SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 92-047, 92-049

IN THE MATTER OF

OSCAR LUIS BELTRE,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 18, 1992

Decided: July 7, 1992

Charles Ryan appeared on behalf of the District IIA Ethics Committee with regard to DRB 92-047.

Roy F. McGeady appeared on behalf of the District IIA Ethics Committee with regard to DRB 92-049.

Respondent appeared pro se.

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

These two matters were before the Board based on separate recommendations for public discipline filed by the District IIA Ethics Committee (DEC).

Respondent was admitted to the New Jersey, New York, and Florida bars in 1982. His primary practice is in New York and his New Jersey office was located in his home at 198 Nimitz Road, Paramus, New Jersey.[1]

[1] On May 30, 1990, the Court suspended respondent for three months and ordered that the suspension continue, pending the outcome of these current ethics proceedings.

(1) The Bona Fide Office Matter - On January 24, 1990, in an appearance on an earlier disciplinary matter,[2] respondent assured the Board that his New Jersey office had call-forwarding to his New York office and that a responsible person was always there to answer the phone. However, when the presenter in the within matter investigated whether respondent had a bona fide office, she found that respondent had not been truthful with the Board. The presenter testified at the DEC hearing that she could not find a telephone listing for respondent in the Lawyers' Diary, that two letters were sent to his office address on January 31, 1990 and February 21, 1990, which were not answered, and that, when she visited his New Jersey office on April 4, 1990, there was no one present at 10:30 a.m. on a regular business day.

Respondent testified that he was not sure that he always turned on the call-forwarding (1T26)[3], and that, if the phone was not connected to either the call-forwarding or to the answering machine, it was not possible for clients or others to reach him in New Jersey on any particular business day (1T35). He further testified that he did not maintain any secretarial services in New Jersey after December 1989, and that there was no one at his office

---

[2] It was this earlier disciplinary matter which resulted in respondent's suspension from the practice of law for three months. That suspension resulted from a finding of violations of R. 1:20-1(b), R. 1:21-6, R. 1:21-1, RPC 5.5(a) and RPC 8.1(b).

[3] 1T refers to the transcript of the DEC hearing of February 25, 1991.

to accept mail or answer the door, unless he happened to be at home. Thus, respondent's own testimony during the DEC hearing contradicted his reassurances to the Board on January 24, 1990.

(2) The Missing Escrow Funds Matter - On September 17, 1985, respondent represented the purchasers of a grocery store business and of the real estate in which the grocery was housed. Respondent acknowledged signing a closing statement providing that, as the purchasers' attorney, he would hold the sum of $3,000 in escrow to assure the payment of a lien for unpaid employee taxes owed by the seller to the Department of Labor (C-4 in evidence). The seller's attorney, Attorney F, testified that, although he neither saw respondent receive the $3,000 sum nor specifically discussed the $3,000 with respondent, he understood that respondent would escrow the funds (2T39-41).[4]

In December 1985, Attorney F requested that respondent supply documentation that the lien had been satisfied. When respondent did not comply with his request, in June 1987 Attorney F. demanded the return of the $3,000 (C-5 in evidence). On June 8, 1989, the seller was forced to personally pay $3,265.74 to have the lien discharged in order to qualify for a new mortgage on a house he was in the process of purchasing. A copy of that check, together with a demand that respondent pay the $3,265.74 plus attorney fees, was sent to respondent on November 29, 1989. Respondent did not

---

[4] 2T refers to the transcript of the DEC hearing of March 20, 1991.

respond to this letter (C-6 in evidence.) The seller also telephoned respondent to inquire about the money. Although respondent promised to call the seller back when he located the file, he failed to do so. Respondent admitted that he talked with the seller in December 1989 and acknowledged receipt of the 1989 letter from the seller's attorney (3T64).[5]

The seller, testifying through a translator, stated that, subsequent to filing the ethics complaint, on or about September 15, 1990, respondent paid him in cash the sum of $3,265.74 and requested that he sign a predated receipt, indicating that he had received $3,000 nearly five years earlier, on September 28, 1985. The seller testified as follows:

> A. Well, the truth have to be said. I'm not going to lie. It hurts me to say this, but I'm going to tell you what happened. Mr. Beltre showed up at my business and told me, 'Well, I came here. Let's fix this because I'm having problems with this.'
>
> Q. When did he come to your business?
>
> A. To the best of my recollection, he went around 7 at night, 6 or 7.
>
> Q. What date?
>
> A. I didn't pay, but I know that I went to Santo Domingo in September and about three days before, that was around the 15 or 18 of September.
>
> Q. What year?
>
> A. Of last year.
>
> Q. 1990?

---

[5] 3T refers to the transcript of the DEC hearing of April 1, 1991.

A. Yes, Ma'am. So, he went there, he gave me the money.

Q. How much?

A. It was $3,000 something, I think. I did not remember well. All I was concerned was to get my money back.

Q. Did he give you cash or check?

A. He gave it to me in cash.

Q. What did he say, if anything?

A. He spoke to me about the paper.

Q. A paper?

A. This paper [indicating], he told me that he was having problems with this, and that he wanted me to sign this paper to show that he had given me this money before, and the truth is I did not wish that anything happen to him and he told me what was there and I went ahead and signed thinking that if we were to stop this, and that if I would have stopped sending letters to the Ethics Committee, it would show that this was not happening anymore. And I have no other interest, only my money.

Q. So you signed the paper he gave you?

A. Yes I signed it.
[2T77-78]

. . .

Q. And you dated it on -- you dated September 28, 1985?

A. That's it.

Q. But it's your testimony that, in fact, you signed this paper in the latter part of 1990 when Mr. Beltre came to you?

A. Pardon me? Say that again.

Q. What was the actual date that you signed the paper, the best you remember?

A. The truth is that's something that I have no interest. He told me to try to put that date down and I asked him, 'I'm not going to have any problems with this?' He told me that with that, I would have no problems because I was the one signing the complaint.

Q. You signed it when he came to you with the money?

A. When he gave me the money.
[2T79-80]

However, respondent had the purchaser offer opposing testimony, through a translator, that he gave $3,000 and a receipt to the seller in September 1985. The receipt reads as follows:

> Alpidio Parra hereby acknowledges receipt from Victor Pineda the sum of $3,000 which was due on September 17, 1985, to be held in escrow for satisfaction of judgement No. DJ-30755-78 against Alpidio Parra in the amount of $2,520.00, pursuant to contract of sale between Antonio Then a/k/a Ferminn. Antonio Then, as seller and Victor Pineda and Luis Sarante de Pineda, as purchasers of premises located at 91 Beech Street, Paterson, New Jersey.
> [C-22 in evidence]

When the purchaser was asked how he knew the judgment number for the receipt, he stated he got it from respondent's secretary and that someone in the purchaser's office, who understood business terms, prepared the receipt (3T13-14). Also, at the same meeting, the purchaser paid $10,000 to the seller, which caused the DEC to ask why he had not obtained a receipt for that sum. Initially, the purchaser testified that he had a receipt for the $10,000 back in the Dominican Republic. He then changed his testimony, stating he never got a receipt for the $10,000 (3T15-16). He never did provide an explanation as to why he did not get a receipt for the $10,000 as well.

Respondent testified that he had not received the $3,000 at the closing and that he had not thought about it until he received the 1989 letter. He testified that he then looked for the file, which he did not find (3T25). At the DEC hearing, he had no documents at all concerning this case, except for the alleged 1985 receipt from the seller.

(3) Failure to Cooperate with the DEC - Respondent failed to answer the two letters from the investigator in January and February 1990. In addition, he did not answer the formal complaint of June 14, 1990 until September 5, 1990. When asked at the DEC hearing why he had not replied to the letters, he contended that he was not opening his mail at that time because he was going through marital problems. He was also asked why he did not answer the complaint within the required ten days. He replied that he was trying to investigate what had happened and that he was delayed several months, waiting to hear from his client (3T55). This explanation of the delay contradicted his later testimony that he talked with his client concerning the receipt and found out about the direct payment in May 1990, one month before he was served with the complaint (3T62).

The DEC found that respondent failed to maintain a bona fide office, in violation of R.1:21-1(a) and RPC 5.5(a). Furthermore, the DEC found that respondent violated RPC 8.1(a), by making a false statement of material fact to the Board when he testified that he was maintaining a bona fide office at the January 24, 1990

Board meeting, and also when he stated, in his answer to the complaint, that he was then maintaining a bona fide office. The DEC was unable to find clear and convincing proof that respondent had paid the seller subsequent to the filing of the ethics complaint. It did find that respondent failed to safeguard funds, in violation of RPC 1.15(a), and engaged in conduct involving dishonesty, in violation of RPC 8.4(c), when he executed a closing statement indicating that he would hold $3,000 and, thereafter, knowingly failed to hold such money. Finally, the DEC found that respondent violated RPC 8.1(b), by failing to respond to the investigator's written demands for information in January and February 1990.

DRB 92-049

(1) The Unauthorized Practice of Law Matter - On September 7, 1990, respondent, while under suspension, appeared before Judge Anthony D. Cipollone of Paramus Municipal Court. Respondent, dressed in a suit and tie, answered all questions asked of the defendant. The entire transcript of that appearance follows:

THE COURT: Ernie Peralta... Why are you here?

MR. BELTRE: This case is scheduled for October 31st.

THE COURT: Right.

MR. BELTRE: We brought this case before because [Mrs.] Peralta has to leave the country.

THE COURT: Who are you?

MR. BELTRE: My name is Luis Beltre, I am an attorney. We brought the complaining witness--

THE COURT: Where do you practice?

MR. BELTRE: New York, New Jersey and Florida Law.

THE COURT: Okay. You wish to dismiss the complaint?

MR. RUSSIELLO: Yes, Your Honor.

THE COURT: Do you have any objection to the dismissal?

MR. BELTRE: No, Your Honor.

THE COURT: Why did you-- Did you collect your money?

MR. RUSSIELLO: Yes, Your Honor.

THE COURT: You see, you can't use this Court as a collection agency. You can't file a criminal complaint to collect money.

MR. RUSSIELLO: Your Honor, I didn't do it without purpose. Due to the circumstances brought up, maybe the Attorney can explain how the check was given me. It was not by Mrs. Peralta.

MR. BELTRE: It was not by her. Once she learned that a check had been issued, she did make good on the check because he wasn't here (indiscernible) and no signed [sic] that check and it happened to be from an old account that was closed.

THE COURT: All right, I'm going to dismiss it, twenty-five dollars ($25) Court Costs have to be paid by somebody.

MR. BELTRE: We'll pay that, Your Honor.

THE COURT: Thank you.
[J-3 in evidence]

Judge Cipollone testified at the DEC hearing that there was no question in his mind that respondent was acting as an attorney for

his client (T10)[6]. Respondent, who appeared pro se at the DEC hearing, gave the following summation:

> I do realize that I may have created a confusion by not clarifying my position before the Judge that particular date, and it was occasioned first by the fact that I didn't think it was a lawyering job that I was doing because I did not negotiate the dismissal, nor did I participate in any negotiations towards getting the dismissal. What I did was, and I believe what I was doing at that time was taking a friend to the courthouse to show her, you know, where to go and how to do things. I was not charging anyone, I did not charge anyone.
>
> . . .
>
> And I, you know, after looking, you know, at the circumstances, afterwards, I think I may have mislead [sic] the Court, first by not being clear as to saying, 'Hey, I'm only here as a friend and to translate for Miss Peralta'.
>
> I believe the Judge was aware that , you know Miss Peralta didn't speak any English, and I did not at any time state to the Judge that I was specifically appearing as the attorney for her. I did state that I was an attorney when he asked me, and that I was admitted, practicing Florida, New Jersey and New York, which is how I normally make my appearance when I say, I give my name and I give my background. It was not my intention to mislead the Court at the time that that happened, and one of the reason why in the criminal case, I went to the pretrial proceeding because I'm a trial attorney, I know it's a matter of interpretation and also all I have is what appearance I may have portrayed to the Judge. And I cannot say he was unreasonable by believing that I may have mislead [sic] him.
>
> [T36-38]

---

[6] T refers to the transcript of the DEC hearing of January 7, 1992.

Respondent contended that he was in court that day solely as a friend and translator, that he did not receive any payment for this appearance, and that he did not submit a written appearance form to the court. When Judge Cipollone was told by the OAE that respondent had appeared while suspended, he issued a warrant for his arrest. Respondent was thereafter criminally charged with violating a Supreme Court Order, in violation of N.J.S. 2C:29-9, and unlawful practice, in violation of N.J.S. 32A:170-78.

(2) Failure to Cooperate with the DEC - On November 11, 1990, the DEC investigator sent a letter to respondent concerning the court appearance (J-4 in evidence). The letter requested that respondent provide certain information to the investigator. Although respondent admitted in his answer that he had received the letter, he did not comply with the investigator's request. He also acknowledged receiving the formal complaint around December 11, 1991, but did not answer it until January 3, 1992, four days before the DEC hearing.[7]

At the DEC hearing, respondent testified that he and his attorney understood that the pending criminal action, which was initiated by Judge Cipollone, meant that the ethics matter would be postponed until the criminal matters were resolved and that,

---

[7] The investigator had actually sent the formal complaint to respondent's New Jersey office on May 28, 1991, by certified mail; three attempts to deliver it on May 29, June 4 and June 13 were unsuccessful.

therefore, there was no need to respond to the investigator's letter (J-7 in evidence).[8]

The DEC found that respondent violated RPC 3.3(a)(1), in that he made a false statement of material fact to Judge Cipollone when he represented that he was a lawyer in New Jersey, knowing that he was suspended from the practice of law; RPC 5.5(a) (unauthorized practice of law); RPC 8.4(b), by committing the criminal act of disobeying a Supreme Court Order; and RPC 8.4(d), by engaging in conduct prejudicial to the administration of justice, when he represented to the court, on September 7, 1990, that he was licensed to practice as an attorney in New Jersey.

Because the DEC concluded that respondent had a good faith belief that the ethics investigation was held in abeyance during the pending criminal action, it was unable to find clear and convincing evidence that he had refused to cooperate with the ethics investigation.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the DEC's findings of unethical conduct are supported by clear and convincing evidence. However, the Board was unable to agree on the quantum of discipline. Four members voted

---

[8] At the time of the DEC hearing, respondent had finished pretrial intervention on the felony charge, but the misdemeanor charge is pending until the resolution of this ethics matter.

for a three-year suspension, while four members voted to disbar respondent.

DRB 90-047

In January 1990, respondent assured the Board that he was in compliance with the bona fide office requirement. Yet, over the next four months, the DEC investigator was unable to reach him by telephone, mail, or by a personal visit to his office. In February 1990, respondent received a copy of the Board's Decision and Recommendation, in Docket No. DRB 89-295, containing the following language:

> For the purpose of this section, a bona fide office is a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours. A bona fide office is more than a maildrop, a summer home that is unattended during a substantial portion of the year, or an answering service unrelated to a place where business is conducted.
>
> [R. 1:21-1(a)]

> Underlying the prevention of sporadic practice is the desire to make sure New Jersey attorneys have sufficient contact with New Jersey law and procedure to serve their clients with competence, and that they are accessible and accountable to both the client, opposing counsel, and to the authorities in this State. In this case, respondent has not had a 'responsible person acting on his behalf' at his Paramus address. A 'responsible person acting on respondent's behalf,' within the meaning of R.1:21-1(a), needs to be equipped to give accurate information about respondent's whereabouts, to make informed decisions in respondent's absence, or to obtain competent advice from him within a reasonable period of time. Respondent certainly has not been accessible to the disciplinary authorities of this state during normal business hours.
>
> [Decision and Recommendation at 5-6]

Respondent had to be aware that he had fallen short of the bona fide office requirements, given the Board hearing in January 1990 and the Decision and Recommendation that stressed the importance of those requirements. Yet, he did nothing to cure that deficiency. Furthermore, respondent showed no contrition at the current ethics hearings, but only offered, in mitigation, that he was getting divorced and that he believed the Board was being unusually strict about the requirements of a bona fide office because he did not have a secretary at his New Jersey office (BT17)[9].

In the escrow matter, the testimony is clear that respondent, at the very least, did not safeguard the $3,000 in an escrow account and pay off the lien, as agreed. The Board agrees with the DEC that, because of the conflicting testimony, there can be no finding of knowing misappropriation. Nonetheless, respondent never set the money aside to insure that it was available for the purpose of discharging the lien. The Board is split on whether this behavior may be labeled failure to safeguard property, in violation of RPC 1.15(a), when respondent never received the funds. No prior case law directly addresses the issue of whether an attorney may be guilty of failure to safeguard funds that he has never received. However, the Board unanimously finds that respondent's signature on the real estate closing statement, witnessing that he had

[9] BT refers to the transcript of the Board hearing of March 18, 1992.

received $3,000 to place in escrow was, at the very least, a misrepresentation, in violation of RPC 8.4(c).

Finally, respondent failed to answer the investigator's letters of January and February 1990, in violation of RPC 8.1(b). This is the fourth hearing in which respondent has displayed this pattern of not replying to investigation letters,, and then filing an answer a mere few days before the hearing, if at all.

DRB 92-049

On June 5, 1990, respondent was suspended by the New Jersey Supreme Court. In his testimony, he acknowledged that he knew he was still suspended in September 1990, when he appeared before Judge Cipollone. He admitted that his failure to tell the judge that he was then under suspension might have been misleading.

Guideline No. 23, which lists restrictions on the future activities of an attorney who has been suspended, explicitly prohibits an attorney from conveying to the public the impression that the disciplined attorney is authorized to practice law. The Guideline further imposes an affirmative obligation upon the suspended attorney to give prompt notice of the suspension to the assignment judge of the vicinage in which the attorney represents a client in any pending matter.

Respondent received a copy of the three-page Guideline No. 23 from the New Jersey Supreme Court at the time of his suspension. Respondent had clear written directions from the Court and, yet, he ignored those directions. The DEC did not accept respondent's

explanation that he did not realize, at the time of his appearance in municipal court, that he was misleading the public and the judge. The Board agreed that respondent's conduct violated RPC 3.3(a)(1) (a material false statement to Judge Cipollone); RPC 5.5(9) (unauthorized practice); and 8.4(d) (conduct prejudicial to the administration of justice).

An attorney has the paramount duty to act at all times as an officer of the court and to be candid with the court. Respondent's misrepresentation about his status as an attorney, whether passive or active, was prejudicial to the administration of justice. This case does not invoke the automatic sanction of disbarment, as set out in In re Verdiramo, 96 N.J. 183 (1984), which was based upon a criminal conviction for obstruction of justice. Nevertheless, a strong sanction is still required, notwithstanding the absence of a criminal conviction.

In In re Goldstein, 97 N.J. 545 (1984), an attorney violated the agreement he had reached with the district ethics committee and this Board to limit his practice to criminal matters. The attorney was, therefore, temporarily suspended from the practice of law. Notwithstanding his suspension, the attorney continued to advise clients that he was working on their cases. In addition to the foregoing violations, the Court also reviewed eleven individual matters. In each matter, the Court found that the attorney had failed to carry out contracts of employment, had failed to act competently and had also misrepresented the status of each matter. This neglect was aggravated by the attorney's violation of the

agreement with the committee and the Board and subsequent misrepresentation to clients that he was still working on their cases, despite his suspension. Under the totality of the circumstances, the Court felt constrained to disbar the attorney.

The Board found in the present case that there was clear and convincing evidence that respondent appeared in court on behalf of another while suspended and misrepresented his status to a judge. Furthermore, the Board found that respondent fraudulently failed to carry out his responsibilities as an escrow agent, lied to the Board about maintaining a bona fide office, and failed to cooperate in the ethics investigation in one matter.

In a recent case, the Board recommended a two-year suspension for an attorney who intentionally altered an official document, grossly neglected a client, misrepresented the status of the case to his client, and failed to cooperate with the disciplinary system. The Court ordered disbarment when it discovered that respondent had failed to comply with Guideline No. 23, by failing to notify his clients of his previous suspension. The Court noted that the attorney had shown no remorse or improvement in his conduct. In re Cohen, 120 N.J. 304 (1990).

Here, four Board members find that, although each one of respondent's offenses, viewed in isolation, would not merit disbarment, the pattern in these two presentments, combined with respondent's earlier infractions, leaves them with no choice but to recommend disbarment. The remaining four members find the same ethical violations, but believe that a prospective three-year

suspension is sufficient discipline, given the absence of knowing misappropriation. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: July 7th, 1992

By: Raymond R. Trombadore
Raymond R. Trombadore
Chair
Disciplinary Review Board