

JP

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-104

IN THE MATTER OF :
STEVEN SCHARFETTER :
AN ATTORNEY AT LAW :

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

Decided: April 5, 1999

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 X Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On November 18, 1997 the DEC served a copy of the complaint on respondent by certified and regular mail at his residence in Morris Plains, New Jersey. The certified mail

receipt was returned indicating delivery on November 22, 1997. The signature is not legible. Respondent did not file an answer, whereupon this matter proceeded as a default.

Respondent was admitted to the New Jersey bar in 1986. He was privately reprimanded in 1990 for neglecting six matters and for misrepresenting the status of five of those matters to the members of his law firm. In October 1997 he was temporarily suspended for failure to release funds from the real estate closing of Corinne Sodano and her husband.

According to the complaint, in May 1996 the Sodanos retained respondent to represent them in the purchase of a house. At the closing, respondent directed the Sodanos to execute incomplete documents, which he notarized. Respondent completed the documents at a later point in time.

After the closing, respondent failed to file necessary documents, including the deed. He also failed to pay the realty transfer fee, although he had retained \$472.50 from the closing proceeds to pay the fee. Although the Sodanos attempted to contact respondent for more than one year, respondent failed to reply to their communications. Finally, the Sodanos retained another attorney to prepare and file a new deed. Also, they had to pay the realty transfer fee.

Respondent was charged with violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate with the client) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in his representation of the Sodanos.

Furthermore, respondent represented the Sodanos while he was ineligible to practice law due to his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, in violation of RPC 5.5(a) (unauthorized practice of law).¹

Finally, respondent was charged with failure to cooperate with the disciplinary system, in violation of RPC 8.1(b).

* * *

Service of process was properly made in this matter. Following a de novo review of the record, the Board found that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1). Respondent violated RPC 1.1(a), RPC 1.4(a), RPC 8.4(c), RPC 5.5(a) and RPC 8.1(b).

The Board made no findings on the alleged violation of RPC 8.4(c) for respondent's failure to remit the \$472.50 realty transfer fee, an issue that the Board determined to remand to the Office of Attorney Ethics ("OAE"). It was not clear from the complaint whether the DEC intended to charge knowing misappropriation of the funds.

¹ The complaint stated that respondent practiced while "suspended" for failure to pay the annual assessment. Practicing while on the ineligible list, however, does not equate with practicing while suspended. While both constitute violations of RPC 5.5(a), practicing law during suspension is a more serious ethics violation.

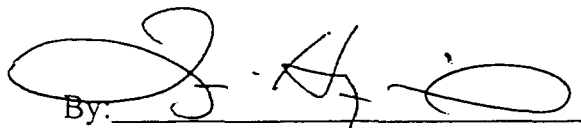
There remains the issue of discipline. For misconduct similar to that of respondent, a three-month suspension has generally been imposed. See In re Medford, 148 N.J. 81 (1997) (three-month suspension for gross neglect, lack of diligence, failure to communicate with the client, failure to promptly deliver funds to a client, practicing law while ineligible, failure to surrender the file to a client and failure to cooperate with the ethics system) and In re Beltre 119 N.J. 190 (1990) (three-month suspension for gross neglect, no bona fide office, practicing law while ineligible, failure to maintain attorney records and failure to cooperate with disciplinary authorities).

However, because of respondent's disciplinary history and his failure to answer the complaint, the Board unanimously determined to suspend him for six months. One member did not participate.

Respondent's suspension is to be prospective from the date of the Court's order. Although respondent has been temporarily suspended since October 1997 for his failure to release funds from the Sodanos' real estate closing, he should not be accorded any credit for that time.

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

Dated: 4/5/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

*DISCIPLINARY REVIEW BOARD
VOTING RECORD*

**In the Matter of Steven Scharfetter
Docket No. DRB 98-104**

Decided: April 5, 1999

Disposition: Six-Month Suspension

Members	Disbar	Six-Month 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:		8					1

By Robyn M. Hill 4/15/99
Robyn M. Hill
Chief Counsel