SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-055

IN THE MATTER OF :

PAUL H. SEIDENSTOCK :

AN ATTORNEY AT LAW :

Decision

Argued: September 18, 1997

Decided: February 17, 1998

Mark H. Lipton appeared on behalf of the District VI Ethics Committee.

Respondent appeared pro se.

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 VI Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1987. At the time of the alleged misconduct, he was employed with a law firm in Jersey City. Respondent has no prior ethics

history.

In 1993 the disciplinary authorities in the State of Delaware forwarded a grievance to the Office of Attorney Ethics alleging misconduct by respondent while admitted pro hac vice in Delaware. The grievance became the basis for the complaint filed in this matter. The Delaware authorities have not investigated the charges, but they have indicated their intention to seek reciprocal discipline based upon discipline imposed in New Jersey.

* * *

The complaint alleged violations of RPC 1.1(a)(gross neglect); RPC 1.3 (lack of diligence); RPC 3.2(failure to expedite litigation); RPC 1.4(a)(failure to communicate); RPC 3.4(c)(knowingly disobeying an obligation under the rules of a tribunal); and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation).

Richard D. Allen, Esq. ("grievant"), a Delaware attorney, represented E.I. DuPont deNemours and Company in a matter litigated in the Superior Court of Delaware in 1993. Respondent represented a group of defendant insurance companies, having been admitted pro hac vice for that purpose. At the time respondent was an associate with the New Jersey law firm of Sheft and Sheft.

The facts surrounding respondent's handling of the case first came to light by way of

respondent's affidavit filed in support of a motion to vacate a discovery order adverse to his clients, the insurance companies.[1]

According to the affidavit, on August 20, 1992 Special Discovery Master Harvey Rubenstein issued a decision on DuPont's motion to compel the insurance companies to respond to DuPont's third set of discovery requests. The insurance companies had thirty days to produce information, as directed in the special master's August 20, 1992 decision. On September 11, 1992 respondent wrote to his clients, advising them of that decision and informing them that he would contact them to discuss the required production of documents.

Subsequently respondent contacted grievant to request a thirty-day extension of time to comply with the special master's decision. That request was granted. Respondent, however, did not contact his clients during the initial thirty-day extension to begin the process of compliance with the special master's decision.

From time to time respondent requested additional extensions from grievant, which were granted. In the affidavit respondent explained his failure to contact his clients:

> During that period, I did not contact our clients to gather the information which had to be produced, although I repeatedly assured the partner in charge of the litigation, Marjorie Mintzer, that I was in touch with our clients and that [grievant] had assured me that he would grant additional extensions. Part of my failure to act was due to illness during the month of November and my hope was that DuPont would consent to an

[1] The affidavit was dated March 21, 1993 and was the culmination of Sheft and Sheft's efforts to get the case back on track after it discovered problems in the case.

additional extension to allow me to prepare our client's production.

[Exhibit C-3 at 2]

On December 22, 1992 grievant told respondent that no further extensions would be granted. Grievant indicated his intention to file a motion for sanctions if respondent did not comply with the special master's August 20, 1992 decision by January 4, 1993. Respondent did not inform his clients or Mintzer of grievant's ultimatum. In fact, respondent continued to assure his clients and Mintzer that DuPont had granted additional extensions of time to comply with the special master's order.

During the relevant time period, correspondence and pleadings related to the litigation were sent to respondent at Sheft and Sheft's New Jersey office. It was respondent's normal practice to forward materials to Mintzer at the New York office for her review. Respondent did not, however, follow this practice in connection with correspondence between him and grievant about the insurance companies' compliance with the special master's order. Respondent later admitted hiding from Mintzer and his clients, his failure to gather the information from the insurance companies or to produce it to DuPont.

Respondent also concealed his inaction in another aspect of the case. On December 8, 1992 DuPont served a notice of deposition and a subpoena duces tecum on American International Group, Inc., ("AIG"), one of the defendant insurance companies. Respondent informed Mintzer of the deposition notice and forwarded a copy to her. AIG authorized respondent to file objections and a motion to quash the subpoena.

On December 29, 1992, at Mintzer's request, respondent contacted grievant to ask for an extension to file the motion to quash. Grievant refused. Despite this refusal, respondent misrepresented to Mintzer and AIG that the time had been extended to January 21, 1993. Respondent never filed the motion to quash, which had already been approved by AIG. Respondent did not disclose this fact to Mintzer or AIG. Between January 21, 1993 and March 26, 1993 respondent continued to assure Mintzer and AIG that DuPont had not filed responsive papers to the motion to quash and had, in fact, requested a series of extensions to file opposition papers.

On January 14, 1993 DuPont filed a motion for sanctions against the insurance companies for their failure to comply with the August 20, 1992 discovery order, as well as a motion for sanctions and the enforcement of the subpoena served on AIG. Those motions were served on the insurance companies at Sheft and Sheft's New Jersey office. Respondent did not send the motion papers to Mintzer for her review or notify any of the insurance companies that the motions had been filed.

Thereafter grievant contacted respondent to arrange a hearing date for DuPont's motions. Respondent agreed to a hearing date of March 12, 1993. He attended the hearing without the knowledge of Mintzer or the authorization of the insurance companies. Indeed, even after the hearing on DuPont's motion for sanctions, respondent continued to assure Mintzer and his clients that DuPont had not filed opposition to his motion to quash. As late

as March 26, 1993 respondent advised Mintzer and his clients that DuPont's opposition papers were not due until April 1, 1993.

Beyond those facts contained in respondent's March 1993 affidavit, few additional facts about the case can be gleaned from respondent's testimony at the DEC hearing. Respondent confirmed, however, that the facts contained in his earlier affidavit were true.

Respondent made several observations in mitigation of his actions. He contended that he was a relatively inexperienced attorney at the time the events took place and that he was at a loss to explain his behavior. He testified that he had bronchitis in the Fall of 1992; he did not, however, blame his actions on the illness. Furthermore, respondent indicated that this was a major insurance litigation case in which DuPont had sued over one hundred insurance companies

> for insurance coverage for various toxic waste that it had in various parts of the country covering the period from — I believe it was the 1930's through the 1970's. So of course, there were a tremendous number of insurance companies. Not only the primary insurers, but also they sued all their excess carriers, which in any one year they may have had fifteen or twenty or thirty insurance companies participating in their years of coverage.

Respondent indicated that he no longer practices law in New Jersey and intends to retire from the practice in this state. He is now employed with the Supreme Court of New York, Appellate Division, as a research attorney. According to respondent, his present employer is unaware of the instant proceedings.

Lastly, respondent did not know and the record does not reveal what, if any, harm came to the insurance companies as a result of his actions.

* * *

The DEC found violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 3.2, RPC 3.4(c), and RPC 8.4(c). The DEC recommended the imposition of a reprimand.

* * *

Upon a de novo review of the record, the Board is satisfied that there is clear and convincing evidence that respondent's conduct was unethical.

In his answer, respondent admitted the allegations of the complaint. The Board found that respondent had undoubtedly showed a lack of diligence and gross neglect by failing to meet numerous deadlines for the production of documents, under the special master's discovery order, in violation of RPC 1.1(a) and RPC 1.3. Likewise, respondent admittedly failed to inform Mintzer or the insurance companies of the problems in the case. Respondent chose to cover up his mistakes by failing to supply essential information to his clients, in violation of RPC 1.4(a). In addition, respondent's failure to gather the information required in the special master's order and to expedite the litigation on behalf of the insurance

companies was in violation of RPC 3.2. Finally, respondent admitted misrepresenting the status of the case to Mintzer and the insurance companies, in violation of RPC 8.4(c).

With regard to the alleged violation of RPC 3.4(c), the Board found no clear and convincing evidence that respondent knowingly disobeyed an obligation under the rules of a tribunal. Therefore, the Board dismissed that charge.

It appears that respondent "locked-up" during the discovery stage of the litigation. Instead of seeking help from Mintzer, he set about to construct a broad cover-up of his initial failure to comply with discovery orders. To his credit, respondent did not attempt to excuse his conduct, once it came to light. He candidly admitted his wrongdoing and cooperated with the DEC. Moreover, respondent was young and inexperienced at the time of his transgressions. In the absence of proof that his conduct harmed the insurance companies in any way, the Board unanimously determined to impose a reprimand for respondent's misconduct. In re Cervantes, 118 N.J. 557(1990)(public reprimand imposed where the attorney showed a lack of diligence and failure to communicate in two cases and misrepresented the status of one of the matters); In re Martin, 120 N.J. 443(1990)(public reprimand imposed where the attorney grossly neglected six matters and misrepresented in one matter that the case was pending when he knew that it had been dismissed); and In re Mahoney, 120 N.J. 155(1990)(public reprimand imposed where the attorney grossly neglected four matters, failed to communicate with his client and misrepresented the status of his work).

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 2/17/98

LEE M. HYMERLING
Chair
Disciplinary Review Board