

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-016

: IN THE MATTER OF :
: :
MICHAEL P. SKELLY, :
: :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 25, 1993

Decided: April 6, 1993

James T. Rosenberg appeared on behalf of the District IIIB Ethics Committee.

Respondent appeared pro se.

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 IIIB Ethics Committee (DEC).¹

Respondent was admitted to the New Jersey bar in 1983. He has been engaged in the practice of law in Willingboro, Burlington County. The facts of this matter are as follows:

In 1986, Edward Dinkler retained respondent to incorporate his business, Tri-State Equipment Company (Tri-State), and to maintain

¹ This matter was originally heard by the DEC on November 6, 1991 and came before the Board at its March 18, 1992 meeting under Docket No. DRB 92-020. At that time, the Board denied respondent's motion to expand the record but remanded the matter to the DEC for a new hearing, based on respondent's representation that he had not received notice of the DEC hearing and that he had evidence to present on his behalf. The Board directed that the DEC address, in particular, the issue of respondent's cooperation with the DEC, including the adequacy of notice to respondent and the steps he took thereafter to comply with the notice.

the corporation's books and records.² Dinkler also retained respondent to prepare wills for himself and his wife and to hold those documents.³ Although he did not remember the precise fee, Dinkler recalled that respondent was paid for these services.

In the fall of 1988, Dinkler sold a wheel alignment system to a Pennsylvania company, Russell Associates. Dinkler was paid approximately \$6,000 for the machinery. Thereafter, Russell Associates installed the machinery in the shop of a third party, guaranteeing that the machinery could be returned for a full refund. When the third party exercised that option and returned the wheel alignment system to Russell Associates, the latter contacted Dinkler and demanded that he pick up his machinery and refund the \$6,000. Dinkler refused to do so, on the basis that the sale to Russell Associates was unconditional. Thereafter, Dinkler began to receive letters from Russell Associates' attorneys.

Dinkler then consulted with respondent, via telephone and in person, who advised him that he was not obligated to remove the equipment or refund the money. Accordingly, Dinkler did neither.

Thereafter, Russell Associates filed a lawsuit against Dinkler in Bucks County, Pennsylvania. Dinkler was served with the complaint, which he delivered to respondent's office, located at 20 Mayfair Circle, Willingboro, New Jersey. Dinkler did not have any contact at that time with respondent but, rather, slipped the

² Dinkler is involved in automotive equipment sales and service.

³ Although it is unclear from the record, it would seem that respondent was retained to draft the wills at or about the same time that he was retained to incorporate Tri-State.

papers under his office door. Dinkler followed up with a message on respondent's answering machine and possibly one conversation with respondent, at which time respondent indicated that he would take care of the matter.⁴ Subsequently, Dinkler received notice from the Pennsylvania court that a default judgment would be entered against him if he did not file a responsive pleading within ten days. Dinkler spoke by telephone with Patricia Skelly, respondent's wife, who is also an attorney. Mrs. Skelly advised Dinkler that respondent was out of town due to a death in the family, but that he was handling the matter.⁵ She further advised Dinkler that respondent had obtained an extension of time to file an answer.

On February 17, 1989, a default judgment was entered against Dinkler for \$6,000. Russell Associates' attorneys contacted Dinkler to inform him that they would take action to satisfy the judgment. Dinkler then telephoned respondent, at which time Patricia Skelly told Dinkler that she knew that respondent had, in fact, received an extension of time to file an answer. She continued to reassure Dinkler that respondent was pursuing the matter (T11/4/92 26-27).

Respondent, in turn, testified that he had no knowledge of the suit against Dinkler until January 1989, when Dinkler telephoned

⁴ The record is not clear as to whether Dinkler actually spoke with respondent after the complaint was filed (T11/4/92 19-22).

⁵ Patricia Skelly was admitted to the bar in New Jersey in 1978. In 1991, she became ineligible to practice for failure to pay the annual assessment to the Client Protection Fund. According to her testimony, she has not practiced law since 1985.

him and brought the relevant documents to his home (T11/17/92 46-47). According to respondent, he then contacted Russell Associates' attorney and obtained an extension of time until February 17, 1989 to file an answer (T11/17/92 46-47). He explained that Russell Associates' attorney, however, had filed for default prior to the deadline for the receipt of the answer (T11/17/92 49). Indeed, respondent did file an answer on Dinkler's behalf. His answer was stamped as received in the Bucks County Prothonotary on February 16, 1989.⁶ However, respondent was unable to produce any evidence that the answer was ever served on Russell Associates' attorney. Although he testified that he had a document to this effect, he failed to produce it at the DEC hearing (T11/17/91 76).

Thereafter, Russell Associates retained a New Jersey law firm to file a suit in New Jersey to enforce the \$6,000 Pennsylvania judgment. Suit was commenced in the Superior Court of New Jersey to enforce the Pennsylvania default judgment. That firm contacted Dinkler, who retained another attorney, James P. McDonough, Esq., to represent him in the New Jersey proceeding. On June 4, 1990, McDonough wrote to respondent, informing him that he and Dinkler wanted him to move to vacate the Pennsylvania judgment and that, once that was accomplished, respondent would have no further

⁶ Respondent testified that, although the answer was actually filed on February 15, 1989, the stamp in the clerk's office was set one day ahead (T11/17/92 48).

responsibility in the case.⁷ Dinkler testified that McDonough spoke with respondent and that the latter refused to act on Dinkler's behalf (T11/4/92 29-30). Indeed, respondent took no action toward vacating the Pennsylvania judgment.⁸ The matter was ultimately settled when Dinkler agreed to pay \$3,500 of the \$6,000 judgment obtained in Pennsylvania.

According to respondent, he and Dinkler discussed the hiring of another attorney to represent Dinkler in the matter. Respondent testified that he agreed that Dinkler should retain McDonough, who was active in the field of Dinkler's business (T11/17/92 50-51). Respondent further testified that he agreed to provide an affidavit that he had, in fact, filed the answer within the extended time (T11/17/92 54). He stated, however, that he never agreed to proceed further on Dinkler's behalf and that he believed that McDonough would be taking appropriate action to vacate the default judgment. He added that a substitution of attorney was not necessary because "[s]ince the matter was in default he was able to reenter or would be under court rule to reenter without a substitution" (T11/17/92 84).

On July 12, 1990, Dinkler sent a letter to respondent, requesting that the wills respondent had drafted for Dinkler and his wife, as well as the Certificate of Incorporation and the stock

⁷ The letter also stated that McDonough would contact Russell Associate's attorney to determine where the case would be litigated. McDonough indicated that, if it was to be litigated in Pennsylvania, he would request a substitution of attorney from respondent (Exhibit P-1).

⁸ The DEC also noted that respondent never filed a substitution of attorney in this matter.

book for Tri-State, be turned over to him.⁹ Dinkler also requested the documents in connection with the Russell Associates lawsuit. Patricia Skelly did provide some of the latter documents to Dinkler; however, respondent never gave him the wills or the Tri-State documents. Dinkler considered further efforts to contact respondent useless and hired McDonough to draft new wills.

On or about August 3, 1990, Robert D. Vetra, Esq., Secretary, District IIIB Ethics Committee, received a grievance from Dinkler. On August 14, 1990, Vetra sent a copy of the grievance to respondent, asking that he reply to the allegations by August 24, 1990. Vetra's letter was sent to respondent at 20 Mayfair Circle, respondent's address listed in the 1991 Lawyer's Diary, via regular and certified mail. The regular mail was not returned; the certified mail was signed by Patricia Skelly on August 29, 1990. Thereafter, James T. Rosenberg, Esq. was assigned by the DEC to investigate Dinkler's allegations. Rosenberg sent three letters to respondent, on October 12 and 18, 1990 and November 16, 1990, asking that he make an appointment with Rosenberg to discuss Dinkler's allegations.¹⁰ Respondent did not reply to Rosenberg's letters. Rosenberg's investigation of the matter led to the filing of a formal complaint on April 8, 1991. The complaint was mailed to respondent at 20 Mayfair Circle, April 9, 1991, by regular and certified mail. The certified mail was returned to Vetra as

⁹ As of the DEC hearing on November 4, 1992, Dinkler still did not have Tri-State's documents.

¹⁰ The letter of October 18 was sent via certified mail and was unclaimed. The letter of November 16 was sent via regular and certified mail.

unclaimed. The regular mail was not returned and was presumably delivered. Respondent did not file an answer to the complaint.

After not hearing from respondent, the DEC caused notice of the hearing to be placed in both the Burlington County Times and the New Jersey Law Journal.¹¹ On November 4, 1991, two days prior to the DEC hearing, Vetra received a letter from respondent indicating that he had heard, by word of mouth, of a notice concerning him and requesting a copy of the complaint, discovery and a thirty-day adjournment. The address on the letter was 104 West Maple Avenue, Merchantville, New Jersey. On that day, Vetra telephoned respondent at the number on his letterhead and left a message for respondent to call him. Respondent failed to return the call. On November 5, 1991, Vetra again telephoned respondent at the same number. He was advised by the individual who answered that no one by respondent's name lived at that address. One hour later, another call to the same number was made, which went unanswered. Vetra had no further contact with respondent, who did not appear at the DEC hearing of November 6, 1991. Respondent testified that he telephoned Vetra's office approximately one month later and spoke with his secretary (T11/17/92 81).

After the Board remanded this matter to the DEC, Vetra contacted the Client Protection Fund to obtain respondent's address. Respondent's address was still listed as 20 Mayfair Circle, Willingboro. Thereafter, Vetra learned that respondent

¹¹ The notice was published in the Burlington County Times on October 8, 17, 18, 20, 21, 22 and 23, 1991. The notice appeared in the New Jersey Law Journal on three occasions.

would be at a meeting of the Willingboro Rotary Club on September 24, 1992. Vetra went to the meeting and personally served respondent with the complaint. Vetra stated that he had no communication from respondent after that date (T11/4/92 6).

Patricia Skelly testified that she lived at 20 Mayfair Circle for nine years and currently resides at 50 Baldwin Lane, Willingboro, where she has lived for the past two years.¹² In early 1990, respondent and Patricia Skelly separated.¹³ He resided in Moorestown through the end of 1991.¹⁴ Respondent and Patricia Skelly reconciled in May 1992 and have been residing together at 50 Baldwin Lane since that time. At the time of their separation, one of the couple's two children resided with respondent. Patricia Skelly testified that, although she saw her child at various locations during the time of the separation, she was never in respondent's home and, from early 1990 to the end of 1991, had no way to contact him.¹⁵ She also testified that she never practiced law with respondent.

However, in its report, the DEC noted that Dinkler testified that Patricia Skelly had previously assisted respondent in handling Dinkler's legal matters. Accordingly, the DEC found that her

¹² This address is also respondent's business address.

¹³ Respondent testified that he moved to Moorestown in June 1989 (T11/17/92 71).

¹⁴ Respondent testified that, when he moved to Moorestown, he notified the Supreme Court of his new address by letter (T11/17/92 72). He further stated that he also informed the Court of the Merchantville address (T11/17/92 86).

¹⁵ Respondent testified that, in fact, Patricia Skelly knew where to contact him (T11/17/92 66).

representations, as his assistant and a member of the bar, were binding upon respondent and found that the Dinkler matter was entrusted to and accepted by respondent and that he caused false representations that the matter was under control to be made to Dinkler.¹⁶

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 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority). Respondent did not file an answer to the complaint. The DEC found that respondent was guilty of the charged violations.

The DEC did not address respondent's closing argument that the DEC had no jurisdiction over this matter because it involved a Pennsylvania transaction litigated in a Pennsylvania court.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the determination of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence. The Board agrees that respondent violated RPC 1.3, RPC 1.4 and RPC 8.1(b). However, the Board disagrees with the DEC's finding that respondent was guilty of gross neglect, in violation of RPC 1.1(a).

¹⁶ No allegation or specific finding of a violation of RPC 8.4(c) was made against respondent.

Although it is true that respondent was not as diligent as he could have been in his representation of Dinkler, he did obtain an extension of time in which to file an answer and did in fact file an answer (the entry of the default judgment in Pennsylvania was erroneous). However, respondent should have taken steps on Dinkler's behalf when he learned of the default judgment. If respondent had violated only RPC 1.3 and RPC 1.4(a), then his misconduct would likely merit the imposition of a private reprimand. However, respondent is also guilty of a violation of RPC 8.1(b), by his failure to cooperate with the disciplinary authorities. This ongoing lack of cooperation is respondent's most serious violation and clearly mandates that the discipline be upgraded.


See In re Williams, 115 N.J. 667 (1989), (where the attorney was publicly reprimanded for gross neglect in one matter and failure to communicate in another, compounded by the attorney's failure to cooperate with the disciplinary authorities); In re Grinchis, 75 N.J. 494 (1978), (where the attorney received a severe public reprimand for neglect in one matter. Grinchis also failed to cooperate with the investigator appointed by the DEC).

This matter was remanded to the DEC to give respondent further opportunity to present a defense. Yet, respondent again failed to cooperate with the DEC, continuing in his disrespectful attitude

toward the ethics system. This aggravating factor convinces the Board that a public reprimand is the appropriate discipline in this matter. The Board unanimously so recommends. Two members did not participate.

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

Dated: 4/6/1993

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board