

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-332
District Docket No. XB-2011-0042E

IN THE MATTER OF
STUART D. FELSEN
AN ATTORNEY AT LAW

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Decision

Decided: March 27, 2013

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). A two-count complaint charged respondent with lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4, presumably (b)), and failure to cooperate with an ethics investigation (RPC 8.1(b)). We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1993. On April 25, 2002, he received a reprimand for improperly practicing law under the trade name of "Law Advisory Group" and for making false or misleading statements in advertisements

about his qualifications and the make-up of that entity. In re Felsen, 172 N.J. 33 (2002).

Respondent was suspended for three months, effective February 24, 2007, for third-degree criminal attempt to possess CDS (Percocet) by fraud, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:35-13, and third-degree forgery of a physician script, in violation of N.J.S.A. 2C:21-1a(2). In re Felsen, 189 N.J. 199 (2007).

On November 27, 2007, respondent was reinstated to the practice of law. In re Felsen, 193 N.J. 329 (2007).

On November 5, 2012, respondent was censured in another default matter for gross neglect, lack of diligence and failure to adequately communicate with the client in a DUI case. In re Felsen, 212 N.J. 434 (2012).

Service of process was proper in this matter. According to the August 30, 2012 certification of service from the OAE, on May 11, 2012, that office sent a copy of the complaint in the above matter to respondent at his law office address, 119 Vista Drive, Cedar Knolls, N.J. 07927, in accordance with the provisions of R. 1:20-4(d) and R. 1:20-7(h). On May 17, 2012, respondent signed for, and claimed, the certified mail. The regular mail was not returned.

On June 7, 2012, the OAE sent respondent a "five-day" letter at the same address, by regular mail, advising him that, if the OAE did not receive a verified answer within five days of the date of the letter, no further hearing would be held and the entire record would be certified to us as a default. The regular mail was not returned.

The time within which respondent had to file an answer has expired.

On September 15, 2011, Hisham Mabrouk retained respondent to file an appeal of a traffic summons for his alleged failure to observe a traffic signal. According to the formal ethics complaint, Mabrouk sought to have the offense reduced "back to its original one."

Mabrouk paid respondent \$475 for the representation. Respondent advised him that he would be in contact, the day prior to the court date, to go over the matter together. Mabrouk received no contact from respondent or the court for nearly a month.

Thereafter, when Mabrouk contacted the court directly, he learned that respondent had taken no action in his behalf and that the twenty-day time limit within which to file the appeal had expired.

Mabrouk was upset to learn that respondent had charged him for legal services, but provided none, after which respondent failed to return the fee.¹

Mabrouk sent respondent three emails about the matter, in October 2011. Respondent failed to reply to any of those requests for information.

In addition, ethics authorities requested that respondent provide information and documents in connection with the Mabrouk investigation and gave him numerous opportunities to comply with those requests. Respondent, however, failed to do so.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent was retained to represent Mabrouk regarding a simple traffic summons. After being paid \$475 for the representation, respondent performed no work on behalf of the client, a violation of RPC 1.3.

¹ Respondent was not charged with having failed to return an unearned fee (RPC 1.16(d)).

Respondent also failed to reply to Mabrouk's repeated email requests for information about the status of his case. Mabrouk learned on his own that respondent had not filed an appeal on his behalf. Respondent, thus, violated RPC 1.4(b).

Finally, respondent failed to reply to multiple DEC requests for information about the grievance, in violation of RPC 8.1(b).²

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See, e.g., In the Matter of Edward Benjamin Bush, DRB 12-073 (April 24, 2012); In the Matter of Rosalyn C. Charles DRB 08-290 (February 11, 2009); In the Matter of James C. Richardson, DRB 06-010 (February 23, 2006); and In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005).

So, too, failure to cooperate with ethics authorities will ordinarily yield an admonition. See, e.g., In the Matter of Kevin H. Main, DRB 10-046 (April 30, 2010); In re Ventura, 183 N.J. 226 (2005); and In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004).

² Although respondent was not charged with having violated RPC 1.16(d) for failing to return the unearned retainer, we may consider it in aggravation.

In a default matter, however, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

In In re McCarthy, 205 N.J. 470 (2011), a default case involving misconduct similar to that of respondent, a reprimand was imposed. There, the attorney lacked diligence, failed to communicate with the client, failed to return a \$250 real estate escrow, and failed to cooperate in the ethics investigation. The attorney, however, had no prior discipline, unlike this respondent.

In another default matter, In re Porwich, 205 N.J. 230 (2011), the attorney received a censure for almost identical misconduct presented herein, lack of diligence, failure to communicate with the client, failure to cooperate in the ethics investigation, and failure to return the client file. The attorney was censured, based on the presence of an earlier (1999) reprimand for similar misconduct.

Here, however, respondent has a significant disciplinary history: a 2002 reprimand; a 2007 three-month suspension; and a November 5, 2012 censure, in yet another default matter.


Taking into account respondent's serious disciplinary history and the fact that he has now allowed two matters to proceed to us, back-to-back, as defaults, we find that this case is more serious than Porwich (censure). Thus, we determine to impose a three-month suspension. We also require respondent, based on the medical issues that he raised in his December 15, 2012 letter to us, upon reinstatement, to provide proof of fitness to practice law, as attested by a mental health professional approved by the OAE.

Member Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By:


Julianne K. DeCore
Chief Counsel

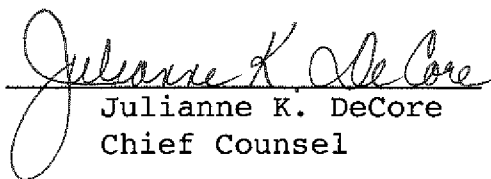
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stuart D. Felsen
Docket No. DRB 12-332

Decided: March 27, 2013

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh						X
Clark		X				
Doremus		X				
Gallipoli		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel