SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-425

IN THE MATTER OF

MARTIN C. X. DOLAN,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: January 27, 1993

Decided: March 18, 1993

Ira M. Starr appeared on behalf of the District VI Ethics Committee.

Marc J. Keane appeared on behalf of respondent.

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

This matter was before the Board based upon a recommendation for public discipline filed by the District VI Ethics Committee (DEC). The DEC considered seven matters.[1] One matter was dismissed (See discussion of the Cznadel matter, infra).

Respondent was admitted to the New Jersey bar in 1978 and maintains a practice in the Jersey City, Hudson County. No testimony was taken at the hearing from any of the grievants. A stipulation was submitted to the panel, wherein respondent admitted

[1] District Docket Nos. VI-90-50E and VI-90-61E were both assigned to the same matter.

the majority of the allegations against him. Exhibit J-3.[2] The DEC based its determination on the facts contained in the stipulation.

The Nimon Matter (District Docket No. VI-90-30E)

In February 1990, Edward Nimon retained respondent to represent him in connection with Nimon's sale of real property. Respondent reviewed the contract of sale and contacted the purchaser's attorney, John K. Miller. Pursuant to the contract, the purchaser provided a check for $9,000 to respondent, which respondent held in trust. According to the stipulation, in March 1990, respondent attempted, unsuccessfully, to contact Nimon. Thereafter, the two "played telephone tag" (Stipulation, paragraph 9).[3] In April 1990, respondent forwarded the deed, affidavit of title and deposit to Miller. Miller ultimately completed the transaction and the closing took place in April 1990. Thereafter, Nimon was unsuccessful in contacting respondent and ultimately filed a grievance against him, in June 1990. Although the stipulation is not clear, it appears that respondent was contacted by the presenter in June and, in early July, issued a stop order on the original check for the deposit and sent a replacement check.[4]

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[2] The Board noted that the stipulation was not signed by the presenter.

[3] Miller was also unable to contact respondent.

[4] Although not essential to the relevant issues, there is a statement in the stipulation to the effect that the replacement check was sent and respondent offered to pay interest. A hand-written note in the margin indicates that the interest issue was not stipulated and the record should be consulted. There is

What happened to the original check is not explained in the record.

Respondent admitted his failure to provide the DEC with an explanation for his conduct.

The Simone Matter (District Docket No. VI-90-21E)[5]

In 1985, respondent was retained to handle the estate of Josephine Simone, who died in May of that year. Until 1988, respondent was in communication with the beneficiaries and, in December 1988, issued checks to them as partial distribution of the estate assets. However, as of 1988, the estate still had not been settled. From December 27, 1988 on, respondent failed to communicate with the beneficiaries, their subsequently retained attorney or the DEC.

The Ciborowski Matter (District Docket No. VI-90-29E)

In 1986, respondent was retained by Matthew Ciborowski to handle the estate of his brother, Edward, who died intestate on May 24, 1986. It appears that, between 1986 and 1988, respondent pursued the matter. Thereafter, save for one letter in March 1990, respondent failed to communicate with his client since the end of 1988, despite numerous requests.[6] Respondent also failed to reply

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no reference in the record to the payment of interest.

[5] The stipulation in this matter is unclear as to the extent of the estate assets and who had physical control of them. A handwritten note in the margin of the stipulation indicates that the record should be consulted. There is no information on this issue in the record.

[6] Although paragraph 21 of the stipulation appears to set forth the steps respondent took on behalf of the estate, the references are unclear.

to the DEC's requests for information, with the exception of his submission, in December 1990, of what was purported to be a duplicate inheritance tax return.

The Cznadel Matter (District Docket Nos. VI-9000-50E and VI-90-61E)

Respondent and his former law partner were appointed co-executors of the estate of Michael Cznadel, who died in June 1989. In late 1989, respondent's partner renounced his appointment.[7] After respondent received the renunciation, in late 1989, he began working on the file. In July 1990,[8] Cznadel's will was admitted to probate and, in September, a partial distribution was made to four of the five beneficiaries. On or about December 1, 1990, respondent filed the inheritance tax return.

Although respondent's conduct was stipulated in this matter, the DEC determined that the allegations were not sufficiently specific to lead to a finding of unethical conduct.

The Wozniak Matter (District Docket NO. VI-90-46E)

Respondent was retained to handle the estate of Eugene Wozniak, who died intestate on February 19, 1987. Respondent was hired by Martha Easdon, Wozniak's sister and sole heir, who resided in Rhode Island. The complaint alleged that, for almost two years,

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[7] According to the stipulation, the surrogate did not accept the form used; a corrected form was submitted in June 1990.

[8] Although this date is stated in the complaint, the stipulation indicates that it may or may not be correct (Stipulation, paragraph 25). However, paragraph 23 of the stipulation states that the will was probated in July 1990.

respondent failed to communicate with Easdon, her attorney in Rhode Island, and her attorney in New Jersey, David Griffith. The stipulation indicates that respondent did some work on the estate, but that Easdon was difficult and respondent stopped working on the estate when Easdon announced that she was hiring another attorney. Although it was alleged that respondent advised Griffith that the inheritance tax return was filed,[9] when in fact it was not, the panel did not find clear and convincing evidence of this violation.[10] In addition to his failure to reply to Griffith's telephone calls and correspondence, respondent failed to release the estate file to him. Respondent also failed to reply to the DEC's requests for information about this matter.

The Was Matter (District Docket No. VI-90-45E)

Irene Was died in the Fall of 1989. Her niece and executrix, May Werres, retained respondent in October 1989. After their initial contact, respondent failed to communicate with Werres or with her subsequent attorney. The will was never probated and little or no work was done by respondent, although the matter was docketed in the county surrogate's office. Further, respondent failed to reply to requests for information from the DEC.

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[9] The complaint states: In February 1989, Respondent advised Griffith that an Inheritance Tax Return was filed with the State in September 1989 (emphasis added).

[10] It was stipulated that the return was never filed (Stipulation, paragraph 31).

The Sobolewski Matter (District Docket No. VI-90-52E)

Respondent was retained in 1984 to handle an estate matter. It appears that, from 1984 through 1987, respondent reasonably handled the matter.[11] However, from late 1988 to late 1990, respondent failed to return telephone messages and correspondence and did no work to finalize the estate. In December 1990, respondent did take some further action on the estate. As in the above matters, respondent did not reply to the DEC's requests for information about this matter.

* * *

The DEC determined that respondent committed the violations cited: RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.15(b) (failure to safeguard property), and R.1:20-3(f) (failure to cooperate with the DEC).[12]

CONCLUSION AND RECOMMENDATION

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

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[11] The stipulation states that the will was contested, which held up the probate of the will for eighteen months (Stipulation, paragraph 37).

[12] The Panel report did not refer to a finding that respondent violated RPC 8.1(b).

In the past, discipline for conduct similar to respondent's has ranged from a public reprimand to a brief term of suspension. (See, e.g., In re Mahoney, 120 N.J. 155 (1990) (where the attorney received a public reprimand for lack of diligence in four matters, pattern of neglect in four matters, failure to communicate in four matters, failure to maintain trust account records in one matter and misrepresentation in one matter); In re Clark, 118 N.J. 563 (1990) (where the attorney was guilty of lack of diligence in four matters, failure to communicate in four matters and failure to return retainer, despite promises to grievant and request by new counsel. Clark was publicly reprimanded); In re Smith, 101 N.J. 568 (1986) (where the attorney received a three-month suspension for neglect in an estate matter, failure to communicate with the client and failure to cooperate with the DEC and Board); In re Albert, 120 N.J. 698 (1990) (where the attorney was guilty of lack of diligence, neglect, failure to communicate in two matters, improper withdrawal of a fee from an escrow account without prior consent of the client and failure to cooperate with the DEC and the Board. Albert had previously received a private reprimand. He received a three-month suspension).

As the above cases illustrate, there is a wide range of discipline for infractions of a nature similar to that of respondent. A distinguishing factor in this matter is respondent's claim of psychological difficulties. According to his testimony, respondent began suffering from psychological problems in 1985. In June of that year, he saw a physician who told him that his

problems were of a cardiac nature (T7/20/92 33). Apparently, respondent's difficulties continued; he testified that, in 1987, he began giving away his work when he felt that he was unable to handle it (T7/20/92 29). In early June 1991, respondent checked into the Carrier Clinic, where he remained until July 2, 1991 (T7/20/92 41-42).

Respondent's current treating physician, Eric M. London, M.D., who began treating respondent shortly after he left the Carrier Clinic, testified (via telephone) before the DEC. Dr. London explained that respondent suffers from a major depressive disorder. In his opinion, however, respondent is ready to return to the practice of law.[13] Respondent is currently not taking any medication, shows no signs of relapse and his prognosis is good.[14] Dr. London stated that he will continue his current practice of meeting with respondent three to four times per year, not for counseling but, rather, to monitor his progress (T7/20/92 44-47).

As to whether respondent could or should have recognized that he had a psychological problem, Dr. London testified that an individual experiencing this condition for the first time would not have had insight into it (T7/20/92 49). He also testified that respondent's failure to cooperate with the DEC would be consistent with depression (T7/20/92 52).

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[13] The Board may wish to note that, as of the second day of hearing before the DEC, respondent had no clients and no open files except for an assigned pro bono matter (T7/20/92 7).

[14] Dr. London testified that respondent's prognosis was very good, even at the time of his discharge from the Carrier Clinic (T7/20/92 44).

With regard to his own ability to practice, respondent testified that he believes that he is fit to return to practice, but not as a sole practitioner. Respondent is of the opinion that a supervised environment would be preferable for him (T7/20/92 56-58).

The Board is aware that psychological difficulties are not an excuse for misconduct. However, such difficulties, if proven to be causally connected to an attorney's actions, have in the past been considered in mitigation. In In re Templeton, 99 N.J. 365 (1985) the Court held:

> In all disciplinary cases, we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for some credible reason other than professional and personal immorality that could serve to explain, and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment.
>
> [Id. at 373-374]

But see In re Tuso, 104 N.J. 59 (1986) (where causation was not demonstrated).

Although finding that causation existed in this matter, the DEC noted that respondent continued to practice, notwithstanding his awareness that something was wrong. Accordingly, given the length of time in question and the number of clients involved, as well as its mandate to protect the public, the DEC was convinced that public discipline was warranted. In making that

recommendation, the DEC enumerated factors that, in its opinion, should be raised in mitigation:

> a) It is the Panel's understanding that these grievances are the first against the Respondent who has been in practice in excess of ten (10) years.
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> b) The allegations do not constitute acts of fraud, misrepresentation or dishonesty of any form.
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> c) The record reflects the written recommendations of various community leaders and a well respected colleague.
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> d) Additionally, though not a defense, the finding of mental disability, should be considered as mitigating.
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> e) It also appears that all of the affected clients have had their files transferred to other attorneys or to Respondent's counsel and haver [sic] been, or are now, property [sic] managed.
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> [Panel report at 10-11].

The panel also noted that, "since June, 1991, the respondent has been in self-imposed suspension and suggested that respondent not receive a suspension (Panel report at 11).[15]

There is no doubt that respondent's misconduct was serious; he grossly neglected a significant number of cases. However, the Board considered the extensive mitigating factors in this matter, as well as Dr. London's testimony that respondent is no longer a danger to the public. In view of the foregoing, the Board unanimously recommends that respondent be publicly reprimanded. In addition, the Board recommends that respondent practice under the supervision of a proctor for two years and that he be required to

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[15] Generally, the Court does not consider a respondent's voluntary withdrawal from the practice of law as a factor when determining the appropriate quantum of discipline. In re Farr, 115 N.J. 231 (1989).

submit quarterly psychiatric reports for two years. Three members did not participate.

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

Dated: 3/18/93 By: Elizabeth L. Buff

Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board