

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-440

IN THE MATTER OF
WILLIAM B. SPARKS
AN ATTORNEY AT LAW

Decision

Argued: January 23, 1997

Decided: June 3, 1997

Ann C. Pearl appeared on behalf of the District IV 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 on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). The complaint charged respondent with various violations arising out of two separate matters.

Respondent was admitted to the New Jersey bar in 1983. He was privately reprimanded on November 27, 1991 (1) for failure to take action on a client's matter,

resulting in the dismissal of the complaint; (2) failure to reply to the client's inquiries about the status of the matter; and (3) failure to reply to the DEC investigator's request for information about the grievance. Respondent had been privately reprimanded on July 29, 1988 for a nine-month failure to prepare documents necessary to extend a mortgage and failure to defer a balloon payment on it. Respondent has no other ethics cases pending.

On or about September 8, 1995, respondent filed an answer admitting each and every allegation contained in the three-count complaint.

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THE VILLARE MATTER

The first count of the complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); and RPC 1.4(a) (failure to communicate).

In or about August 1994, Robert C. Villare ("grievant") retained respondent to represent him in two separate matters arising out of two real estate transactions. There was no written retainer agreement for the representation. The first matter involved grievant's purchase of a home with an allegedly defective irrigation system. Respondent was to file suit against the sellers of the property. The second matter involved a dispute over funds held in escrow after grievant's sale of commercial real estate. Respondent was to attempt to negotiate a settlement and, failing that, to institute suit on behalf of grievant.

Grievant paid respondent a \$250 retainer for the irrigation matter in October 1994. Thereafter, grievant called and wrote to respondent on numerous occasions. Respondent failed to return his calls or to answer his letters. Indeed, respondent took no further action on the matter.

With regard to the commercial real estate matter, respondent attempted to settle the escrow dispute for \$2,500 and, when unable to do so, did nothing further.

THE HIGHTOWER MATTER

In or about August 1991, Veronica A. Hightower ("grievant") retained respondent to represent her in a personal injury action resulting from an incident at a Pathmark store on May 6, 1991. Respondent filed suit on May 6, 1993, the last date to file under the statute of limitations. The case was dismissed for lack of prosecution on March 17, 1994.

Although grievant called and wrote to respondent numerous times requesting information about her case, respondent failed to reply to her calls and letters. Respondent did not notify grievant that her complaint had been dismissed until some fifteen months later. At that time, respondent also advised grievant that she should retain other counsel for a possible malpractice claim against him.

Although grievant did retain other counsel, the record does not reflect what, if anything, happened with the malpractice claim. Respondent paid grievant \$6,000 in restitution for her claim.

FAILURE TO COOPERATE WITH THE DEC

The third and final count of the complaint alleged a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities) for respondent's failure to file an answer to the complaint. For unknown reasons, that count was not dismissed after respondent, at the DEC hearing, submitted proof of the filing of the answer.

* * *

Respondent testified at the DEC hearing that he filed an answer admitting all of the charges in the complaint by letter to the DEC dated April 11, 1995. Citing R.1:20-6(c)(1), the DEC concluded that there were no genuine disputes of material fact and that a formal hearing was not necessary. Nonetheless, the DEC briefly questioned both grievants and respondent, under oath, before placing its decision on the record.

With regard to the Villare matter, the DEC found that respondent had violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); and RPC 1.4(a) (failure to communicate). The DEC did not state the basis for each finding.

With respect to the Hightower matter, the DEC found that respondent had violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); and RPC 1.4(a) (failure to communicate). The DEC found a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities), concluding that ". . . in fact there were clearly violations of RPC

— the various RPC's detailed in the complaint.” Again, the decision was silent about the basis for each finding.

The DEC recommended a reprimand and a proctorship, as well as a psychiatric evaluation of respondent to determine his fitness to practice law.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's finding that respondent's conduct was unethical was fully supported by clear and convincing evidence. The charges contained in the complaint, which respondent admitted, established that respondent displayed unethical conduct in both Villare and Hightower.

In Villare, respondent was retained to represent grievant in two separate transactions. In the first transaction respondent was to file suit against the sellers of residential property purchased by grievant. That property had a defective irrigation system. Respondent was paid a \$250 retainer for the specific purpose of filing suit. Instead, respondent did nothing, thereby violating RPC 1.1(a) and RPC 1.3. Respondent also failed to return calls or answer any of grievant's letters, in violation of RPC 1.4(a).

With regard to the commercial real estate matter, respondent was retained to negotiate a settlement in an escrow dispute. Failing settlement, respondent was to file suit on behalf of grievant. While respondent did attempt to settle the escrow dispute, when a settlement

was not forthcoming respondent did nothing further on the case. By his actions, respondent violated RPC 1.1(a) and RPC 1.3. Respondent also violated RPC 1.4(a) for his failure to keep grievant informed about the status of the case, despite grievant's efforts to obtain that information.

In the Hightower matter, respondent filed a personal injury suit in behalf of grievant on the very last day allowed by the statute of limitations. Thereafter, the complaint was dismissed for lack of prosecution. Respondent did not so inform grievant. In failing to prosecute the case, respondent violated RPC 1.1(a) and RPC 1.3. In addition, although grievant called and wrote to respondent numerous times requesting a status report on her case, respondent failed to reply to her calls and letters. Finally, some fifteen months after the complaint was dismissed, respondent disclosed to grievant that her case had been dismissed. Respondent's failure to keep grievant apprised of the developments in her case violated RPC 1.4(a).

The final count of the complaint alleged a violation of RPC 8.1(b). At all times prior to the DEC hearing, the DEC believed that respondent had not answered the complaint. It became apparent that respondent had filed an answer only when he appeared at the hearing and showed evidence of the filing of the answer. It is not known what happened to the DEC's copy of the answer. Nonetheless, the DEC agreed that it had been filed. Under these circumstances, the charge of a violation of RPC 8.1(b) should have been dismissed by the DEC and is hereby dismissed by the Board.

The only remaining issue is that of discipline. Disturbed by respondent's misconduct in the within matters as well as his previous brushes with the disciplinary system, the DEC recommended a reprimand, as well as a proctorship and a psychiatric evaluation. However, there is no evidence in the record to indicate that respondent is unfit to practice, only that he periodically neglects cases. Accordingly, a psychiatric evaluation is not warranted. Respondent admitted at the Board hearing that a proctorship, however, may be useful.

A review of recent cases shows that the Court has imposed discipline ranging from a reprimand to a term of suspension where the ethics violations have been a combination of gross neglect, pattern of neglect, failure to communicate and misrepresentation. In some cases, two or three of these violations are present, either alone or coupled with a different violation, such as failure to cooperate with the disciplinary authorities. After a consideration of the relevant circumstances, including respondent's apparent contrition, return of the retainer in Villare, restitution in Hightower and his cooperation with the disciplinary authorities, the Board unanimously determined to impose a reprimand. See In re Gordon, 139 N.J. 606 (1995) (where the attorney was reprimanded for lack of diligence and failure to communicate in two matters; gross neglect and failure to return a file in one of the two matters; prior public reprimand); In re Carmichael, 139 N.J. 390 (1995) (where the attorney was reprimanded for lack of diligence and failure to communicate in two matters; prior private reprimand); and In re Wildstein, 138 N.J. 48 (1994) (where the attorney was reprimanded for failure to communicate in three matters; lack of diligence in two of the three

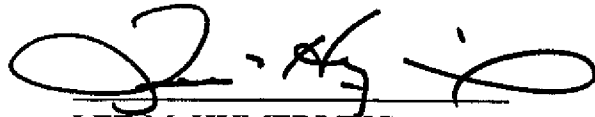
matters and gross neglect in two of the three matters).

The Board also required that respondent practice under the supervision of a proctor for a period of one year.

The Board further required that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: _____

6/3/97



LEE M. HYMERLING

Chair

Disciplinary Review Board