

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-241

IN THE MATTER OF
GARY LESSER
AN ATTORNEY AT LAW

Decision

Argued: September 18, 1996

Decided: October 17, 1996

Louis Criscuoli appeared on behalf of the District X Ethics Committee.

George Daggett 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 discipline filed by the District X Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.1 (gross neglect); RPC 1.3 (lack of diligence and promptness); RPC 1.4 (failure to communicate); RPC 4.1 (making a false statement of material fact to a third person); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1969. He was engaged in the practice of law in Budd Lake, Morris County, until October 26, 1993, when he was temporarily

suspended by consent order, pending the conclusion of certain ethics proceedings against him.

In re Lesser, 134 N.J. 220 (1993).

Respondent was privately reprimanded on February 27, 1989 for violations of RPC 1.5(b) (no written retainer) and RPC 1.15(b) (failure to promptly deliver funds to client), arising out of a real estate transaction.

On February 7, 1995, respondent was suspended for three months for the commingling of trust and personal funds, failure to notify the client of the receipt of funds, failure to disburse funds promptly and failure to comply with the recordkeeping rules. In re Lesser, 139 N.J. 233 (1995).

In June 1995, respondent was suspended for one year for gross neglect of an appeal, which resulted in its dismissal, misrepresentation of the status of the appeal to the client and failure to cooperate with the disciplinary authorities. In re Lesser, 140 N.J. 41 (1995).

In May 1996, respondent was suspended for an additional one year for the commingling of personal and client trust funds, failure to safeguard client property, and wilful disregard of recordkeeping responsibilities. There, respondent used his trust account as a personal account and withdrew \$250,000 of his funds for a contractor who performed work on his house. In re Lesser, 144 N.J. 160 (1996).

* * *

In August 1988, respondent was retained to represent James and Jacquelin Smith. James Smith was seriously injured when he was struck across the head with a tire iron while a patron

of a bar in Paterson, New Jersey. As a result, Mr. Smith suffered severe physical injury. On August 30, 1988, respondent filed a lawsuit in behalf of the Smiths. Thereafter, respondent ceased all communication with the Smiths, despite their repeated attempts to communicate with him. Until early 1992, the Smiths' attempts to obtain information about their case were unsuccessful.

In February 1992, the Smiths consulted with Alfred E. Fontanella, Esq. ("Grievant"), requesting that he contact respondent in their behalf to determine the progress of their case. Grievant sent a letter to respondent in early February 1992. On February 18, 1992, respondent wrote to grievant indicating that the suit was still "active." He stated that interrogatories had been answered and depositions had been scheduled and re-scheduled, although not yet taken.

Based on these representations, the Smiths and grievant made no further inquiry of respondent until July 1994. At that time, the Smiths again requested that grievant contact respondent for an update on the status of their case. During grievant's attempts to contact respondent, he and the Smiths became aware of respondent's temporary suspension and of the closing of his office. Grievant, nonetheless, telephoned respondent and wrote to him on July 25, and August 4, 1994. Respondent never replied to these inquiries. Thereafter grievant obtained a copy of an order from Passaic County Superior Court Judge Nicholas G. Mandak, dated November 3, 1989, which had dismissed the Smiths' complaint for failure to answer interrogatories.

Through grievant's efforts, in October 1994 the dismissal was set aside and the action reinstated.

* * *

The DEC found clear and convincing evidence that respondent violated RPC 1.1 (gross neglect) for having undertaken a complex personal injury matter for which he had no experience and for failure to have the matter reinstated, once it was dismissed. The DEC also found a violation of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) for failure to keep the Smiths reasonably informed about the status of their case, failure to inform them of the dismissal of the lawsuit and failure to comply with R:1:20-20(b)(11), following respondent's suspension from the practice of law. The DEC further found a violation of RPC 4.1 (making a false statement of material fact or failure to disclose the material fact) by respondent's written representation to grievant that the Smiths' lawsuit was still active when, in fact, it had been dismissed by court order over two years earlier. Lastly, the DEC found a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) by respondent's representation to both grievant and the Smiths that the dismissed lawsuit was still active.

The DEC considered respondent's prior disciplinary history, in particular the two separate one-year suspensions. The DEC recommended disbarment.

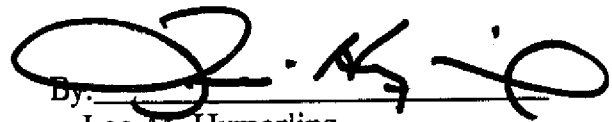
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Following a de novo review of the record, the Board is satisfied that the DEC's conclusions that respondent's conduct was unethical are fully supported by clear and convincing evidence.

Respondent's infractions in this matter, however, occurred during the same time period as other serious misconduct for which respondent received a series of suspensions. Had this matter been before the Board together with the previous matters, it would not have changed the quantum of discipline imposed. Accordingly, although the Board found that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4; and RPC 8.4(c) in this matter, the Board determined that additional discipline was not warranted. The Board required, however, that respondent complete the Skills and Methods core courses prior to reinstatement. In addition, reinstatement is to be premised on the prior resolution of all outstanding ethics matters against respondent.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 10/7/96

By: 

Lee M. Hymerling
Chair
Disciplinary Review Board