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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-471

IN THE MATTER OF :
:
CHARLES F. MARTONE, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: January 27, 1993

Decided: March 18, 1993

Raymond T. Coughlin appeared on behalf of the District VI Ethics Committee.

John R. Hamill, Jr. 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 on a recommendation for public discipline filed by the District VI Ethics Committee ("DEC"). The complaint charged respondent with unethical conduct in five separate matters.¹

Respondent was admitted to the New Jersey bar in 1973. Since the summer of 1989, he has been employed by the Office of the Public Defender in Essex County.

THE RATTA MATTER

Respondent was retained in 1987 to represent Pasquale Ratta's

¹ The DEC dismissed the underlying charges of violations in two matters, but concluded that respondent had failed to cooperate with the ethics investigator in those two matters.

children, John and Rosemarie, in the sale of real property owned by Mr. Ratta and located at 24 Patterson Street, in Kearny, New Jersey². John and Rosemarie were buying the property from Mr. Ratta for \$110,000. Mr. Ratta gave his children a mortgage loan in the amount of \$80,000.

Following the closing on August 21, 1987, Mr. Ratta telephoned respondent and wrote him on several occasions, requesting the recorded deed and mortgage as well as a copy of the title policy. Respondent did not comply with Mr. Ratta's request. On November 9, 1987 and April 19, 1988, Rosemarie Ratta wrote to respondent, asking him to forward those documents to Mr. Ratta at the earliest opportunity. Respondent did not do so. On March 30, 1989 and May 9, 1989, an attorney who was acting on Mr. Ratta's behalf also wrote to respondent requesting those documents and additional information. Respondent ignored those letters as well. Ultimately, Mr. Ratta paid a visit to the county clerk's office and discovered that the deed and the mortgage had never been recorded. Mr. Ratta testified that, although the checks given to respondent for the payment of his services were never cashed, he was forced to pay \$500 to a new attorney to straighten out the matter. At the DEC hearing, respondent explained that the Ratta file, together with all of his active files and closed files that had been requested for an audit of his attorney records, had been lost when his car was stolen in March 1989. He explained that he had

² The complaint did not charge respondent with conflict of interest, even though Mr. Ratta testified that he understood that respondent was representing his children and that he was "also in the package, so to speak."

contacted the title company with instructions that it review all of the real estate matters that had been handled through that company to insure that all matters had been completed. Because, however, Mr. Ratta had chosen not to have a title search conducted, the title company had no records on this matter, which caused it to "fall through the cracks." Respondent also offered, in mitigation, testimony concerning serious physical problems that beset him at the time, including asthma, cough, severe obesity and sleep apnea, a condition that caused him to cease breathing during sleep. Respondent explained that, as a result of his inability to sleep, he was physically exhausted at the time of the within ethics infractions. His condition was later diagnosed as sleep apnea and treated with the use of a machine that pumps air into his lungs and, thus, allows him to fall asleep for at least a number of hours. Respondent produced a medical report (Exhibit R-2) attesting that his physical ailments affected his practice at the relevant time.

THE KROPILAK MATTER

Respondent represented Delphine and Gregory Kropilak in a personal injury action against Paramus Park Mall. In July 1986, the matter was settled for \$23,000. After respondent prepared a release and a stipulation of dismissal, the carrier forwarded a draft for the appropriate amount, whereupon the monies were properly disbursed. After further review of the release, however, the attorney for the carrier noticed that it did not contain the

amount of the settlement, that the witness' signature was illegible and that the signatures had not been acknowledged. Thereafter, he placed many telephone calls to respondent's office, all to no avail. He was then forced to file a motion to compel the submission of a proper release, which motion was granted. Despite the court order's direction, respondent failed to prepare a second release. Two motions and two court orders later, respondent still had not submitted a proper release to the carrier.

At the DEC hearing, respondent testified that he was not aware of one of the motions filed by counsel for the carrier and that he had not intended to ignore the court orders but, rather, was under the impression that the matter had been successfully completed after he had prepared a second stipulation of dismissal, as ordered by the court. Respondent also asserted that, without reviewing the file, which had been stolen, it was impossible for him to testify about his efforts to properly conclude the matter.

THE DECATALDO MATTER

Respondent was retained by Luisa and Michael DeCataldo to represent them in the purchase of real property located in Colonia, New Jersey. The closing took place on March 31, 1988. According to the closing statement, sufficient monies were set aside from sellers' funds to pay outstanding taxes on the property (\$363.56) as well as an outstanding bill to AVP Exterminators, Inc. (\$469) (Exhibit P-6).

After the closing, the DeCataldos became aware that neither

the taxes for the first quarter, in the amount of \$171, nor the exterminator's bill had been paid³. They attempted to reach respondent many times to resolve this matter, unsuccessfully. Eventually the DeCataldos were forced to pay the taxes with out-of-pocket funds.

At the DEC hearing, respondent testified that, although aware of the problems raised by the DeCataldos in their grievance, he did not issue new trust account checks to pay the two relevant expenses because it would have been inappropriate for him to do so without reliable evidence that the bills had not been satisfied. Again, respondent pointed to the loss of his files in an attempt to explain why he had been unable to write new trust account checks. He testified, however, that he had offered to reimburse the DeCataldos for any expenses that they would have been obligated to pay with their own funds.

THE QUATTROMINI AND LAUTTENBERGER MATTERS

Because the grievants in these two matters failed to appear for testimony, the DEC dismissed the charges concerning respondent's representation of these two clients. The DEC, however, accepted evidence that respondent had failed to cooperate with the ethics investigator in these two matters, as seen below.

³ The complaint did not charge respondent with knowing misappropriation of client funds.

FAILURE TO COOPERATE

In September 1990, the ethics investigator sent letters to respondent in connection with the Ratta, Kropilak, DeCataldo, Quattromini and Lautenberger grievances. In those letters, the investigator requested that respondent review the enclosed grievances and furnish a written reply within two weeks. Respondent did not comply with the investigator's request for information.

At the DEC hearing, respondent apologized for not having replied to the investigator's letters and, at the same time, disavowed any intent to hide information from the DEC. He testified that he was so physically exhausted at the time that he was unable to even review the grievances.

* * *

At the conclusion of the ethics hearing, the DEC found that respondent had violated RPC 1.3 (lack of diligence), 1.4 (failure to communicate), and 1.1(b) (pattern of neglect) in the Ratta matter; 1.1(a) (gross neglect), 1.3 (lack of diligence), and 1.1(b) (pattern of neglect), by failing to comply with three court orders to execute a proper release in the Kropilak matter, and 1.3 (lack of diligence), 1.4 (failure to communicate) and 1.1(b) (pattern of neglect), by failing to pay the taxes and the exterminator's bill after the closing of title in the DeCataldo matter. The DEC also found that respondent had failed to cooperate with the ethics investigation in the Ratta, Kropilak, DeCataldo, Quattromini, and

Lautenberger matters, in violation of RPC 8.1(b).

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. The Board also agrees with the DEC's specific findings of violations of the Rules of Professional Conduct.

There remains, thus, the issue of the appropriate measure of discipline for respondent's ethics transgressions.

Unaccompanied by more serious violations, respondent's lack of diligence and pattern of neglect in three matters, followed by his failure to cooperate with the ethics investigation and to file an answer to the formal ethics complaint in five matters, should merit a public reprimand. See, e.g., In re Wall, __ N.J. __ (1990) (lack of diligence and failure to communicate in two matters, gross neglect in a third matter and improper sharing of legal fees with a non-attorney); In re Clark, 118 N.J. 563 (1990) (lack of diligence and failure to communicate in four matters and failure to return retainer despite promises to grievant and request by new counsel); In re Beck, 118 N.J. 561 (1990) (pattern of neglect and failure to communicate in three matters); In re Lester, 116 N.J. 774 (1989) (gross neglect in two matters and uncandid answers to ethics complaints); and In re Williams, 115 N.J. 667 (1989) (gross neglect and failure to communicate in one matter and lack of

cooperation with the ethics investigation and failure to file an answer). Although respondent received a private reprimand, in February 1990, for failure to communicate in three matters and lack of diligence in two matters, his counsel and the DEC correctly noted that the matters now before the Board occurred during the same time frame as the former violations. Accordingly, this is not a case where an attorney was previously disciplined for similar conduct and did not learn from that lesson. The only violation that took place after the infractions that were the subject matter of the former private reprimand was respondent's failure to cooperate with the DEC.

In light of the foregoing — and of the fact that respondent apparently is serving the public well in the Office of the Public Defender — it is the Board's view that a public reprimand constitutes sufficient discipline for his misdeeds. The Board unanimously so recommends. The Board further recommends that respondent be supervised by a proctor, should he re-enter the private practice of law. One member agreed with the quantum of discipline, but disagreed with the Board's finding of violations of RPC 1.1(a) in the Ratta, Kropilak and the De Cataldo matters. 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