

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-148

IN THE MATTER OF
PIERCE L. BUTLER,
AN ATTORNEY AT LAW

Decision

Argued: June 19, 1997

Decided: October 15, 1997

Brian Gillet appeared on behalf of the Office of Attorney Ethics.

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 disciplinary stipulation filed by the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1981 and maintained a law office at 570 West Mount Pleasant Avenue, Suite 1, Livingston, New Jersey 07039.

On October 29, 1992 respondent received a private reprimand for failing to obtain a canceled mortgage document from the county clerk in a real estate matter and for failing to cooperate with the disciplinary authorities in violation of RPC 1.1(a), RPC 1.15 and RPC 8.1(b). Respondent has no other ethics matters pending.

By entering into the stipulation with the OAE, respondent waived the filing of a complaint and admitted violations of RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); R.1:21-6 (recordkeeping); and RPC 1.15(d) (safekeeping property).

* * *

On or about November 29, 1994, Gerald R. Bouchal, Esquire ("grievant"), attorney for American Title Insurance Company, Inc., filed a grievance alleging that respondent had failed to record closing documents and to satisfy or discharge prior mortgages in seven separate real estate matters. By letter dated December 1, 1994, the OAE scheduled a demand audit of respondent's books and records. The audit was conducted on December 16, 1994, with a follow-up interview on January 17, 1995. On March 24, 1995, when grievant notified the OAE of yet another matter, the OAE conducted a follow-up interview on June 22, 1995.

The OAE's review of respondent's real estate files and trust account records revealed that respondent had engaged in a pattern of neglect by failing to record mortgages and mortgage discharges in a timely manner. The OAE compiled a list of client matters (Figure One below) with closing dates and recording dates, demonstrating a pattern of neglect in a total of nine real estate transactions:

Figure One

CLIENT	CLOSING*	RECORDING DATE
King (Exhibits 4A & 4B)	03/11/93	11/94
Riordan (Exhibits 5A & 5B)	04/26/93	05/08/95**
Butler (Beach Haven) (Exhibits 6A & 6B)	05/06/93	12/13/94
Butler (Florham Park) (Exhibit 7A & 7B)	05/06/93	12/14/94
Fallat (Exhibits 8A & 8B)	05/11/93	01/12/95**
Horrigan (Exhibits 9A & 9B)	05/19/92	12/13/94
Bury (Exhibits 10A & 10B)	10/08/93 ¹	02/27/95**
Costa (Exhibits 11A & 11B)	11/08/93	11/94
Adams (Exhibits 12A & 12B)	12/21/93	12/09/94

* client ledger cards and HUD-1 settlement statements annexed as exhibits.

**unrecorded as of the December 16, 1994 demand audit

The demand audit also revealed that respondent unnecessarily delayed payment of the title policy premiums in all nine matters, delayed payment for surveys conducted in two matters (King and Riordan) and delayed payment of certain miscellaneous fees due the mortgage company for certain closings (Figure Two below):

¹The settlement statement in Bury (Exhibit 10A) denotes a closing date of 10/12/93.

Figure Two

CLIENT	CLOSING DATE	TITLE PREM. PAID	MISC. FEE PAID	SURVEY
King	03/11/93	09/21/93		10/13/94
Riordan	04/26/93	07/09/93	04/07/95④	06/09/94
Butler	05/06/93	07/19/93	07/19/93①	
Butler	05/06/93	07/19/93	07/19/93①	
Fallat	05/15/93 ²	**		
Horrigan	05/19/92	09/21/93		
Bury	10/31/93 ³	12/19/94	**②	
Costa	11/08/93	08/26/94①		**
Adams	12/21/93	12/19/94	12/09/94③	

** not paid as of 12/16/94

- ① Administrative Changes - Prudential
- ② Fourth quarter taxes
- ③ Realty Transfer fee
- ④ Filing fees - Superior Court and Ocean County

In the Bury matter, although the closing took place on October 12, 1993, respondent did not satisfy a mortgage to the Treasurer, State of New Jersey, until December 15, 1994 (Exhibit 10B).

Although the discharge of mortgage in Bury was subsequently satisfied on January 30, 1995, respondent did not file that discharge until June 19, 1996 (Exhibit 13). In addition, although respondent had sufficient funds in his trust account to satisfy the fourth-quarter taxes, those taxes

²The settlement statement in Fallat (Exhibit 8A) denotes a closing date of 5/15/93.

³The settlement statement in Bury (Exhibit 10A) denotes a closing date of 10/12/93.

were not paid until after the demand audit (Exhibit 10B).

In the Fallat matter, which closed on May 11, 1993, although respondent satisfied two outstanding mortgages to National Community Bank in a timely fashion, he did not file discharges of mortgage until August 1, 1996 (Exhibits 14A & 14B).

In the Jones and the Butler (Florham Park) matters, which closed on May 6, 1993, although respondent satisfied three outstanding mortgages held by Orange Bank, Chemical Bank (Merrill Lynch Mortgage Co.) and Barclay's American Mortgage Co. (Horizon Bank, N.A.) in a timely fashion, he failed to file the discharge of mortgage regarding the Orange Bank mortgage until December 4, 1995 (Exhibit 15A). As of the date of the Board hearing, only the Barclay's American Mortgage Co. (Horizon Bank, N.A.) discharge of mortgage had not been filed. By letter dated June 16, 1997, respondent represented to the OAE that this discharge was expected to be in hand for filing within ten days.

In the Adams matter, which closed on November 21, 1993, although respondent satisfied the seller's outstanding mortgage to Key Corp. Mortgage Co. in a timely fashion, he did not file a discharge of mortgage until June 24, 1996 (Exhibit 16).

* * *

Respondent stipulated that he had neglected all of the within matters and that he had failed to comply with the recordkeeping rule. Indeed, respondent admitted violations of RPC 1.1(a)(gross neglect); RPC 1.1(b)(pattern of neglect); RPC 1.3(lack of diligence); RPC 1.15(d)(safekeeping property); and R.1:21-6 (recordkeeping requirements).


Pursuant to R.1:20-15(f), the only remaining issue is that of discipline. The OAE recommended the imposition of a reprimand and possibly a proctorship for an unspecified period of time.

Discipline ranging from a reprimand to a short term of suspension is generally appropriate in matters involving gross neglect and lack of diligence, oftentimes coupled with other violations, such as failure to communicate, recordkeeping violations, misrepresentation or failure to cooperate with the disciplinary authorities. In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed where the attorney showed gross neglect and lack of diligence in two matters, with a failure to communicate in a third matter); In re Martin, 120 N.J. 443 (1990) (reprimand imposed where the attorney displayed a pattern of neglect in six matters with misrepresentation to the client in one of the matters. The attorney had a prior three-month suspension); and In re Mahoney, 120 N.J. 155 (1990) (reprimand imposed where the attorney showed a pattern of neglect, lack of diligence and failure to communicate in four matters, misrepresentation in one matter and a failure to maintain trust account records in one matter).

In the instant case, respondent grossly neglected a total of nine matters and admitted numerous recordkeeping violations. In aggravation, respondent received a private reprimand in 1992. There are no mitigating factors to consider. Accordingly, the Board unanimously voted to impose a reprimand, with the additional requirement of a two-year proctorship. Two members did not participate.

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

10/15/97
Dated



LEE M. HYMERLING
Chair
Disciplinary Review Board