

Bank

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-223

IN THE MATTER OF :
 :
SIDNEY S. KANTER :
 :
AN ATTORNEY AT LAW :
 :

Decision
Default [R. 1:20-4(f)(1)]

Decided: January 23, 1997

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

Pursuant to R. 1:20-4(f)(1), this matter was before the Board based on a recommendation for discipline by the District VB Ethics Committee ("DEC"), following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by regular and certified mail sent to respondent's office on or about May 25, 1995. The certified return receipt was signed, although the signature is illegible, and the regular mail was not returned. The DEC sent two letters to respondent notifying him that failure to timely file an answer would cause the matter to be certified to the Board for the imposition of sanction, pursuant to R. 1:20-4(f)(1)

Although the DEC did hold a brief "hearing" on October 11, 1995, at which respondent failed to appear, this matter was considered by the Board as a default matter. Testimony at the DEC hearing was limited to the procedural history of the case and, thereafter, the DEC issued a hearing panel report, summarily finding unethical conduct on the part of respondent, which required disbarment. The Board accepted the hearing panel report as the certified record of the DEC.

The formal ethics complaint charged respondent with, among others, violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4 (failure to communicate); RPC 1.16(d) (failure to turn over files); RPC 3.2 (failure to expedite litigation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Respondent's unethical conduct encompassed eleven matters.

Respondent was admitted to the New Jersey bar in 1972. He was temporarily suspended on September 27, 1995 for failure to respond to a demand for a random compliance audit by the Office of Attorney Ethics ("OAE"). Thirteen matters against respondent are currently pending at the DEC level. They have been transferred to untriable status, pending the outcome of this case.

THE CLARK MATTER

Willie Clark retained respondent to represent him in July 1990 in connection with a personal injury matter. In March 1991, Clark executed a blank release following respondent's representation that he would obtain a settlement for \$25,000 and that suit had been filed. Thereafter, respondent failed to forward any information to Clark and to reply to his numerous attempts to contact him. The complaint alleged a violation of RPC 1.4(a) (failure to communicate).

THE WITT MATTER

Walter Witt retained respondent to represent him as executor of the estate of Emma Witt. In August 1993, respondent negotiated a consent order for the listing of certain premises for sale. Two-thirds of the new sale proceeds were to be distributed to the wards of Witt. The property, however, was the subject of foreclosure proceedings, knowledge of which was imputed to

respondent, absent any proof that he knew. Respondent did not advise the court of the existence of the foreclosure, a material fact. The complaint alleged a violation of RPC 3.3(a)(5) (failure to disclose to the tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure).

THE SIMMONS MATTER

Jacob Simmons, Jr. retained respondent to represent him in a personal injury matter. In a 1992 settlement conference, Simmons rejected the settlement panel's recommendation. Subsequently, Simmons signed a blank release for a purported settlement that respondent was to secure. Thereafter, in 1992, Simmons was incarcerated and gave his mother, Josephine Simmons, the authority to act on his behalf. Simmons' mother requested from respondent a copy of her son's executed release, but respondent refused to give it to her. Furthermore, respondent falsely advised Mrs. Simmons that he was authorized to settle the case for \$10,000 and also failed to respond to her numerous attempts to contact him. The complaint charged respondent with a violation of RPC 1.4(a) (failure to communicate).

THE THOMAS MATTER

After Harold Thomas retained respondent to represent him in connection with a motor vehicle accident, respondent failed to communicate with him. The complaint does not indicate what steps, if any, respondent took in his client's behalf. On numerous occasions, Thomas tried, in vain, to find out the status of his case.

THE HALL-DEAN MATTER

Debi A. Hall-Dean retained respondent in or about February 1992 to represent her in a matrimonial action. Thereafter, Hall-Dean made numerous unsuccessful attempts to contact respondent until April or May 1992, when respondent sent her a certification for her signature. The complaint alleged a violation of RPC 1.4 (failure to communicate).

THE ROBILOTTO MATTER

Anne Robilotto retained respondent in June 1992 to represent her in an automobile accident matter. Robilotto's repeated calls to respondent went unanswered. In October 1993, respondent explained to Robilotto that he was having problems with secretaries. He assured her that he was "taking care of things." Thereafter, respondent failed to communicate with Robilotto. The statute of limitations has already expired. The complaint alleged a violation of RPC 1.4(a) (failure to communicate) and of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

THE MORRIS MATTER

Rhonda and Geneva Morris retained respondent to represent them in connection with a contract dispute. Respondent advised his clients not to pay the second mortgage on their residence.

As a result, the Morrises received various correspondence and documents from the second mortgagee, which they turned over to respondent. The second mortgagee apparently filed foreclosure proceedings against the Morris property. When respondent did not file an answer, the property was foreclosed upon and a sheriff's sale ensued. During this period, respondent failed to inform his clients of the status of their matter.

Sometime in 1993, respondent filed an action against the mortgage broker, among others. During this time, the only communication the Morrises received from respondent was a copy of the defendant's answer to the complaint, as well as a notice to take depositions in or about early 1994. Respondent also failed to keep numerous appointments made with his clients. The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

THE ISLER MATTER

George Isler retained respondent in connection with a personal injury matter. Although respondent filed a complaint, he failed to reply to his client's inquiries and failed to inform him about the status of his case. At one point, Isler went to respondent's office, at which time respondent falsely indicated that he was either waiting for a trial date or was negotiating a settlement with the insurance company. In fact, Isler's complaint had been dismissed in 1990 for failure to reply to interrogatories. An appeal to restore the complaint was denied. The complaint alleged a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep client adequately informed) and RPC 3.2 (failure to expedite litigation).

THE HOLMES MATTER

Marshall Holmes retained respondent in connection with a personal injury matter. By certified letter dated July 3, 1992, Holmes discharged respondent, directed him not to contact him and advised him to send his file to his new attorney. Despite Holmes' instructions, respondent attempted to contact him and refused to turn over his files to his new attorney. Respondent was

charged with a violation of RPC 1.16(d) (failure to return client property).

THE KANE MATTER

Maria Lopez and her ex-husband retained respondent to represent them in the sale of a business. Thereafter, Lopez retained Walter Kane, Esq. to represent her in connection with a tax matter. Kane and Lopez wrote numerous letters to respondent, sent by regular and certified mail and facsimile transmission, requesting Lopez's file. Respondent failed to turn over the file and failed to reply to the DEC's request for information in this matter. The complaint alleged a violation of RPC 1.16(d) (failure to turn over files) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

THE AHMED MATTER

In 1990, respondent filed a personal injury action in behalf of Mujib Ahmed. In May 1990, respondent contacted Ahmed to answer interrogatories. Thereafter, Ahmed's repeated efforts to contact respondent were unsuccessful. Respondent also failed to reply to the DEC's requests for information in this matter. The complaint charged respondent with a violation of RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

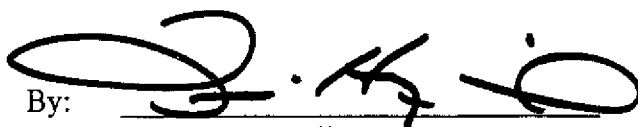
Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted, with the exception of the Witt matter. Knowledge of the foreclosure in Witt was only imputed to respondent and, thus, the Board is unwilling to find, by clear and convincing evidence, that respondent violated RPC 3.3(a)(5) in this instance. The record contains sufficient evidence of unethical conduct on the part of respondent, as charged in the complaint.

This leaves only the issue of appropriate discipline. Similar conduct has resulted in a two-year suspension. See In re Depietropolo 127 N.J. 237 (1992) (two-year suspension for pattern of neglect in five matters, misrepresentation, failure to communicate and failure to cooperate with disciplinary authorities) and In re Foley, 130, N.J. 322 (1992) (two-year suspension for pattern of neglect, failure to communicate, misrepresentation and failure to cooperate with disciplinary authorities).

In light of the foregoing, the Board unanimously determined to suspend respondent for two years. Additionally, upon reinstatement and for a period of two years, respondent is required to practice under the supervision of a proctor approved by the OAE.

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

Dated: 1/23/97

By: 

Lee M. Hymerling
Chair
Disciplinary Review Board