

authorities. On June 20, 1994, the New York Appellate Division entered an Order of Disbarment after respondent failed to answer the petition, notwithstanding the fact that he had been granted an extension of time to submit an answer. Thereafter, respondent filed a Notice of Motion to Vacate Default Judgment, attributing his inaction to his belief that the Appellate Division would only order sanctions and not disbarment. On October 28, 1994, the Appellate Division issued an order denying respondent's motion.

The underlying charges against respondent concerned his representation of two clients, Mr. Sood and Mr. Hoffman. In 1986, Mr. Sood retained respondent to assist him in recovering monies due to his jewelry business. Although the case was dismissed in December 1987 for failure to prosecute with reasonable diligence, respondent made no effort to reopen the matter and over the next several years failed to advise Mr. Sood that his case had been dismissed. Instead, respondent continued to inform Mr. Sood and one of Mr. Sood's creditors that the case was still pending, when he knew or should have known that the statement was false. After contacting the court and learning that the case had been dismissed, Mr. Sood retained new counsel, who requested the file from respondent. Respondent refused to forward the file unless Mr. Sood executed a release stating that the contents of the file would not be used against him in a malpractice action, despite the fact that the statute of limitations was due to expire.

In the second matter, respondent was retained by Mr. Hoffman, in February 1987, to represent him in a personal injury suit

against the city of Clifton. Between 1987 and 1992, Mr. Hoffman made numerous phone calls to respondent concerning the progress of his case, but respondent failed to answer many of the calls. On the occasions that respondent was reached, respondent advised his client that the case was progressing. In 1992, Mr. Hoffman learned that, although a notice of claim had been filed, respondent had failed to serve the summons and complaint, thereby allowing the statute of limitations to expire. Respondent never advised Mr. Hoffman of these events.

Furthermore, in or about 1987, respondent used legal stationary indicating that he was in a formal partnership with another attorney and that this business arrangement was a professional corporation, when, in fact, no partnership was established between them, nor was a professional corporation ever formed.

Although respondent was required to promptly notify the OAE of his disbarment in New York, pursuant to R. 1:20-7(a) (currently R. 1:20-14(a)), he failed to do so.

The OAE has requested the imposition of a six-month to one-year suspension.

* * *

Upon review of the full record, the Board has determined to grant the OAE's motion for reciprocal discipline. The Board adopts the findings of the New York Supreme Court, Appellate Division,

that respondent neglected his clients, in violation of RPC 1.1; failed to act with reasonable diligence in representing his clients, in violation of RPC 1.3; engaged in conduct that involved dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c); failed to turn over files after being discharged, in violation of RPC 8.4(d); engaged in conduct designed to limit his liability to a client for malpractice, in violation of RPC 1.8(h); and failed to cooperate with the disciplinary authorities, in violation of RPC 8.4(d).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d) (currently R. 1:20-14(a)(4)), which provides:

(d) . . . [t]he Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

- (1) the disciplinary order of the foreign jurisdiction was not entered;
- (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
- (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (4) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (5) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs one through four. Based on subparagraph five, however, the Board believes that similar behavior in New Jersey would warrant less severe discipline than a seven-year suspension, the functional equivalent to respondent's disbarment in New York¹. While respondent's conduct toward his clients warranted discipline in New York, it was his failure to cooperate with the disciplinary authorities that triggered his disbarment. In New Jersey, neglect of one's responsibility to the disciplinary system, though very serious, falls short of the category of offenses warranting the disassembly of an attorney's practice for seven years.

Nevertheless, respondent's callous indifference toward his clients' interests, by failing to prosecute their claims, lying to them over a period of years concerning the status of their cases, refusing to hand over his client's files to new counsel in an attempt to extort a release from a mounting malpractice claim against him, misrepresenting himself as being a partner in a professional corporation, compounded by the grave consequences of leaving one client without a remedy and his failure to cooperate with the New York and New Jersey disciplinary authorities, warrants a two-year suspension from the practice of law. See In re Foley, 130 N.J. 322 (1992) (two-year suspension for engaging in a pattern of neglect, failure to communicate, misrepresentation, and failure

¹In New York, a disbarred attorney may seek reinstatement seven years after the effective date of disbarment.

to cooperate with disciplinary authorities in three client matters); In re De Pietropolo, 127 N.J. 237 (1992) (two-year suspension for gross neglect, lack of diligence, failure to communicate with client, misrepresentation to client, charging unreasonable fees, failure to return documents and unearned fees, and failure to cooperate with ethics authorities in five client matters).

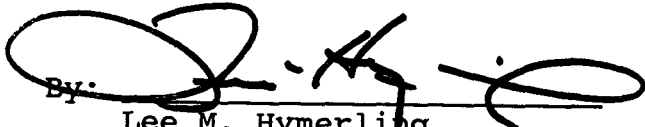
In light of the foregoing, the Board unanimously determined to grant the OAE's motion for reciprocal discipline and to suspend respondent for a period of two years.

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

Dated: _____

10/2/95

By: _____


Lee M. Hymerling
Chair
Disciplinary Review Board