

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 94-432

IN THE MATTER OF :
MARIE CHEN :
AN ATTORNEY AT LAW :
_____ :

Decision of the
Disciplinary Review Board

Argued: February 1, 1995

Decided: July 7, 1995

Stephen B. Rubin appeared on behalf of the District XIII
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
public discipline filed by the District XIII Ethics Committee
("DEC"). The three-count formal complaint, stemming from two
separate grievances filed against respondent, charged her with
violations of RPC 1.1, RPC 1.4 and RPC 8.4 (although the complaint
did not cite a particular section, the hearing panel report
referred to RPC 8.4(a)). The complaint also charged respondent
with a violation of RPC 5.5(a) (lack of a bona fide office).

Respondent was admitted to the New Jersey bar in 1986. She
has no prior ethics history. She is a sole practitioner in Bound
Brook, New Jersey.

THE DAVINCI MATTERS- District Docket No. XIII-93-034E

Anthony and Carol DaVinci retained respondent in 1992 to set aside a default judgment in a foreclosure action on their house and to file a joint bankruptcy petition. In July 1993, respondent obtained an order vacating the default and reopening the matter. However, she failed to pursue the matter. When Anthony DaVinci became discouraged by respondent's lack of activity and lack of replies to his inquiries, he requested the return of his files. Respondent did not comply with his request.

In February 1994, DaVinci was surprised to receive a notice of a sheriff's sale from the bank's attorney. Although DaVinci tried to retain other counsel, each of the three attorneys contacted requested a retainer of \$15,000 and refused to start representation until DaVinci obtained his files and records from respondent. T87, 94¹. DaVinci then sought a postponement of the sale to May 16, 1994.

DaVinci finally reached respondent by telephone, at which time they discussed respondent's continued representation for reopening the Chapter 7 bankruptcy petition. They also discussed the return of DaVinci's file. Indeed, respondent returned the file within a week or two of that call. Concurrently, DaVinci retained another law firm, which filed a Chapter 13 bankruptcy petition on an undetermined date. After both petitions were filed, the foreclosure action was automatically stayed. DaVinci stated that, although he received a discharge in bankruptcy under Chapter 7, the

¹ T refers to the transcript of the DEC hearing on September 22, 1994.

mortgage on his house was challenged by the mortgagee. At the time of the DEC hearing in September 1994, respondent and DaVinci were still trying to resolve the representation and substantive issues.

* * *

DaVinci also retained respondent in 1992 to obtain an expungement of his criminal record so he could apply for certain licensing and bonding. DaVinci paid respondent \$180 in November 1992. Respondent had misplaced the file, but four weeks before the DEC hearing she began to return DaVinci's documents to him so he could retain other counsel. In an undated letter to the DEC presenter, respondent offered to follow through on the expungement. Exhibit D-10.

* * *

In a third matter, DaVinci retained respondent on an undisclosed date to file suit against Warren County and Washington Township for false arrest and imprisonment, stemming from his appearance as a witness in a friend's matter, in July 1991.

Respondent prepared a complaint, which was dated July 20, 1993. She filed it timely in the Chancery Division of Somerset County in July 1993, but it was later rejected on the basis that it had been filed in the wrong jurisdiction. Thereupon, respondent mailed the complaint to the Law Division of Warren County in September 1993. However, the DEC presenter stated that he had

telephoned the Warren County Clerk, on November 18, 1993, and that there was no record of the filing of the complaint. Apparently, there was some confusion about whether the matter should be filed in the Law or the Chancery Division. If in Chancery, the original filing would have been proper because the sole Chancery judge for Warren, Somerset and Hunterdon counties sat in Somerville (the Somerset County seat). T107-109, Exhibit D-9. The record, however, appears to indicate that the correct court was the Warren County Law Division.

THE SIMON MATTERS - District Docket No. XIII-93-033E

Karse Simon retained respondent to represent him in the cash purchase of a condominium in Bridgewater Township. For some time, in the spring and summer of 1993, Simon worked at an office across the hall from respondent's office, until Simon moved to another location. During the time they were in the same building, respondent often talked to Simon in the late afternoon. T49-50.

The closing occurred on August 13, 1993 at another attorney's office in Manville. A RESPA form was completed. Exhibit S-1. After the closing, Simon called respondent's office a few times, but was unable to speak with her. T14-17. In 1994, Simon received unpaid sewer bills for four quarters of 1993, which bills he paid in full on August 8, 1994 to avoid a tax sale. A tax sale notice, addressed to the prior owner, had been delivered to Simon. Exhibit S-2.

On August 8, 1994, the DEC presenter ordered and later obtained a tax search showing title still in the prior owner's name, almost a year after the closing. Exhibit S-4. Simon did not receive from respondent a recorded deed or a title policy. The evidence at the DEC hearing included a title commitment indicating only "tax searches ordered." (The record does not reveal whether respondent received and reviewed the tax search prior to closing. The RESPA form shows no adjustment between the buyer and the seller for sewer taxes.)

Respondent acknowledged that she did not make a copy of Simon's deed before mailing it to the county clerk; she "never used transmittal letters [but] simply put it in with a check;" she had an inadequate system to back up files from the computer hard drive to floppy disks, which she discovered when she had a computer breakdown. She had no secretary and operated on a tight budget.

* * *

Also in 1993, Simon retained respondent to file a motion for the equitable distribution of marital assets, an issue left undecided when he had been divorced a few years earlier. Respondent told Simon that the papers had to be refiled and that the case would be heard in June 1993. Simon had not heard from respondent since his August 1993 closing. Eventually, Simon called the court and was advised that the matter had been dismissed without prejudice. In evidence are a motion, dated January 12, 1993 and

marked "filed" April 12, 1993, and an order, dated May 10, 1993, denying the motion because no supporting affidavits were filed. Exhibit S-5.

THE BONA FIDE OFFICE MATTER

A question about respondent's "real" office location was brought to the attention of the DEC by Judge Leonard N. Arnold, in a September 1993 letter addressed to the Somerset County Bar Association. Exhibit O-1. The judge became concerned when respondent, appearing before him on a motion, explained that she was appearing for another attorney, Reaz H. Jafri, and that they shared the use of a desk in the offices of a mortgage corporation. That office is located at North Gaston Avenue, Somerville. Respondent had rented P.O. Box 8625 in Somerville and later had given it up. (The record does not indicate the dates).

As noted by the DEC, the office space that respondent used at the mortgage company did not have any signs to indicate that respondent maintained an office there. She often used the space after 5:00 p.m., as an accommodation to clients who worked during regular business hours. (Respondent saw clients in real estate transactions at that office). The DEC also noted respondent's admission that she was not frequently there and that there was no responsible person at that location to answer telephone calls and to provide information as to her whereabouts. In addition, respondent did not have the use of a receptionist, fax or photocopying machines, and secretarial services.

Respondent's name was not listed on the building directory or on the office door. Finally, the office itself contained nothing to suggest that respondent maintained a presence there.

Respondent asserted that she also kept an office at her home on Linden Avenue, Bound Brook, New Jersey. However, there was no secretary or responsible individual at that location to answer the phone. All calls were picked up by an answering machine. Furthermore, she had no Lawyers' Diary listing at that address or sign indicating that she had an office at that location.

* * *

The DEC found clear and convincing evidence of violations of RPC 1.1(b) (pattern of neglect), RPC 1.4(a) (failure to keep the clients reasonably informed) and RPC 8.4(a) (violating the RPCs). Although the hearing panel report did not distinguish among the matters, it may be reasonably inferred from the report and the record that respondent was found guilty of the same unethical conduct in the three DaVinci matters and the two Simon matters. (The reference to RPC 8.4(a) is not clear and may have been used as a catch-all violation).

The DEC also found that respondent did not maintain a bona fide office and failed to respond to a demand for information from the disciplinary authorities, in violation of RPC 5.5(a) and RPC 8.1(b), respectively. The latter finding was presumably based on

respondent's failure to timely turn over the DaVinci file to her clients, as requested by the DEC presenter. Exhibit D-6.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's conclusions that respondent acted unethically are fully supported by clear and convincing evidence.

Respondent displayed gross neglect and failure to communicate with her clients in two matters, in addition to failure to maintain a bona fide office and to cooperate with the ethics system. The Board's sense, however, is that respondent is not venal. Most of her problems could have been avoided or at least minimized with proper office procedures, which she lacked. Indeed, her testimony indicates that she is articulate, candid and experienced on many legal issues.

The Court ordinarily imposes discipline ranging from a public reprimand to a term of suspension where the ethics violations have been a mixed combination of gross neglect, pattern of neglect, failure to communicate and failure to cooperate with the disciplinary authorities. Respondent's ethics offenses are most analogous to cases resulting in a reprimand. In re Wall, N.J. (1990) (public reprimand for lack of diligence and failure to communicate in two cases, gross neglect in a third matter, and improper sharing of fees with non-attorney); In re Gordon, 121 N.J.

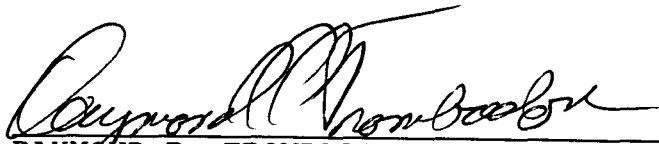
399 (1990) (public reprimand for gross neglect and failure to communicate in two cases).

Accordingly, the Board has unanimously determined to reprimand respondent for her misconduct. In addition, within sixty days of the receipt of this Decision, respondent shall submit proof to the Board that she is in compliance with the bona fide office requirements. Lastly, for a period of six months following the Supreme Court order disciplining her, respondent shall be supervised by a proctor approved by the Office of Attorney Ethics.

Respondent is required to reimburse the Disciplinary Oversight Committee for administrative costs in connection with this matter.

Dated:

7/7/95



RAYMOND R. TROMBADORE
Chair
Disciplinary Review Board