

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-087

IN THE MATTER OF :
HOWARD PITT, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 12, 1993

Decided: August 3, 1993

Mary Franc Thurber appeared on behalf of the District IIA Ethics Committee.
Respondent did not appear.¹

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 IIA Ethics Committee (DEC). The formal complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 1.15 (failure to safeguard property). Respondent neither filed an answer to the complaint nor appeared at the DEC hearing. At the beginning of the DEC hearing, the presenter, Mary Franc Thurber, Esq., telephoned respondent, who

¹ During a telephone conversation with Chief Counsel on April 20, 1993, respondent advised that he would not appear at the May 12, 1993 Board hearing and would forward a written statement to the Board regarding the case. No such statement was received until May 12, 1993, after the Board hearing in this matter had ended, when respondent "faxed" a statement to Board Counsel's office.

stated that he would be sending correspondence to the hearing by "fax," setting forth his position. He did not do so, however.

Respondent was admitted to the New Jersey bar in 1974. He does not maintain a law office in New Jersey. By letter dated May 6, 1988, respondent was privately reprimanded for lack of diligence and failure to communicate in a collection matter. On October 16, 1990, he was publicly reprimanded for failure to maintain a bona fide office in New Jersey and for failure to cooperate with the DEC.

In March 1986, the grievants herein, Stephen B. and Louise S. Rosenthal retained respondent to represent them in connection with the refinancing of their mortgage, paying him between \$400 and \$600. The existing mortgage was held by Midlantic National Bank/North (Midlantic). The new mortgage holder was to be Hudson Mortgage Company (Hudson). The closing took place on March 18, 1987. On March 19, 1987, respondent sent sufficient funds to Midlantic to pay off the mortgage. On April 7, 1987, Midlantic sent respondent the mortgage endorsed for cancellation, but he failed to cancel the mortgage of record with the Bergen County Clerk's office. In addition, although respondent had the Rosenthals execute a mortgage in favor of Hudson, he never forwarded the document to the Bergen County Clerk's office for recording.

On March 19, 1987, respondent sent payment for title insurance to Chicago Title Insurance Company (Chicago). Respondent did not

receive the title policy, however, because he never canceled the Midlantic mortgage of record or recorded the Hudson mortgage.

The Rosenthals learned of respondent's derelictions in March 1989, when they attempted to obtain a home equity loan from First Fidelity Bank (Fidelity). Although the loan had been approved, prior to its finalization Fidelity advised the Rosenthals that it could not locate the cancellation of the Midlantic mortgage. The Rosenthals contacted respondent several times over the following months. Respondent assured the Rosenthals that he would take care of the matter. Despite his promises, respondent took no action to assist the Rosenthals, who ultimately were forced to resolve the problem themselves.

After reviewing their documents, the Rosenthals realized that the title insurance policy had never been issued. The Rosenthals then delivered proof of the cancellation of the mortgage to Chicago. Some weeks later, when Chicago advised the Rosenthals that the Hudson mortgage had never been filed, the Rosenthals contacted Hudson, whereupon the necessary documents were re-executed. Title insurance was finally issued on June 25, 1990.

It appears that the Rosenthals' title policy had somehow "fallen through the cracks" prior to 1989. When the difficulty surfaced in 1989, representatives of Chicago and Hudson attempted, via telephone and letter, to obtain respondent's assistance. Despite respondent's assurance that he would check his file and contact the representatives, he failed to cooperate with them.

In addition to his misconduct in handling the Rosenthals' matter, respondent failed to respond to several letters from the DEC investigator. He also failed to file an answer to the complaint, despite being advised by letter from the DEC secretary, dated March 24, 1992, that the failure to file an answer would be treated as an additional charge against him. Further, he did not appear at the hearing, although he was advised of the scheduled proceedings by letter from the DEC secretary, also dated March 24, 1992.

The DEC found that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.1. In addition, the DEC found that respondent's gross neglect of the Rosenthals' matter, combined with the prior two disciplinary matters, constituted a pattern of neglect, in violation of RPC 1.1(b). No reference was made to the alleged violation of RPC 1.15, which does not appear to apply specifically to this situation.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. Respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.1.

The Board, however, disagrees with the DEC's finding of a violation of RPC 1.1(b). The grievance that led to respondent's previous private reprimand was filed in 1984. Assuming that the

misconduct that led to that grievance occurred in 1983 or 1984, it was too remote in time from the within misconduct (from 1987 through 1989) to be considered as part of a continuing pattern of neglect. Accordingly, the finding of a violation of RPC 1.1(b), tied in as it is to respondent's previous misconduct, is inappropriate. In addition, in connection with the discussion of violation of RPC 1.4, the DEC referred to respondent's failure to provide information to his clients to allow them to make informed decisions, RPC 1.4(b). The Board is of the opinion that a finding of a violation of RPC 1.4(a) is more appropriate and so finds.

Typically, violations similar to respondent's would merit the imposition of a public reprimand. See In re Stewart, 118 N.J. 423 (1990) (gross neglect and failure to communicate in one matter, prior private reprimand); In re Rosenblatt, 114 N.J. 610 (1989) (gross neglect and failure to communicate in one matter, prior private reprimand); and In re Williams, 115 N.J. 667 (1989) (public reprimand for gross neglect in one matter, failure to communicate in one matter, failure to file an answer and lack of cooperation with the DEC).

The distinguishing factor in this case is that this respondent clearly has not learned from his earlier mistakes. He was first privately reprimanded in 1988, for lack of diligence and failure to communicate. He was then publicly reprimanded in 1990, for failure to maintain a bona fide office and failure to cooperate with the DEC. Yet, respondent continued to violate the standards of the profession. His failure to cooperate in this matter, including his


failure to appear at the DEC hearing, was serious. Indeed, even when respondent was contacted during the hearing, he misrepresented to the DEC that he would send a "fax" to the panel within one hour.

In In re Parker, 119 N.J. 398 (1990), the attorney accepted \$100 from a client to start a divorce action, did nothing, failed to return the money and failed to communicate with his client. He also failed to reply to the investigator's requests for information, to file an answer to the complaint and to appear at the DEC and Board hearings. Parker received a six-month suspension.

Unquestionably, respondent's conduct in this matter caused the Rosenthals extreme emotional anxiety. Respondent's conduct in this matter, as well as in the matters that led to his earlier discipline, demonstrates his lack of respect for his clients, the rules governing the profession and the disciplinary system. Given respondent's disciplinary history, his failure to correct his practices and his attitude, a six-month suspension is warranted. The Board unanimously so recommends. In addition, the Board recommends that, upon reinstatement, respondent practice only under the supervision of a proctor for a period of one year. One member did not participate.

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

Dated: 8/13/1993

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board