

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-334

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IN THE MATTER OF  
ROBERT E. RIVA,  
AN ATTORNEY AT LAW

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Decision

Argued: November 20, 1997

Decided: April 13, 1998

Irvin M. Freilich appeared on behalf of the District VB 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 VB Ethics Committee ("DEC"). This matter was originally before the Board in August 1996 as an ethics appeal. The Board determined to reverse and remand the case for a hearing on charges of gross neglect, RPC 1.1(a), and lack of diligence, RPC 1.3.

At the DEC hearing, respondent raised several issues, claiming that he was denied due process, that the remand by the Board was improper and that he did not have access to the complete record before the Board. The DEC noted that, although respondent's claims had been preserved for appeal, he had been given full opportunity to review the entire file in the matter, to develop a full record and to supplement the record with any relevant documents.

Respondent also raised several issues before the Board, including that he had not received some of the supplemental materials in the matter until the last day of the hearing and that, therefore, he was "effectively barred" from responding to information that he did not know existed or that was in possession of the Board.

This matter is before the Board for a de novo review of the record. Finding that respondent has had ample opportunity to examine all materials now before the Board, the Board determined to proceed with its review of the matter. Clearly, respondent may seek the Court's review of the constitutional challenges he raised before the DEC and the Board, which have been preserved pending the review of the merits of the disciplinary matter by the Court. R.1:20-16(f)(2).

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Respondent was admitted to the New Jersey bar in 1979. He maintains a law office in Short Hills, New Jersey. Respondent has no history of discipline.

The grievant in this matter, Robert Palceski, and his wife, Janet, owned and operated a company known as R & J Pool Decks, Inc. The company was formerly known as R & J Concrete, Inc., but had been dissolved based on respondent's advice, in order to avoid problems with a former employee, Joaquim Pires. Pires had been employed by R & J Concrete, Inc. until his employment was terminated by the Palceskis in July 1992. Pires hired an attorney, Robert Sherman, who wrote to the Palceskis about a potential claim. The Palceskis retained respondent to review the matter. Apparently, because Pires had been engaged in some improper activities involving the company, respondent was able to convince Sherman that, if Pires sued the Palceskis, they would file a counterclaim. It was about that time that respondent advised the Palceskis to dissolve the corporation. Nothing more was heard from Sherman.

By November 1992 Pires had retained a new attorney, Novlet Lawrence. Lawrence wrote to the Palceskis on November 11, 1992 demanding an explanation for Pires' termination. Again, the Palceskis contacted respondent. According to Robert Palceski, respondent told him that he had contacted Lawrence to inform her that, if Pires filed an action against the Palceskis, they, in turn, would file a counterclaim. Thereafter, the Palceskis believed that the matter had been informally resolved because they heard nothing further from respondent. In January 1993, however, they were served with a summons and complaint. The Palceskis again turned to respondent for legal assistance.

When respondent spoke to Lawrence about the matter, she agreed to enter into a stipulation to extend the time to file an answer. Respondent prepared an answer, counterclaim and a stipulation extending the time to answer. He forwarded them to Lawrence, who executed the stipulation and returned it to respondent. After respondent realized that the stipulation was improperly dated, he conferred with Lawrence, who authorized him to change the date. According to respondent, he told Lawrence that that practice was improper and advised her to prepare another stipulation with a correct date.

At the DEC hearing, respondent explained that he believed from the tenor of his conversation with Lawrence that there would be a voluntary dismissal of the matter. Lawrence testified, however, that she had never made such a representation because Pires was "adamant" about pursuing the claim. Respondent never filed a stipulation extending the time to answer, or filed an answer and/or a counterclaim.

Robert Palceski testified that he spoke to respondent almost on a weekly basis. According to Robert Palceski, respondent had told him that he had filed the documents and that, because respondent had heard nothing further from Lawrence, the case would just "go away." Respondent also told Robert Palceski that, because Lawrence had been unresponsive to his telephone calls, his tactic was to let the case "lie, and it will die." Robert Palceski stated that respondent had told him that he would file a motion to have a default entered on the counterclaim and would move to have the complaint dismissed. Robert Palceski added that respondent had informed him that, if they waited eight months, they would be entitled

to a dismissal, which the court would "rubber-stamp."

For her part, Lawrence testified that, after she sent the letter to the Palceskis, she heard nothing further; she, therefore, filed the complaint. Afterwards, she called respondent several times and left a number of messages on respondent's answering machine between March and May 1993 to determine whether respondent was planning to file an answer. Eventually, Lawrence called the court and learned that respondent had not filed an answer. Thus, on May 12, 1993 Lawrence filed a request for the entry of default. Although the cover letter to the court indicated that respondent had been served with a copy of the request for default, respondent denied that he had received it. An affidavit of service prepared by Lawrence's secretary indicated that she had mailed, by regular mail, a copy of the proposed default order to respondent on July 26, 1993. Respondent also denied receiving a copy of that document.

A judgment by default was entered in September 1993. The judgment and writ of execution were served personally on the Palceskis by the constable.

Robert Palceski stated that, although he had requested copies of the documents and motions prepared in connection with the case, respondent had failed to comply with his requests, making up a number of excuses as to why he could not give him the documents.

Robert Palceski's version of the events was as follows:

Respondent had agreed to leave some papers at the Palceskis' residence on September 22, 1993. When someone came to their door that evening, the Palceskis believed it was

respondent; instead it was a constable with a writ of execution on the default judgment. A default had been entered against the Palceskis' company for \$1.7 million. Robert Palceski stated that the trucks from his business were seized, his bank accounts were frozen and the constable sought to seize his cars and other personal assets. While the constable was there, Robert Palceski telephoned respondent. Respondent told the constable that the writ was a mistake; it had been entered against the wrong company. Thereafter, respondent assured the Palceskis that he would go to court the next day to secure the return of their assets. Later that evening, respondent went to the Palceskis' home to obtain copies of the relevant papers to prepare an emergent motion to vacate the default. According to Janet Palceski, respondent assured them that he was working on the motion. However, when the Palceskis requested a copy of the document, respondent tried to put them off. Finally, when Robert Palceski threatened to drive to respondent's office to pick up the document, respondent agreed to "fax" him a copy. According to Robert Palceski, all that respondent "faxed" was fourteen "blank" pages.

Mrs. Palceski explained that two days later, September 24, 1993, respondent appeared in court and obtained the release of the Palceskis' trucks and tools only. Thereafter, respondent filed a motion to vacate the default. The matter was heard on October 8, 1993. The judge noted that respondent's papers were deficient and that additional information was needed to articulate a "meritorious defense." It was not until December 1993, though, that the judge reviewed the matter again. The reason for the delay is unknown.

From September 1993 through December 1993 respondent told the Palceskis, on a number of occasions, that he was conducting research on a meritorious defense and was consulting with other attorneys. By the time that a full hearing on the motion was to be held, the Palceskis had retained a new attorney, James Bell.

Respondent was unable to produce any documentation to show that he had performed any legal research, written any briefs or filed anything with the court in behalf of the Palceskis. The only papers in respondent's file were the motion to vacate the default and the accompanying certification, which proved to be inadequate.

The litigation between Pires and the Palceskis was eventually settled for approximately \$11,500. As of the date of the DEC hearing, there were other pending lawsuits arising from the writ of execution against the Palceskis.

When Robert Palceski was questioned as to why he had filed an ethics grievance, he replied as follows:

[W]hen you put faith and your trust in an individual who represents a Court assigned to protect you [sic]. I don't think anyone would believe that this person would lie, misguide you, falsify statements in as far as records that are being produced in your behalf to defend yourself, and this is not just one isolated event that took place. It went on week after week, month after month, just repetitive lies in reference to motions and law that we were supposed to be protected by, actions that [respondent] said he was taking on our behalf, that he was consulting with this other attorney. . . . He kept taking money from us as time went on. If the case was dead like he said, why would he keep taking money?

\* \* \*

I filed this because what he did was wrong and that [sic] he won't go and do this to someone else in the future . . . Somebody's got to stop him from doing this. What we went through was terrible. I can't tell you emotionally what this has done to us. . . . We don't want this to happen.

For his part, respondent acknowledged that, even though he believed that he had orally resolved the problem with both Sherman and Lawrence, he did not obtain anything in writing from either attorney. He also admitted that, even though he knew that a stipulation of dismissal was necessary to resolve the matter, one was never obtained. As to the blank pages that he "faxed" to the Palceskis, he claimed that he might not have properly transmitted the document or might have put the pages in the machine backwards.

Once the Palceskis discharged respondent and retained Bell, Bell attempted to obtain the file from respondent. Respondent did not turn over the file to Bell for at least three weeks. It contained little: the cover letter to Lawrence, the draft stipulation extending the time to answer and the answer and counterclaim, none of which had been filed with the court. According to Robert Palceski, Bell believed that the file was incomplete; Bell, therefore, made inquiries to the court, only to discover that the court, too, did not have the documents that respondent claimed to have prepared.

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The DEC found that respondent's conduct violated RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence) and that respondent did little to advance his clients' interests, other than prepare a proposed form of answer, counterclaim and stipulation extending the time to answer. The DEC concluded that respondent's inaction caused the entry of the default judgment and the execution on his clients' assets.

The DEC found that, notwithstanding respondent's assertions that Lawrence had not provided him with notice of the default, Lawrence's testimony and the copies of the documents with regard to the judgment showed otherwise. Although the DEC did not make a finding as to whether respondent was actually on notice of the default, it found that his total lack of effort to protect his client's interests, in the face of a known, pending and unanswered lawsuit, constituted gross negligence and failure to act with reasonable diligence.

The DEC also found that, after the default was entered, respondent failed to diligently and reasonably represent his clients. According to the DEC, all that respondent did was to file a deficient motion to vacate the default and prepare an accompanying certification that, on its face, failed to set forth a meritorious defense. The DEC noted that, once respondent became aware of the \$1.7 million dollar default, he had a duty to do far more. As the DEC remarked, "the entire matter remained in an unresolved state of confusion until respondent was dismissed" and replaced by another attorney.

The DEC recommended the imposition of a reprimand.

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Upon a de novo review of the record, the Board is satisfied that the evidence clearly and convincingly establishes that respondent's conduct was unethical. The Board concurs with the DEC's findings that respondent's conduct violated RPC 1.1(a) and RPC 1.3.

Respondent's gross negligence started when he failed to timely file an answer to the complaint, followed by his failure to file the stipulation to extend time to answer, failure to obtain anything in writing from his adversary concerning a voluntary dismissal and failure to check on the status of the case. Respondent's negligence did not end with the entry of the default judgment. Respondent failed to act with the alacrity that the situation required to have the default vacated. Although he managed to have some of the businesses' property released from the writ of execution, the remainder of the assets, including the Palceskis' personal assets, remained encumbered until the Palceskis retained new counsel.

In another case, In re Bashnir, 143 N.J. 406 (1996), an attorney grossly neglected a litigated matter resulting in a default and the entry of a \$41,000 judgment against his clients. The Court imposed a reprimand. The attorney failed to propound interrogatories or seek discovery, did not attend his clients' deposition, failed to convey dates of trials and depositions to his clients in writing and failed to take certain actions in his clients' behalf because his clients had not given him the funds to do so. The Board found that the attorney's derelictions resulted from his youth and inexperience. The Court confirmed the Board's

determination and found violations of RPC 1.1(a) and RPC 1.3. See also In re Clark, 142, N.J. 475 (1995) (reprimand for gross neglect and lack of diligence where attorney allowed more than one year to pass with no information from the court regarding his client's case, resulting in the dismissal of the matter).

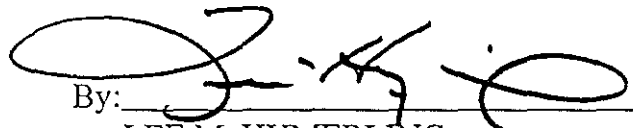
Here, the Board has given strong consideration to respondent's unblemished record of almost two decades and to the aberrational nature of his misconduct. A five-member majority voted to impose a reprimand. Three members voted to impose a three-month suspension. One member did not participate.

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

Dated: \_\_\_\_\_

4/13/98

By: \_\_\_\_\_



LEE M. HYMERLING

Chair

Disciplinary Review Board