SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-044
District Docket No. VA-2015-0031E

IN THE MATTER OF	
JOHN R. DUSINBERRE	
AN ATTORNEY AT LAW	

Decision

Argued: June 16, 2016

Decided: November 9, 2016

Brian O. Lipman appeared on behalf of the District VA Ethics Committee.

Roy W. Breslow appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand filed by the District VA Ethics Committee (DEC). Respondent admitted having violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) and (c) (failure to communicate with a client), and RPC 8.4(c) (misrepresentation). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1974. He has no prior discipline.

The facts are as set forth in an October 5, 2015 disciplinary stipulation between respondent and the DEC.

Respondent is a sole practitioner. At the time that he engaged in the within misconduct, he was a partner with the law firm of Mandelbaum, Salsburg, Lazris & Discenza (MSLD), in West Orange. The stipulation addressed respondent's misconduct in four separate client matters.

In the first matter, respondent represented Anthony Domenick and 407-409 Summer Associates, LLC for a Paterson condominium development known as "Sandy Hill at Summer Street." The terms of the representation called for respondent to file a public offering statement (POS) with the New Jersey Division of Community Affairs (DCA) and to record a master deed in the county clerk's office.

Respondent told his client that he had filed the POS with the DCA and furnished him with a copy of a November 12, 2007 POS carrying registration number "04368." Respondent stipulated that he never filed a POS with the DCA. Rather, he had fabricated the POS and created a fictitious registration number; the DCA had never assigned a registration number to the Sandy Hill project.

Although respondent also failed to record the master deed, he either informed his client, or led him to believe, that he had done so.

In a second matter, respondent represented a client identified only as "Mr. Cerquirra" and "88 St. Francis LLC," regarding a condominium development project at 88 St. Francis Street in Newark. The representation required respondent to register the project with the DCA and to obtain a registration order.

Respondent informed the client that he had obtained a registration order for the project from the DCA. He also gave the client an October 27, 2008 letter, purportedly from DCA's Manager of the Planned Real Estate Department, Stewart P. Pallonis. Enclosed with that letter was an order of registration from the DCA carrying registration number 04487, and signed "Stewart P. Pallonis."

In fact, respondent never registered the 88 St. Francis Street project with the DCA. Rather, he had fabricated both the Pallonis letter and the registration order, signing Pallonis' name to both documents before giving them to the client.

In a third matter, respondent represented Sterling Properties (Sterling) for a Cedar Knolls condominium project known as "Viera at Hanover." The representation required

respondent to register the project with the DCA, but he failed to do so.

Respondent, nevertheless, led Sterling to believe that he had registered the project with the DCA, knowing that he had not done so. In reliance on respondent's false information, Sterling went forward with the project.

In a fourth matter, respondent represented Sterling for another condominium project in Piscataway. That representation, too, required respondent to register the project with the DCA. Again, respondent failed to do so. Respondent led Sterling to believe that the Piscataway project, too, was registered with the DCA, knowing that it was not. Relying on respondent's statements, Sterling proceeded with the development project.

Respondent testified at the DEC hearing about mitigating factors that affected him at the time of his misconduct. Shortly after passing the bar in 1975, respondent joined a small law firm known at the time as "Mandelbaum Salzburg." He became a partner in 1979. Over the years, the law firm grew, became known as MSLD, and had more than sixty attorneys when respondent left, in 2009.

During respondent's entire thirty-four-year career at MSLD, he reported to Barry Mandelbaum, the managing attorney, and twelve years his senior. Respondent described Mandelbaum as a

"benevolent despot" and a "mentor." Respondent was never "encouraged" to generate business for the firm. Rather, he tended to work on legal matters that Mandelbaum generated.

Respondent described his relationship with Mandelbaum as a stressful one. Mandelbaum would berate respondent publicly, place notes on respondent's door about perceived failings, and subject him to "105 decibel," public "dress downs," all of which were extremely embarrassing.

As the law firm grew larger, younger attorneys became partners. By the mid-2000s, some of those partners had come to expect respondent to complete work on projects that they had generated, placing additional pressure on respondent to perform.

Several years before respondent engaged in the within misconduct, MSLD established an executive committee to manage the law firm. Respondent perceived that the new arrangement rewarded some of the younger, income-generating attorneys, at his expense. Feeling exposed, he became "terrified" about losing his job. At that juncture, he grew even more reliant on Mandelbaum for protection:

> So my desire and drive to please him became extremely strong. And I can't tell you the number of times when I would have an issue with a client, I would hear the client five minutes later on the phone with Barry and then I would hear Barry's footsteps stomping down the hall to basically dress me down or

> yell at me and to confront me, or whatever it might be very publicly.
>
> And it was extremely upsetting and got to the point where I went from a lawyer who loved to go to work every day to a lawyer who dreaded pulling into the parking lot of my law firm, counting whose cars were in to try and decide whose work I should be doing that day so that I wouldn't get yelled at or -- or, you know, almost -- I almost use the word bullied, although I'm an adult and was an adult at the time, and it's a hard concept to have, but it's the desperate situation I found myself in.
>
> [T20-10 to T21-2.][1]

Worried about being "kicked out" of MSLD, respondent felt tremendous pressure to complete tasks on time, according to schedules that other attorneys prepared for him. Also pressing was the fear that, because he was over sixty years old and had never been in another legal setting, he could not strike out on his own.

The record before us is not clear about the exact timing of respondent's fraudulent acts, but he testified that everything came to a head in 2009. It appears, however, that respondent provided the falsified documents to his clients in these matters sometime between 2007 and early 2009. In one particular paragraph in the January 21, 2016 hearing panel report, the

---

[1] "T" refers to the transcript of the October 7, 2015 DEC hearing.

panel specifically noted that, "[a]s 2009 (the year of the misconduct) approached, respondent found himself under immense pressure to fulfill his obligations to clients . . . ."[2]

Respondent produced a June 28, 2012 letter-report from Roy C. Grzesiak, Ph.D. Dr. Grzesiak treated respondent in a sequence of about sixteen psychotherapy sessions between April 13 and November 19, 2009, as well as a two-hour follow-up session on June 21, 2012.

Dr. Grzesiak found that, although respondent had no psychiatric illness or psychosis, his behavior revealed a specific disorder, Dependent Personality Disorder, DSM-III-R. Respondent and the doctor traced the problem back to respondent's childhood. Respondent, the younger of two brothers, saw his parents physically and mentally abuse his older brother. They also expected perfection from the older boy. Respondent, seeing this as a child, went out of his way to avoid confrontation with his parents. Consequently, he developed a personality of confrontation avoidance that followed him into adulthood. According to Dr. Grzesiak, it was this aspect of respondent's personality that caused him to spend so much of his time avoiding confrontations with Mandelbaum, "who had assumed a

---

[2] MSLD filed the ethics grievance on April 13, 2009.

parental oversight [role] within [respondent's] psyche." Dr. Grzesiak concluded that respondent's actions in these matters "were proximally related to his personality disorder."

Respondent expressed deep remorse for his actions, and believed that he may have engaged in this wrongful conduct in order to facilitate his own demise at MSLD:

> And this has been a real -- it's been a tough time for me. Those were dark years. I look back on them very remorsefully. I just wish it hadn't been that way. After hours of talking to a professional about it, the suggestion was even made that I may have even set this situation up in some way so that I wouldn't have to admit failure and leave the firm, that it would make me leave and do what I should have done because I'd set it up to do wrong.
>
> [T21-9 to 14.]

According to respondent, he is much more relaxed now that he has his own law practice, regulates his own workload, and "controls [his] own destiny." His mental health also has improved because he obtained treatment in 2009. Respondent believes that leaving MSLD has added many years to his life.

Respondent advanced several other mitigation factors. He paid significant sums of money to right his wrongful acts. He estimates that he has paid a combined total of $200,000 to his former clients, the DCA for fines, and MSLD for its $100,000 insurance deductible. He completely depleted his 401(k) account,

and his life savings, and borrowed additional funds to make the parties whole. At the time of the DEC hearing, respondent was within $8,000 of paying the last of those debts, which are to reimburse MSLD.

Respondent also has served the legal community throughout his career. For the past twenty-three years, he has chaired the Essex County Bar Association's real property committee. He is also a past trustee of the Essex County Bar Association.

For the past thirty years, respondent has been an elder in his church, and has been involved in charitable organizations and "other forms of public service." He presently serves as North Caldwell's planning board attorney.

Finally, respondent has a pristine ethics history since his admission to the bar more than forty years ago.

The DEC concluded that respondent violated all of the RPCs charged in the complaint and to which he stipulated. Specifically, the DEC found that respondent failed to prepare and file documents needed in the four real estate transactions, in violation of RPC 1.1(a), RPC 1.1(b), and RPC 1.3; provided clients with false information about their matters, in violation of RPC 1.4(b) and (c); and forged documents and misrepresented to clients that he had filed them, in violation of RPC 8.4(c).

The DEC took into account the considerable mitigation that respondent provided at the hearing: his forty years without prior discipline; the enormous pressure from multiple sources at MSLD to perform; his having suffered from a previously undiagnosed personality disorder that adversely affected his decision-making under pressure; his deep remorse; his repayment to the parties of about $200,000, using all of his life savings and additional borrowed sums to do so; his service to the legal community and his church; and his cooperation with ethics authorities by readily admitting his misconduct in this matter.

Respondent's counsel, who has known respondent for more than thirty years, urged the imposition of only a reprimand, noting that a term of suspension at his age would force him to stop practicing permanently. Counsel characterized respondent's misconduct, in the context of his forty-plus years of practice, as a "sidestep."

As previously noted, the DEC recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent stipulated that, in four separate real estate matters, he failed to prepare and file documents that the DCA required before it would approve his clients' construction

projects. Respondent's failure to take the action necessary to have the projects approved, in all four matters, amounted to lack of diligence and gross neglect, violations of RPC 1.3 and RPC 1.1(a), respectively. Those four instances of neglect, when viewed together, form a pattern of neglect, a violation of RPC 1.1(b).

In addition, respondent failed to inform his clients about important events involving their development projects, and failed to arm them with information sufficient for them to make informed decisions about the representations. Respondent, therefore, is guilty of the stipulated violations of RPC 1.4(b) and (c), respectively.

Respondent's most serious misconduct involved his document fabrication, forgeries, and lies to his clients. In the Sandy Hill matter, he prepared a false POS, provided it to the client, and then lied to the client that he had properly registered the project. Respondent also misrepresented, either overtly or by his silence, that he had filed the master deed with the county clerk, when he had not done so.

In the 88 St. Francis matter, respondent prepared two false documents: a false DCA registration order and a letter purportedly from the DCA. Respondent forged a DCA official's signature to both the order and the letter, then gave copies of

those documents to the client to demonstrate that the project had been properly registered, when it had not.

In the Viera at Hanover matter, respondent failed to register the project with the DCA and then lied to the client that he had done so. In the Piscataway matter, a second project for the same client, respondent engaged in the same misconduct, lying to the client about having registered the project. In both matters, the client apparently moved ahead with the projects, unaware that it had no DCA approval to proceed. By his multiple misrepresentations, and his fabrication and forgery of documents, respondent violated RPC 8.4(c).

Misrepresentations to clients ordinarily require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). The sanction imposed on attorneys who, in addition, have lied to clients or supervisors and fabricated (and/or forged) documents to conceal their mishandling of legal matters, has ranged from a reprimand to a long-term suspension, depending on the specific facts of each case, including the extent of the wrongdoing, the harm to the clients or others, and the presence of mitigating or aggravating circumstances. See, e.g., In re Bedell, 204 N.J. 596 (2011) (reprimand for attorney who represented two passengers for injuries sustained in an automobile accident; after the clients refused settlement offers

for their injuries, the attorney fabricated individual releases for both clients, reflecting the offered amounts ($17,500 and $15,000); he then signed the clients' names, attempting to mimic their signatures, and signed his own name as a witness to the signature on each release, knowing that neither client had signed it; in addition, the attorney took the jurat on both releases, falsely indicating that his clients had personally appeared before him and signed the documents; when the clients later confirmed with the attorney their rejection of the settlement offers, the attorney failed to inform them that he had sent the executed releases on which he had forged their signatures, witnessed them, and affixed jurats; mitigation included the attorney's admission of wrongdoing and lack of prior discipline); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the Office of Attorney Ethics about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Brollesy, 217 N.J. 307 (2014) (three-month suspension in a consent to discipline matter for an attorney who misled his client, a Swedish pharmaceutical company, that he had obtained visa-approval for one of the

company's top-level executives to begin working in the United States; although the attorney had filed an initial application for the visa, he took no further action thereafter and failed to keep the client informed about the status of the case; in order to conceal his inaction, the attorney lied to the client, fabricated a letter from the United States Embassy, and forged the signature of a fictitious United States Consul to it, in violation of RPC 8.4(c); violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) also found; mitigation included the attorney's twenty years at the bar without prior discipline and his ready admission of wrongdoing by entering into a disciplinary stipulation); In re Yates, 212 N.J. 188 (2012) (three-month suspension for attorney who allowed the statute of limitations to expire on a medical malpractice claim and hid that fact from the client and his firm by stalling all communications with the client, until eventually fabricating a $600,000 settlement agreement; in mitigation, the attorney had a thirty-year career with no disciplinary record and cooperated with the OAE by entering into a stipulation); In re Kasdan, supra, 115 N.J. 472 (three-month suspension for misconduct in six matters, including numerous misrepresentations to a client that a complaint had been filed, and preparation and delivery of a false pleading to the client; in another case, the attorney concealed from the

client the fact that the case was dismissed due to her failure to answer interrogatories; she then repeatedly misrepresented the status of the case and fabricated trial dates to mislead the client; in two other cases, a real estate closing and a custody matter, the attorney ignored the clients' numerous requests for information; in two other real estate matters, she engaged in gross neglect when closing title without securing payment of the purchase price from her clients; she also delivered to the seller's attorney a trust account check that she knew had been drawn against insufficient funds); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client, the attorney prepared a motion for sanctions against the witness, which he showed the client but never filed with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to inform the judge of the witness' failure to appear at the deposition; the attorney was also found guilty of a pattern of neglect, lack of

diligence, failure to communicate with clients, failure to comply with discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and a pattern of misrepresentations; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re Morell, 180 N.J. 153 (2004) (reciprocal discipline matter; one-year suspension for attorney who told elaborate lies to the client about the status of the case and fabricated documents, including a court notice and a settlement statement for his clients' signature); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months suspended; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the Courts a fictitious complaint to mislead the client that a lawsuit had been filed; the attorney was also found guilty of lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice); In re Alterman, 126 N.J. 410 (1991) (two-year suspension for attorney who was overwhelmed during his successive employment with two multi-member law firms and neglected several matters; to conceal his inaction, the attorney lied to his clients that the cases were

proceeding apace, fabricated documents to mislead his supervisors and the clients that the matters were progressing normally, and misrepresented to a judge that he had authority to settle a suit on behalf of a client; in the last instance, when confronted by his superiors, the attorney denied rumors that the matter had been settled and denied knowledge of the draft settlement agreement; he finally admitted his misconduct when his superiors threatened to telephone his adversary; he was also found guilty of failure to withdraw from, or to decline, representation, practicing law while ineligible, and failure to cooperate with disciplinary authorities by not filing an answer to an ethics complaint; in mitigation, the attorney testified that his work was unsupervised and that he suffered from psychological illness; although a causal link was found between the attorney's acts of misconduct and his psychological problems, the abominable nature of his behavior merited a two-year suspension); In re Penn, 172 N.J. 38 (2002) (three-year suspension, in a default matter, for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney misrepresented that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to

ethics officials; the attorney also practiced law while ineligible); and In re Meyers, 126 N.J. 409 (1992) (three-year suspension for attorney who prepared and presented to his client a fictitious divorce judgment in order to conceal his failure to file a complaint for divorce for about two years; failed to file a motion to vacate default after the husband filed a complaint for divorce; failed to inform his client that the husband had filed a complaint for divorce; lied to the client that the husband's action was just a re-examination of equitable distribution and that he had missed the trial date due to a calendar error; misled the client into believing that she had been divorced for those two years and that all issues attendant to the divorce had been resolved; the attorney then asked his client to misrepresent to the court that the phony divorce judgment had been merely a draft and then the attorney misrepresented to a court intake officer that the fabricated divorce judgment had been a mere draft and that his client had misunderstood its significance; the attorney also made other misrepresentations to his client and covered up the divorce action filed by the husband; as a result of the attorney's gross neglect, the client lost her claim to the husband's pension and the ability to claim the couple's son as a dependent for tax purposes).

Here, respondent's misconduct is somewhat comparable to that of the attorneys in Bedell (reprimand) and Brollesy (three-month suspension). Bedell, like respondent, fabricated multiple documents involving two clients, when settling their cases without their authorization; he forged the clients' signatures to those documents and "witnessed" them; the attorney then took the jurat on the false releases and failed to inform his clients about his actions. Respondent's misconduct is, however, more serious than Bedell's, for it encompassed four matters and involved the fabrication of documents and forgery of the signature of an official. In Brollesy, the attorney consented to a three-month suspension for a single fabrication and forgery. Like respondent, Brollesy misled his client with the aid of a fabricated document upon which he affixed the signature of a phony United States Consul. Like respondent, he did so in order to hide his inaction, and, like respondent, he lied to the client about his actions. Brollesy and respondent were found guilty of similar violations – RPC 8.4(c), RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Brollesy also had no prior discipline in twenty years at the bar (forty years for respondent) and, like respondent, readily admitted his wrongdoing by entering into a disciplinary stipulation. Brollesy's actions were found to be an aberration, a mitigating factor urged here, as well.

Respondent's conduct is also somewhat similar to that of the attorney in Yates, supra, who was suspended for three months for fabricating a $600,000 settlement agreement after missing the statute of limitations in the case; in mitigation, Yates had a thirty-year career with no disciplinary record and cooperated with the OAE by entering into a stipulation.

In our view, respondent's misconduct merits more than a reprimand and is most similar to the conduct of Brollesy and Yates, both of whom received three-month suspensions. We conclude, on the one hand, that respondent's forgery of a DCA manager's signature was not quite as serious as Brollesy's forgery involving a U.S. Embassy or Yates' fabrication of a $600,000 settlement agreement. On the other hand, respondent is guilty of other ethics infractions in a total of four matters.

There is also significant mitigation for our consideration. Respondent was open and sincere at the DEC hearing about feeling "pushed around" over the course of his legal career, and about the extreme pressure he felt before engaging in the aberrant behavior present in these matters. After thirty-four years with MSLD – his entire career – respondent finally "cracked" under the enormous pressure of multiple task masters and engaged in behavior that, when viewed in the context of his otherwise unblemished forty-year legal career, was aberrant. Moreover,

respondent suffered from a previously undiagnosed personality disorder that adversely affected his decision-making under pressure; has expressed his deeply-felt remorse; has repaid the parties approximately $200,000, which represented his entire life savings, as well as additional borrowings, to make the parties whole; has served well the legal community and his church for decades; and has fully cooperated with ethics authorities, readily admitting his misconduct. Finally, as noted, respondent has enjoyed an otherwise long, unblemished legal career.

Under the totality of the circumstances, and given the sheer weight of respondent's mitigation, we determine that a censure is the appropriate sanction for respondent's misconduct.

Vice-Chair Baugh was recused. Members Hoberman and Rivera 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 John R. Dusinberre
Docket No. DRB 16-044

Argued: June 16, 2016

Decided: November 9, 2016

Disposition: Censure

MEMBERS	Censure	Recused	Did not participate
Frost	X		
Baugh		X	
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera			X
Singer	X		
Zmirich	X		
Total:	6	1	2

Ellen A. Brodsky
Chief Counsel