

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-141

IN THE MATTER OF
SHIRLEY F. GAJEWSKI
AN ATTORNEY AT LAW

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Decision

Argued: June 19, 1996

Decided: September 18, 1996

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, following respondent's one-year suspension from the practice of law in the State of New York, effective January 16, 1996.

Respondent was admitted to the New Jersey and New York bars in 1983. In 1995, the Court reprimanded her for violating RPC 1.15(a) and R. 1:21-6 by not maintaining trust accounts in a New Jersey bank, even though she had received \$500 for a New Jersey representation. Additionally, the Court found that she violated

RPC 5.5(a), by not maintaining a bona fide office in the State of New Jersey. In re Gajewski, 139 N.J. 389 (1995).

More recently, in a December 14, 1995 decision, the Appellate Division of the Supreme Court of New York, First Judicial Department, suspended respondent for one year, effective January 16, 1996. Respondent's misconduct in New York consisted of a pattern of neglect in two matters. In one of those matters, her conduct adversely reflected on her fitness to practice law. Additionally, in a third matter, the New York Supreme Court found that respondent's conduct was prejudicial to the administration of justice. Exhibit A to OAE's letter-brief.

The underlying facts of the New York suspension are set forth in the disciplinary opinion:

In April 1986, Ms. Janie Cooke retained respondent on a contingent fee basis to protect her interests in her family home which had been owned by her mother at her death and was occupied by Cooke's brother. It appeared that Ms. Cooke's brother had conveyed the entire property to Home Lawn Equities, purporting to act as the only child and sole heir of his mother. Respondent sued Home Lawn on behalf of Ms. Cooke.

Respondent conducted no discovery but placed the matter on the trial calendar in March 1987. She then defaulted in appearing at two pre-trial conferences and on her own motion to restore the case to the calendar. A second motion to restore was granted and respondent was sanctioned \$500.00. An additional two and a half years passed with respondent doing nothing on the case, despite her being served with a demand to resume prosecution. Respondent's third motion to restore the case was conditionally granted, but respondent then failed to provide the required proof of compliance with the previously imposed monetary sanction. Six months later the case

was dismissed on defendant's motion, upon respondent's default. Ultimately, respondent succeeded in restoring the case by motion and, on March 1, 1991, appeared and entered into settlement discussions.

Pursuant to the settlement agreement, when, as it turned out, the property could not be sold, the parties were to share equally in the expenses and income of this income-producing property. Nevertheless, respondent took no action to settle a judgment to this effect, nor has she taken action to obtain an accounting of the rents paid to Home Lawn.

In a second matter, Valerio, respondent was retained for a personal injury case but failed to conduct discovery or place the case on the trial calendar. When the defendants moved to dismiss the case, respondent defaulted on the motion, which was granted. More than one year later, respondent brought an order to show cause to vacate the dismissal. The motion was denied because no reasonable excuse was presented and no affidavit of merit was attached. Respondent's explanation was that she could not locate her client to determine who was representing him.

In the final matter, Jovic, respondent allowed a collection agency to affix her name to affirmations in court papers, although she had not signed or reviewed the papers. One person signing respondent's name turned out to be a disbarred lawyer. The hearing panel found that, although the conduct was not fraudulent, it was prejudicial to the administration of justice.

Respondent claimed that her misconduct was the result of her limited knowledge of family court matters. Based on that claim, the New York hearing panel diverted her case and required her to complete Continuing Legal Education courses. In addition, the

panel required her to withdraw from all non-family court matters. It was after respondent failed to comply with this diversion that the hearing panel recommended a one-year suspension.

The OAE urged the Board to suspend respondent for one year.

* * *

Upon a review of the full record, the Board determined to grant the OAE's motion. The Board adopted the factual findings of the Appellate Division of the Supreme Court of New York. In re Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which directs that:

... The 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:

- (A) the disciplinary... order of the foreign jurisdiction was not entered;
- (B) the disciplinary... order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary... order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (D) 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

(E) the misconduct established warrants substantially different discipline.

In this instance, the record does not demonstrate that any of the conditions set forth above warrants the imposition of discipline different from that imposed in New York. Ordinarily, unless good reason to the contrary exists, the disciplinary action in New Jersey will comport with that imposed in the other jurisdiction. In re Kaufman, supra, 81 N.J. at 303.

In New Jersey, conduct similar to respondent's has resulted in a similar term of suspension. See, e.g., In re Dreier, 138 N.J. 45 (1994) (one-year suspension for gross neglect of an estate matter, lack of diligence, failure to communicate, failure to promptly deliver property and failure to cooperate with disciplinary authorities); In re Giles, 131 N.J. 111 (1993) (one-year suspension for misconduct in four matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to return client property and failure to cooperate with ethics system); In re Jenkins, 117 N.J. 679 (1989) (one-year suspension for gross neglect in two matters coupled with misrepresentation of the status of cases; disregard for disciplinary process was considered as an aggravating factor). But see In re Rosner, 120 N.J. 370 (1990) (three-year suspension for attorney who essentially sold his license to practice by allowing client to use letterhead signed by the attorney in blank and thereby permitting client to defraud third parties).

In light of the foregoing, the Board unanimously determined to impose a one-year suspension, retroactive to the date of her suspension in New York, January 16, 1996. Two members did not participate.

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

Dated: 9/18/96



LEE M. HYMERLING
Chair
Disciplinary Review Board