SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-203
District Docket No. XIV-2009-0501E
and XIV-2009-0502E

IN THE MATTER OF	:
DONALD H. LARSEN	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 18, 2012

Decided: December 11, 2012

Maureen Grasso Bauman appeared on behalf of the Office of Attorney Ethics.

Glenn R. Reiser 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 discipline (reprimand) filed by the District IIA Ethics Committee (DEC), having proceeded on a stipulation of facts, in lieu of formal complaint. Respondent stipulated to having violated RPC 1.5(b) (failure to memorialize the rate or basis of

the fee) and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE is requesting a reprimand. We agree that a reprimand is the appropriate discipline in this case.

Respondent was admitted to the New Jersey bar in 1983. He has no prior discipline.

On September 7, 2009, respondent self-reported to the OAE that he had engaged in certain misconduct in the present two client matters.

I. The Laurent Matter – District Docket No. XIV-2009-0501E

In April 2001, Robert Laurent and respondent entered into a written fee arrangement, whereby respondent would represent Laurent in a dispute with an employer, at a rate of $250/hour. Laurent gave respondent a $5,000 retainer toward his fee. Laurent was to be billed on a monthly basis.

On June 21, 2001, respondent filed a lawsuit on Laurent's behalf, captioned Laurent vs. Pena, et al. The lawsuit was to prosecute claims against TAP Capital Management, TAP's principal, Theodore A. Pena, and Raymond James Financial Services, Inc. (RJ) for unpaid insurance commissions due and owing to Laurent, as well as for misrepresentation, conversion

and violation of the New Jersey Conscientious Employee Protection (Whistleblower) Act.

In October 2001, respondent's adversary advised him that Laurent had signed a "Registered Representative Agreement" with RJ, in 1999, requiring Laurent to arbitrate any disputes with RJ before the National Association of Securities Dealers (NASD).

In November 2001, respondent advised Laurent that the claim must be brought in front of NASD and that he would dismiss the lawsuit, before filing a claim with NASD.

On February 1, 2002, respondent filed a stipulation of dismissal as to TAP and RJ in connection with the lawsuit, which was dismissed on April 6, 2002. Respondent, however, never filed a claim with NASD on Laurent's behalf.

Rather than tell Laurent that he had never filed a NASD claim, respondent lied to him, until June 2007, about the status of the claim. He even fabricated stories about having conducted depositions, hearings and motion practice, so as to deceive Laurent that he was actively pursuing his claim. In 2008, the lawsuit file was destroyed.

At the DEC hearing, Laurent testified that respondent's neglect of his matter and lies about the representation had a

significant impact on him. He wondered if respondent understood the toll that his inaction and lies had taken:

> THE WITNESS: I see that the exhibits [sic] you've got some character references and so forth and you helped some people, some clients and I can understand that but I just wonder if the stipulations give enough detail as to the nature of the misrepresentations, lies that were told over a seven-year period directly to me and my wife and over a two-year period to my attorneys, my new attorneys. Amazing the lies that were told of meetings that were never had, never held rather of people real and fictitious and I wonder if the panel gets an appreciation for how the lies influence the way we ran our own lives, our anticipation of things to come. I wonder if Mr. Larsen has any idea of how he's hurt my family and I wonder if the stipulations even go into the detail of where these lies were told.
>
> The people I work in the office, Mr. Larsen had spoken to them a few times, lies there. I ended up giving incorrect information to the brokerage firms that I work with about the NASD lawsuit that was not filed, me thinking it was filed. The State of New Jersey Banking and Insurance Company or insurance department rather were lied to on a meeting that we held in front of them. It goes on and on over a nine-year period. I have to wonder when I would get up during that nine-year period and look in the mirror and shave and say I have to go to work and

> conduct my business honestly, I wonder if Mr. Larsen did the same thing. That's all I have to say.
>
> [T8-22 to T10-4.][1]

Although Laurent testified that a forensic accountant estimated $400,000 in lost earnings as a securities broker, due to respondent, Laurent settled a malpractice action on July 9, 2010 for $100,000, from the malpractice carrier of respondent's then-law partner. Laurent testified that respondent had carried no malpractice insurance and that respondent executed a consent judgment in favor of Laurent for an additional $100,000, which respondent is expected to pay over time.

Laurent also acknowledged that his new attorneys were able to file NASD claim before the expiration of the statute of limitations. According to Laurent, his attorneys had warned him that the wrongful termination claim was "weak."

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[1] "T" refers to the transcript of the November 16, 2011 DEC hearing.

II. The Ollearis Matter – District Docket No. XIV-2009-0502E

At some point before July 19, 2002, Joseph A. Ollearis retained respondent to sue his employer, Profit Recovery Group (PRG), for breach of contract. Ollearis gave respondent $5,000 as a retainer. Respondent was to bill his time at a rate of $250/hour.

Respondent had not previously represented Ollearis. The parties did not enter into a written fee agreement for the representation.

On July 19, 2002, respondent filed a complaint captioned Ollearis vs. The Profit Recovery Group International, Inc. and Barnes & Noble College Bookstores, Inc. He thereafter failed to have it served on the defendants. On February 8, 2003, the court dismissed the complaint for lack of prosecution.

Respondent attempted several times to have the complaint reinstated, but the court denied his motions. From 2003 to 2009, respondent failed to tell his client that the complaint had been dismissed. He lied to Ollearis about its status, even going so far as to fabricate stories about having conducted depositions, hearings, and having engaged in motion practice. The lies were told in an effort to mislead the client that the matter was proceeding apace.

In 2004, the case file in Ollearis vs. Profit Recovery International. Inc. and Barnes & Noble College Bookstores, Inc. was destroyed.

Respondent admitted that he misrepresented the status of both the Laurent and Ollearis matters to his clients, violations of RPC 8.4(c). Respondent also admitted that his failure in the Ollearis matter to set forth in writing the rate or basis of his fee, violated RPC 1.5(b).

For his part, respondent acknowledged his wrongdoing at the ethics hearing and stated that, at about the time he took on the Laurent and Ollearis representations, his wife had abruptly announced that she was leaving him and taking their children out of state with her. He immediately became embroiled in a hotly contested custody battle for the children. When asked how that affected his law practice, he stated:

> A. I probably shouldn't have been practicing law. To be honest, I just – at least with these two cases again -- how can you -- I did the wrong thing and I don't know how else to explain it. Now looking back at it because I did get help, looking back at it, I realize but you know what happened, honestly it was pride. I'm sitting here, it's tough to admit you screwed up. Instead of going to a client and saying you know what, I have all these things hitting me, I screwed up your case, I'm sorry. I didn't. I made up this -- I was a very good attorney

> back then, not anymore but -- and I knew all this stuff, I knew litigation, I knew this stuff and I had cases going on and going on and as I mentioned in this thing, I got embroiled and, I don't know, these are not defenses, there is no excuse for this. I got embroiled in these lasik cases. I thought it was a blessing in disguise but there was 26 cases.
>
> Q. When you say lasik cases, what are you talking about?
>
> A. You know, the lasik vision, it was a huge -- I don't know, it was in the law journal and it was against the founder of it, you know, and what happened was initially worked out good but the cases had gone on so long that I had stopped paying me and I was literally working, not getting paid, trying to pay my matrimonial attorney and, again, these ones -- what happened is, again, this all happened at the same time so these two cases like the same thing happened, both cases same thing, I think they were filed about a month apart.
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> [T34-8 to 35-17.]

Respondent also testified that he had become depressed, began eating excessively, gained considerable weight, and developed sleep apnea. He was diagnosed with depression by a psychiatrist, Dr. Michael Robinson, and is being treated on an ongoing basis with medication and therapy sessions with Dr. Robinson.

As a precaution against any future mistakes, respondent has limited his practice to municipal court work, because those cases "are real easy to do." Respondent also expressed deep remorse for his actions, recognizing that remorse is little consolation to his clients, but that he was sorry for his misconduct.

In further mitigation, the stipulation cited respondent's full cooperation throughout the OAE investigation, and his lack of prior discipline. Respondent also provided three letters from individuals attesting to his fine character.

The OAE urged the imposition of a reprimand, citing In re Frey, 192 N.J. 445 [sic] (2007), In re Gale, 195 N.J. 001 [sic] (2007), In re McNamara, 179 N.J. 342 (2004), and In re Hall, 176 N.J. 515 (2003), without explaining their relevance.

The DEC found that, in both the Laurent and Ollearis matters, respondent neglected the cases (for which he was never charged with gross neglect) and then lied to the clients about the status of the matters, violations of RPC 8.4(c). In the Ollearis matter, the DEC found a violation of RPC 1.5(b) for respondent's failure to utilize a written fee agreement.

In mitigation, the DEC considered that respondent self-reported his misconduct and saved disciplinary resources by

entering into a stipulation in lieu of a complaint; that he expressed remorse for is actions; that he did not seek financial gain; and that he presented letters from persons attesting to his good character.

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

Respondent was retained to sue the employers of two separate clients, Laurent and Ollearis. Although he filed complaints in both matters, he thereafter failed to properly prosecute the clients' claims.

In Laurent, after properly dismissing the lawsuit, respondent neglected to file a claim with the NASD. He then lied repeatedly to the client about the status of the NASD claim from about April 2002 to June 2007, fabricating stories about all of the supposed actions that he had taken on his client's behalf. In so doing, respondent violated RPC 8.4(c). In aggravation, respondent grossly neglected the case, allowing it to languish for five years, while he lied about his inaction.

In the Ollearis matter, respondent filed a complaint for his employee client, but failed to serve the complaint on the employer and other defendants. After the complaint was dismissed

for lack of prosecution, respondent tried to have it reinstated. When that was unsuccessful, he engaged in a cover-up, from February 2003 to 2009, making up stories for the client about all of the supposed actions that he had taken to prosecute the claim. Respondent's stories were knowingly false, a violation of RPC 8.4(c). In aggravation, respondent also neglected the case.

Finally, in Ollearis, respondent failed to set forth, in writing, the nature or basis of his fee, a violation of RPC 1.5(b).

Misrepresentation to clients requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (attorney misrepresented to his client for a period of four years that he was working on the case; the attorney also exhibited gross neglect and lack of diligence and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170

N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

Here, respondent also failed to set forth the rate or basis of his fee in the Ollearis matter, a non-serious infraction for which an admonition would ordinarily suffice. See, e.g., In the Matter of Joel C. Seltzer, DRB 09-009 (June 11, 2009); In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009); and In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007).

In aggravation, respondent grossly neglected his clients' matters, a violation present in all of the reprimand cases cited above. Therefore, the addition of that element here does not, on its own, enhance the appropriate level of discipline beyond a

reprimand. In addition, in the Laurent matter, there was financial harm to the client.

In mitigation, respondent has no prior discipline since his admission to the New Jersey bar in 1983 and he expressed remorse for his misconduct.

For all of it, we determine that a reprimand sufficiently addresses respondent's transgressions.

Member Doremus 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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Donald H. Larsen
Docket No. DRB 12-203

Argued: October 18, 2012

Decided: December 11, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Censure	Reprimand	Admonition	Did not participate
Pashman				X		
Frost				X		
Baugh				X		
Clark				X		
Doremus						X
Gallipoli				X		
Wissinger				X		
Yamner				X		
Zmirich				X		
Total:				8		1

Julianne K. DeCore
Chief Counsel