *RPC* 1.16(d), and *RPC* 5.5(a) and (b).

The Firmender Matter

Rita Ann Firmender retained Belmont & Gressen on October 19, 1990 following an automobile accident in Ringwood, New Jersey in which she sustained injuries. Respondent filed a complaint on September 16, 1993. On August 29, 1994, Firmender signed an authorization and settlement sheet allowing Gressen to endorse a $30,000 settlement check. The settlement check was endorsed and deposited in the firm's Pennsylvania attorney trust account on September 21, 1994. On September 29, 1994, Firmender received a $19,741.28 check from the firm. The firm overcharged Firmender $85.38 by failing to deduct costs of $258.72.

The complaint alleged violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), and *RPC* 5.5(a) and (b).

The DeGroat Matter

On January 3, 1991 Vanessa DeGroat retained the firm to represent her following a November 12, 1990 automobile accident in Wanaque, New Jersey. Respondent filed a complaint on October 30, 1992. DeGroat executed a settlement sheet on May 16, 1994 authorizing Gressen to endorse the $35,000 settlement check. On March 1, 1996, Gressen endorsed and deposited the settlement check in the firm's Pennsylvania attorney trust account. Gressen sent DeGroat a $24,606.47 settlement check on March 27, 1996. By failing to deduct costs of $569.83, the firm overcharged DeGroat $188.04.

The complaint alleged violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), and *RPC* 5.5(a) and (b).

The Gallagher Matter

On January 4, 1991 Susan M. Gallagher retained Belmont & Gressen to represent her in connection with personal injuries sustained in a December 14, 1990 automobile accident in Lincoln Park, New Jersey. Respondent filed a complaint on December 7, 1992. Gallagher signed an undated settlement sheet authorizing Gressen to endorse the $25,000 settlement check. On May 19, 1994, Gallagher received a $15,044.12 settlement check drawn on the firm's Pennsylvania attorney trust account. Because the firm failed to deduct costs of $318.60, Gallagher should have received an additional $106.09.

The complaint alleged violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), and *RPC* 5.5(a) and (b).

The Gilson Matter

On October 24, 1990, Cindy Gilson retained the firm to represent her in a personal injury action following an October 23, 1990 automobile accident in Pequannock, New Jersey. Respondent filed a complaint on September 30, 1992. Although Gilson signed a settlement sheet on May 16, 1994 authorizing Gressen to deposit the $10,000 settlement check, the firm had endorsed and deposited the check in its Pennsylvania account on May 9, 1994, seven days earlier. On May 19, 1994, Gressen sent Gilson a $6,422.86 settlement check. By failing to deduct costs of $243.81, the firm overcharged Gilson $81.19.

The complaint alleged violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), and *RPC* 5.5(a) and (b).

The Otte Matter

On January 4, 1991, Linda Otte retained Belmont & Gressen to represent her following a February 9, 1990 automobile accident in Bloomfield, New Jersey. Respondent filed a complaint on January 27, 1992. Gressen appeared for depositions of the parties on March 28, 1994. On June 21, 1994 Otte signed a settlement sheet authorizing Gressen to endorse the settlement check, sixteen days after the $30,000 settlement check had been

endorsed and deposited in the firm's Pennsylvania account. On July 1, 1994, Gressen sent Otte a $19,215.70 settlement check. The firm overcharged Otte $195.78 by failing to deduct costs of $587.93.

The complaint alleged violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), and *RPC* 5.5(a) and (b).

The Probst Matter

On November 27, 1989, Frank Probst retained Gressen to represent him in a personal injury matter after an October 31, 1989 automobile accident in Frankford Township, New Jersey. Respondent filed a complaint on October 16, 1991. On April 11, 1992 Probst signed a settlement sheet authorizing Gressen to endorse a $6,750 settlement check. The settlement check was endorsed and deposited in the Pennsylvania account on April 24, 1992. Gressen sent Probst a $4,100.05 settlement check on April 29, 1992. By failing to deduct costs of $179.05, the firm overcharged Probst $59.38.

The complaint alleged violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), and *RPC* 5.5(a) and (b).

The Farber Matter

On October 22, 1990, Judith D. Farber, a New Jersey resident, retained the firm following a slip-and-fall accident on October 6, 1990. Farber signed a settlement sheet on

October 6, 1992, authorizing Gressen to endorse a settlement check. On October 14, 1992 a $5,000 settlement check was endorsed and deposited in the firm's Pennsylvania account. On October 19,1992 the firm sent Farber a $3,133.33 settlement check. The firm overcharged Farber $66.67 by failing to deduct costs.

The complaint alleged violations of *RPC* 1.5(c), *RPC* 1.15(a) and (c), and *RPC* 5.5(a) and (b).

* * *

As mentioned above, respondent admitted the allegations of the complaint. Respondent testified that he stopped practicing law about two years before the ethics hearing and had no intention of practicing law in New Jersey. He maintained that the only New Jersey cases handled by Belmont & Gressen were the eight personal injury matters cited in the ethics complaint.

Respondent asserted that he had reimbursed every client the amount overcharged by the improper contingent fee calculations, even hiring a "skip tracer" to locate Rita Firmender, who had moved. He added that, in Pennsylvania, attorneys' fees are deducted based on the gross, not the net, recovery and that either Gressen or a paralegal, Kim Thompson, performed the calculations. Respondent pointed out that the funds were ultimately distributed to each client, albeit by way of a check from the Pennsylvania, rather than New Jersey, trust account.

With respect to the settlement sheets authorizing the firm to endorse checks, respondent contended that he was not aware that it was improper for an attorney to seek such

authorization. He declared that, in the *Ralston* matter, although an authorization form was submitted to the client, it was not returned. Respondent claimed that, at the time of the settlement, the attorney-client relationship with Ralston had deteriorated. He testified as follows with respect to the failure to turn over the file to the client:

> I insisted that the file be returned or turned over to the client and that did not take place immediately and that caused the termination of the partnership, if you will, or the decision not to do any further business with Michael Gressen on my part because he refused to turn over the file.
>
> There was a financial dispute with the new attorney for the Ralstons, and then Michael finally acquiesced and said I will turn it over, and I thought it had in fact been turned over. And I got further notice from [the new attorney] that he had not received it.
>
> At that point I physically went to the office where the file was and actually watched it be shipped out of the office.

Although respondent testified that at the time he was not aware of the instances in which Gressen appeared at a settlement conference in court and at depositions in New Jersey, respondent acknowledged that he did not properly supervise his partner Gressen.

* * *

The DEC concluded that respondent violated all of the *RPC*s with which he was charged, primarily based on respondent's admissions in the answer to the complaint. The DEC characterized respondent as candid and forthcoming, finding that the overcharges resulting from the fee miscalculation had been remedied and that no client had been harmed

by the *RPC* 1.15(a) and (c) violations. However, the DEC expressed concern that respondent appeared to have "lent his name and his status as a member of the bar of New Jersey to permit a non-New Jersey lawyer to practice in this state . . . Mr. Belmont was, then, essentially a front for an out-of-state lawyer's undertaking of a personal injury practice in New Jersey." The DEC found that respondent's conduct "rose beyond mere negligence, and constituted at least gross negligence." Relying on cases in which suspensions for a pattern of negligence or gross negligence ranged from three months to one year, the DEC recommended that respondent receive a six-month suspension and that, upon reinstatement, he demonstrate to the Office of Attorney Ethics ("OAE") that he is maintaining a *bona fide* office, proper trust accounts and proper methods of supervision and recordkeeping.

* * *

Following a *de novo* review of the record, the Board is satisfied that the DEC's finding of unethical conduct is supported by clear and convincing evidence. Indeed, respondent admitted all of the factual allegations in the eight-count complaint.

Respondent violated *RPC* 1.5(c) when the firm calculated its contingent fee based on the gross recovery without first deducting the costs. This practice, apparently acceptable in Pennsylvania, is not permitted in New Jersey. *R.* 1:21-7(d). Similarly, in accordance with *RPC* 1.15(a), the settlement checks should have been deposited in a trust account in New

Jersey, not in Pennsylvania. Also, respondent's failure to maintain a *bona fide* New Jersey office violated *RPC* 5.5(a). Furthermore, by knowingly permitting his partner to handle New Jersey files, respondent assisted another in the unauthorized practice of law, in violation of *RPC* 5.5(b). Lastly, although respondent did not participate in the failure to turn over Ralston's file, he is held responsible for his partner's violation of *RPC* 1.16(d).

The finding that respondent violated *RPC* 1.15(c) was erroneous. As pointed out by respondent's counsel, the prohibition from obtaining clients' authorizations to endorse settlement checks was eliminated in 1994. Specifically, in *Matter of ACPE Opinion 635*, 125 *N.J.* 181 (1991), the Court had ruled that attorneys may not routinely obtain such authorizations in personal injury matters, absent extraordinary circumstances. The New Jersey Department of Insurance subsequently adopted regulations requiring insurers to notify their insureds, in writing, at the time payments are made. With that safeguard in place, on April 25, 1994 the Court announced in a notice to the bar that attorneys in personal injury matters may use authorizations to endorse forms. In the *Firmender* and *DeGroat* matters, the authorizations were obtained after April 1994, in compliance with the Court's notice to the bar. In *Gallagher,* the settlement sheet was not dated and the settlement check was issued on May 10, 1994. It cannot be found, thus, by clear and convincing evidence that the settlement check was improperly endorsed. In the *Ralston* matter, the client failed to return the authorization form, while in *Gilson* and *Otte*, the authorization forms were signed seven and sixteen days, respectively, after the checks had been endorsed by Belmont & Gressen.

Finally, in *Probst* and *Farber*, the authorization forms were signed in 1992, before the change in procedure permitting their routine use. At most, the use of the authorization form before its official approval amounted to a technical violation of *RPC* 1.15(c), which requires attorneys to segregate funds in dispute.

The DEC found respondent guilty of gross negligence, although he was not charged with a violation of *RPC* 1.1(a). While respondent's counsel contended that respondent's failure to properly supervise his partner was negligent, rather than intentional, the complaint neither contained a charge of gross negligence nor recited sufficient facts to give respondent notice of the potential violation of that *RPC*. The Board, thus, was unable to find a violation of *RPC* 1.1(a).

Respondent's misconduct, taken separately, would ordinarily result in a reprimand. In *In re Mezzacca*, 120 *N.J.* 162 (1990), in ten matters the attorney calculated his contingent fee based on the gross amount of the recovery, in violation of *RPC* 1.5(c). In another matter, he failed to maintain trust funds in a trust account, in violation of *RPC* 1.15, resulting in the delay in payment to his client. In imposing a public reprimand, the Court balanced the mitigating factors (the attorney's candor and admission of wrongdoing) and the aggravating factors (a prior public reprimand and the attorney's continuing deficiencies from an earlier audit of his trust accounts).

In *In re Simms*, 151 *N.J.* 480 (1997), the attorney admitted that he endorsed his client's name on a settlement check and, after signing his client's name on a release,

acknowledged the "signature." The attorney conceded the impropriety of his conduct, explaining that he was trying to accommodate his client's request to obtain the settlement funds before an upcoming holiday. Despite the attorney's motives to help his client, he was reprimanded for violations of *RPC* 8.4(c) and (d).

For failure to return clients' files, in violation of *RPC* 1.16(d), reprimands have been imposed. *See In re Helt*, 147 *N.J.* 273 (1997) (attorney reprimanded for failure to return file and failure to cooperate with disciplinary authorities) and *In re Rosenblatt*, 118 *N.J.* 559 (1990) (attorney reprimanded for lack of diligence and failure to return file). Similarly, since *In re Kasson*, 141 *N.J.* 83 (1995), a reprimand is usually imposed for failure to maintain a *bona fide* office.

In this matter, respondent charged an improper contingent fee in eight matters; deposited settlement checks in those matters in a Pennsylvania trust account; endorsed his client's names on settlement checks, either with their authorizations – but before the approval of that procedure by the Court (two matters) – or without their authorizations (three matters, although in two of them the authorizations were signed shortly after the checks were deposited); failed to maintain a *bona fide* office in New Jersey; assisted his partner in the unauthorized practice of law; and failed to turn over a client's file. There are substantial mitigating factors. Respondent enjoyed a previously unblemished record for twenty-five years; he voluntarily withdrew from the practice of law more than two years before the ethics hearing; he tracked down and made restitution to all of the overcharged clients; although the

settlement funds were not deposited in an approved New Jersey banking institution, they were deposited in a Pennsylvania trust account and were safeguarded; respondent cooperated fully with the OAE, admitted his wrongdoing and expressed remorse; no harm resulted to his clients; respondent was not motivated by personal financial gain; more than six years have elapsed since respondent's misconduct; and most, if not all, of respondent's actions constituted technical violations and were not the product of greed or venality.

Based on the foregoing, the Board unanimously determined to impose a reprimand.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/11/98

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Barry J. Belmont
Docket No. DRB 98-184

Argued: July 23, 1998

Decided: December 11, 1998

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
Total:			9				

By Robyn M. Hill 12/14/98
Robyn M. Hill
Chief Counsel