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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-426

IN THE MATTER OF :
:
WILLIAM D. MANNS :
:
AN ATTORNEY AT LAW :

Decision

Argued: May 14, 1998

Decided: September 28, 1998

Jeffrey M. Pollock appeared on behalf of the District VA Ethics Committee.

Thomas R. Ashley appeared on behalf of respondent, who was also present.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

These matters were before the Board based on a recommendation for discipline filed by the District VA Ethics Committee ("DEC").

Respondent was admitted to the New Jersey in 1978 and maintains an office for the practice of law in Newark, Essex County. Respondent has no prior ethics history.

In the matter under Docket No. DRB 97-426 (Brinson), respondent entered into a disciplinary stipulation with the DEC in which he admitted violations of RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) in three separate matters involving the same client. As a result, the record in that matter is sparse. Only respondent testified at the DEC hearing.

* * *

Count one of the complaint alleged violations of RPC 1.1(a)(gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with the client) in a personal injury action.

The grievant, Hattie Brinson, retained respondent in or about December 1987 to represent her in a personal injury action arising out of a slip-and-fall on the steps of a friend's apartment. Based on information gathered from Brinson, respondent filed a lawsuit against the alleged owner of the building, William Barnes. Barnes obtained summary judgment on the grounds that he was not the defendant because he did not own the building. Respondent testified that, when he filed the complaint, he relied on Brinson's information that Barnes was the owner of the building. Respondent conceded that he should have conducted a title search on the property to determine the identity of its owner.

The complaint also alleged that Brinson repeatedly asked respondent for information about the case, to no avail. Respondent denied this allegation, but could not substantiate any communications with Brinson. Likewise, respondent denied the charge

that he failed to inform Brinson that her case had been dismissed. Again, respondent was unable to show that he notified Brinson of the dismissal. In his answer to the complaint, respondent claimed that he told Brinson that an appeal of the dismissal could be filed but that an appeal would entail additional legal fees. The answer, thus, implies that Brinson was aware of the dismissal. Respondent did not testify about this issue and the record is silent in this regard.

* * *

Count two of the complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) arising out of a collection matter.

According to the complaint, Brinson retained respondent on or about July 27, 1992 to defend her in an action filed by Hospital and Doctors Service to collect a hospital bill in the amount of $37,248.78. Thereafter, respondent allegedly took no action and did not defend Brinson in the suit. A default judgment was entered against Brinson on November 17, 1992.

The complaint further alleged that respondent did not advise Brinson of his failure to defend the suit or of the existence of the default judgment.

In his answer, respondent denied the allegations contained in this count of the complaint. Respondent also testified as follows:

> At or about the same time, [Hattie Brinson] began to express concern to me that her injuries persisted and that her medical bills were excessive, I think they were about $38,000 for

> treatment that she received here in New Jersey. And she was being sued by the hospital for the failure to pay this medical bill. The insurance coverage that was provided for her pursuant to I guess PIP coverage on this vehicle in North Carolina had a 2,000-dollar limit on it, so she paid that over and that was the end of their obligation. And she was concerned now that the hospital would be suing her - had sued her and that there was a judgment against her, that she didn't have any money, she was on a fixed income, social security, and she asked me if I could at least contact the attorney for the hospital and let them know that she was indigent and that she had no funds to pay off this judgment, and I agreed to do that.
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> I wrote a letter explaining to them who I was and who my client was, that she was indigent. They then sent me a, what do you call it, subpoena, I forget the name of it, but it's a document post-judgment that has the defendant set forth his assets. And by doing this, it demonstrates to the creditor that in our case, the defendant was indigent and judgment approved [sic], so we did that.

The record is otherwise silent with regard to any additional facts.

Count three of the complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 3.1 (meritorious claims and contentions) in a personal injury action resulting from an automobile accident in North Carolina.

According to the complaint, respondent filed a personal injury suit in Brinson's behalf on July 27, 1992, following an automobile accident in North Carolina. Apparently, Brinson paid the driver of the other automobile, Ethellen Lewis, a $21,000 settlement, after being confronted with eyewitness testimony that Brinson had caused the accident.

Lewis executed a general release. Brinson's action was then transferred to the Federal District Court for the Eastern District of North Carolina, where Lewis filed a counterclaim. Between December 1993 and July 1994 respondent did not defend the North Carolina suit. On July 15, 1994 summary judgment was entered in Lewis' favor.

The matter was set down for a "damages only" pre-trial conference on November 14, 1994. Although respondent admitted receiving the notice of the conference, he did not file a pre-trial memorandum or attend the conference. However, he wrote to the court to inform that he would not appear. The trial was held on November 28, 1994 in respondent's absence. The court then entered final judgment against Brinson in the amount of $81,594.90. Lewis was granted attorney's fees in the amount of $5,000 plus costs of $515.99. Finally, respondent was sanctioned $250 for his failure to attend the pre-trial conference.

It is uncontested that respondent never advised Brinson of the outcome of the matter and that Brinson was unaware of the outstanding judgment against her. In his answer to the complaint, respondent asserted that he was not retained to represent Brinson on Lewis' counterclaim. Therefore, respondent stated, he filed no answer in her behalf. Respondent made this claim despite the fact that he filed the lawsuit. At no point did respondent seek to be relieved as counsel. Respondent later admitted at the DEC hearing that it was a mistake for him to continue in the case after the change of venue. Respondent asserted that, had he known that North Carolina law allowed counterclaims

to be filed in actions where general releases had already been executed, he would have notified his client of that fact and, presumably, withdrawn from the case.

As previously noted, respondent stipulated that he violated RPC 1.3, RPC 1.4(a) and RPC 1.1(b). Respondent specifically denied that his actions constituted gross neglect, in violation of RPC 1.1(a), or that the action he brought against the owner of the building was frivolous. Inexplicably, the hearing panel report states that respondent stipulated a violation of RPC 1.1(a). The salient portion of the report, put on the record in the presence of respondent and counsel and without their objection, states as follows:

> It is our recommendation at this time that the Disciplinary Stipulation entered into by Mr. Manns on June 2, 1997, be accepted; therefore, that it be accepted that Mr. Manns has violated Rule of Professional Conduct 1.1(a), Rule of Professional Conduct 1.3, and Rule of Professional Conduct 1.4(a).
>
> We also recommend that the charges relating to Mr. Manns' alleged violation of Rule of Professional Conduct 3.1 and 1.1(b) be dismissed.

The DEC recommended the imposition of a reprimand and the requirement that, for a period of three months, respondent provide his calendar information to the panel chair and to respondent's then attorney, Thomas Ashley. Apparently, Mr. Ashley agreed to act as respondent's "proctor" during the recommended three-month period.

* * *

The DEC found violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a). Without explanation, the DEC dismissed the charges of violations of RPC 3.1 and RPC 1.1(b). As noted above, in recommending the imposition of a reprimand, the DEC called for a three-month proctorship. Finally, the DEC recommended continuing legal education in the area of office management.

* * *

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

With regard to the alleged violation of RPC 1.3, respondent admitted that he did not conduct a proper investigation or perform a title search to identify the building's owner. Respondent acknowledged that he should have done so. As a result, the only named defendant, Barnes, was granted summary judgment and the case was dismissed. The Board found that respondent's failure to use reasonable means to ascertain the true owner of the building constituted lack of diligence, in violation of RPC 1.3, although it did not rise to the level of gross neglect.

As to the issue that respondent did not inform Brinson of the dismissal of the case, the Board found no clear and convincing evidence in the record to find a violation in this regard. In his answer, respondent implied that he made Brinson aware of the dismissal by

discussing the appeal process with her. Respondent's feeble explanation notwithstanding, there is still insufficient evidence to sustain a finding that respondent did not inform her of the dismissal. Therefore, the Board dismissed the charge of a violation of RPC 1.4(a). Finally, the record is silent about what happened in the case after its dismissal. It is not known if Brinson suffered any harm as a result of respondent's misconduct.

With regard to count two of the complaint (Brinson's $37,000 hospital bill), it appears that respondent did very little to protect his client's interests. Respondent testified that he wrote a letter to the hospital indicating that Brinson was judgment-proof. He then walked away from the case. Predictably, a default judgment was entered against Brinson for $37,248.78. Thereafter, respondent took no action in Brinson's behalf. Clearly, he could not have reasonably expected that his letter would resolve the matter. Brinson was saddled with a $37,000 judgment as a result of respondent's disregard for the case. Unquestionably, respondent violated RPC 1.1(a) and RPC 1.3 by failing to defend his client in the lawsuit. The Board found insufficient evidence in the record, however, to sustain a violation of RPC 1.4(a) and, therefore, dismissed that charge. Once again the extent of Brinson's damages is unknown because the record is silent about any events after the entry of the default judgment.

Count three of the complaint concerned the North Carolina automobile accident. Here, too, respondent's indifference to his client caused Brinson great harm. Respondent filed a suit in New Jersey that was later transferred to the federal district court in North Carolina. In his answer to the complaint, respondent incredibly asserted that he had not

been retained to defend Brinson against the counterclaim in the same suit that he had filed in her behalf. At the DEC hearing, respondent admitted that he had acted as Brinson's counsel after the change in venue. In fact, respondent testified that he was surprised to learn that North Carolina law allowed Lewis' counterclaim, despite the fact that she had signed a general release. Respondent expected the case to be a simple one. Nonetheless, respondent did not seek to withdraw from the case once it was apparent to him that the counterclaim would go forward. Instead, from December 1993 to April 1995 respondent took no action to protect Brinson. He filed no pre-trial memorandum and did not appear at the trial. As a result, judgment was entered against Brinson in the amount of $81,000. In addition, Lewis received attorney's fees in the amount of $5,000 and costs of $515.99. (Apparently, respondent paid the attorney's fees, costs and a $250 court-ordered sanction for his failure to appear at the pre-trial conference.) The Board determined that respondent's misconduct by failing to defend Brinson in the same suit that he had initiated in her behalf, thereby allowing an $81,000 judgment to be entered against her, was in violation of RPC 1.1(a) and RPC 1.3. In addition, the Board found sufficient evidence to sustain respondent's admitted violation of RPC 1.4(a) for his failure to inform Brinson of important aspects of the case.

One remaining issue was not addressed in the complaint or thereafter in the proceedings, concerning a violation of RPC 8.4(c). In at least one instance, respondent misrepresented by silence the status of the case to Brinson. Although respondent was not specifically charged with a violation of RPC 8.4(c), the facts in the complaint gave him

sufficient notice of the alleged improper conduct and of the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 8.4(c). Respondent did not object to the admission of such evidence in the record. In light of the foregoing, the complaint is deemed amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976). It was incumbent upon respondent to notify his client of the entry of the $81,000 judgment in the automobile accident matter (count three). In some situations, silence can be no less a misrepresentation than words. Crispen v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). The Board found that respondent's failure to notify Brinson of the judgment constituted a misrepresentation by silence, in violation of RPC 8.4(c).

In sum, respondent exhibited a lack of diligence in all three matters. He grossly neglected two of the matters and failed to communicate with his client in one of the matters.

The Board concurred with the DEC and unanimously imposed a reprimand for respondent's misconduct. In re Carmichael, 139 N.J. 390 (1995) (reprimand imposed where the attorney showed a lack of diligence and failure to communicate in two matters. The attorney had a prior private reprimand); In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed where the attorney showed gross neglect and lack of diligence in two matters and with a failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand imposed where the attorney showed gross neglect and a failure to communicate in two matters). Concerned that respondent did not properly consider Brinson's financial

well-being throughout the various representations, the Board also required respondent to practice under the supervision of a proctor for a period of six months.

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

Dated: 9/28/98

LEE M. HYMERLING
Chair
Disciplinary Review Board