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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-190

IN THE MATTER OF	:
THOMAS S. VALLEAU,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 25, 1991

Decided: November 12, 1991

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter is before the Board based upon a presentment filed by the District X Ethics Committee. Respondent was admitted to the practice of law in New Jersey in 1975. He was engaged in practice in Lake Hopatcong, Morris County, until his suspension on October 24, 1989, for the conduct set forth infra. By order dated November 28, 1989, his suspension was continued pending final disposition of any complaints against respondent.

The facts are as follows:

Gunther F. Leichtle, a Morris County resident, died on September 8, 1987. After his Last Will and Testament was admitted to probate by the Morris County Surrogate on October 1, 1987, letters testamentary were issued to respondent as the alternate

executor of the estate. The sole heir to the estate was Gunther F. Leichtle, II, son of the deceased and a minor at that time. The son's mother and guardian is Barbara Bertrand, the deceased's ex-wife. Bertrand became aware that respondent had sold real property of the estate as its executor and trustee. Bertrand also became aware that a second parcel of land had been sold on December 2, 1988 by the Jefferson Township Tax Collector, for unpaid taxes. It was Bertrand's belief at that time that additional real estate had also been conveyed to the deceased's mother.

During 1988 and 1989, Bertrand made numerous attempts to obtain information and an accounting from respondent. Her attempts were unsuccessful. From September 1988 to March 1989, Bertrand's attorney, Kurt G. Senesky, Esq. made further unsuccessful attempts to obtain information about the matter. In March 1989, a complaint was filed on Bertrand's behalf to compel respondent to file an accounting of the estate.[1] Respondent did not file the accounting. On April 5, 1989, an order was entered by the Honorable Reginald Stanton, A.J.S.C., requiring respondent to show cause why he should not settle his account. The matter was carried to May 26, 1989, on which date respondent appeared, but filed no response. Judge Stanton then ordered respondent to render an accounting by June 9, 1989. Senesky did not receive the accounting by June 9. He then contacted respondent, who asked for, and was granted, an additional week to prepare the accounting. At the end of the additional week,

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[1]The record does not reveal who filed the complaint on Bertrand's behalf.

respondent still had not provided the accounting.

On June 26, 1989, Senesky prepared a motion seeking removal of respondent as executor and trustee of the Leichtle estate and requiring him to turn over all records and assets of the estate. Senesky forwarded the documents to respondent, explaining that the motion would be filed if the accounting was not provided. On July 5, 1989, after receiving no communication from respondent, Senesky filed the motion, which was returnable on July 21, 1989. Respondent failed to appear on that date. By order dated July 26, 1989, the Honorable Kenneth C. MacKenzie, J.S.C., removed respondent as executor and trustee and required him to turn over all estate documents and all assets and indicia of assets of the estate to the Morris County Surrogate. Respondent failed to comply with the court's order. On August 28, 1989, Senesky filed a motion returnable on September 8, 1989, seeking an order

> A. Adjudicating [respondent] Executive [sic] of the Estate of Gunther F. Leichtle, in violation of litigant's rights for his failure to comply with the Order of...July 26, 1989;
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> B. Requiring the defendant to appear before this Court on a date certain, at which time he is to comply with Paragraph (sic) C of the...Order...; [and]
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> C. In the event he does not so appear, that a warrant be issued for his arrest and that he be incarcerated...until such time as he complies with the Order...

On September 18, 1989, Judge Stanton heard Senesky's motion and, with respondent present, issued an order requiring respondent to return to his office and turn over all estate assets to Senesky for delivery to the Surrogate. Respondent did, in fact, release

various documents to Senesky and turned over $39,728.64 to the Morris County Surrogate. Judge Stanton's order of September 18 also required respondent to render an accounting of the estate within fifteen days of the order. As of the date of the committee hearing, April 23, 1991, respondent had not filed the accounting.

On November 8, 1988, Bertrand filed a grievance against respondent with the district ethics committee.[2] The grievance was assigned to Robert C. Shelton, Jr. for investigation. On January 12, 1989, Shelton sent a letter to respondent enclosing the grievance and requesting a meeting with respondent. Despite several attempts by Shelton to meet with respondent, the latter failed to cooperate and, in fact, canceled three appointments.

On September 18, 1989, Judge Stanton wrote to the Office of Attorney Ethics (OAE) concerning respondent's handling of the estate. By letter dated September 22, 1989, the OAE instructed respondent to appear for a demand audit on October 4, 1989 at 10:00 a.m. At approximately 9:00 a.m. on October 4, respondent telephoned the OAE, stating that he had received the notice of the audit from his secretary the previous evening. [3] The audit was rescheduled for October 12, at 10:30 a.m. At approximately 8:30 a.m. on October 12, respondent telephoned the OAE to inform it that

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[2]The grievance was dated October 12, 1988.

[3]The return receipt card indicated that the demand letter had been received in respondent's office on September 26, 1989. In his answer (Exhibit C-4), respondent stated that his secretary did not bring the letter to his attention. Respondent explained that his partner noticed the letter, telephoned him on the evening of October 3, 1989 and read the contents of the letter to him.

he was ill. The audit was rescheduled for October 16, at 10:30 a.m. At approximately 10:00 a.m. on October 16, respondent telephoned the OAE to advise that he was still ill. The audit was rescheduled for 10:30 a.m. on October 20. At approximately 8:30 a.m. on October 20, respondent telephoned the OAE, stating that he was still ill and that he wished to have the audit rescheduled for one week later. Respondent was told that no further adjournment would be granted and that the OAE would move for his temporary suspension. The OAE did so on October 20. Respondent did not reply to the OAE's petition for his emergent suspension or to the Court's order directing him to show cause why he should not be suspended. Accordingly, respondent was suspended on October 24, 1989. The suspension was continued on November 29, 1989, pending resolution of the complaint against respondent.

On January 2, 1990, Senesky turned over various Leichtle estate documents to the OAE. The documents had been released by respondent pursuant to Judge Stanton's order of September 18, 1989. On January 4, 1990, the OAE sent a subpoena duces tecum to respondent by certified mail. The subpoena directed that, on January 12, 1990, respondent was to produce Leichtle estate records, client ledger card, bank statements and canceled checks and deposit slips for his business and trust accounts. Respondent failed to appear. On January 19, 1990, respondent was personally served with a subpoena directing him to appear at the OAE, on January 29, 1990, with the requested documents. Although respondent failed to appear on January 29, he did telephone the OAE

on January 30, at which time he requested that the date of his appearance be changed to February 2, due to inclement weather. On February 2, respondent telephoned the OAE cancelling his appointment, which was rescheduled for February 7. On February 7, respondent telephoned the OAE and cancelled his appointment, rescheduling it for February 14. On February 14, respondent telephoned the OAE and cancelled his appointment. However, on that date, respondent was telephonically interviewed regarding the Leichtle estate.

On February 7, the OAE was able to gain access to respondent's office from his former partner, at which time it obtained trust records relevant to the Leichtle estate. Using those records as well as those documents that had been provided by Senesky, the OAE was able to determine that there had been no misappropriation of funds. In fact, the OAE discovered that respondent had placed $32,000 of his own funds in the estate account, which funds he had advanced on behalf of the estate. With regard to those funds, respondent testified at the committee hearing that, pursuant to a divorce decree between the deceased and his second wife (not the grievant herein), the ex-wife was to receive $30,000 from the deceased by a date certain. Under the terms of the decree, if the money was not received, the ex-wife would be entitled to a larger share of the proceeds of the sale of their home, which share, according to respondent, would have amounted to a sum far larger than the $30,000. Respondent testified that the house had not been sold and the $30,000 sum was not available when needed. He

indicated that he then advanced the funds to avoid the loss to the estate. As of the date of the committee hearing, respondent's funds were still in the account that had been frozen pursuant to the Court order of October 24, 1989 (T4/23/91 35).[4]

In his formal answer to the complaint (Exhibit C-4), respondent essentially admitted the allegations against him, as set forth in the complaint.[5] The committee agreed that respondent had violated RPC 1.3, RPC 1.4(a), RPC 8.4(d) and RPC 8.1(b). However, the committee further found that the evidence presented on the charge that respondent had failed to safeguard client property was not clear and convincing. Accordingly, the committee found that there was no violation of RPC 1.15.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence.

Respondent is guilty of lack of diligence and failure to communicate in his handling of one matter. This conduct would likely call for the imposition of a private reprimand. However, respondent is also guilty of violations of RPC 8.1(b) (failure to

[4]The record does not reveal what ultimately occurred with regard to the deceased's ex-wife and the $30,000 sum.

[5]In addition, at the ethics hearing respondent admitted the violations as charged (T4/23/91 16).

respond to a lawful demand for information from a disciplinary authority) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The presence of these two additional violations requires the imposition of more serious discipline.

In In re Smith, 101 N.J. 568 (1986), the attorney neglected an estate matter and failed to communicate with his client for a period of one year. The attorney's lack of diligence caused his client to sustain an injury, in that the state inheritance tax return was filed late and a penalty was imposed. In addition, he failed to respond to four letters from the ethics committee and failed to appear at the first scheduled Board hearing. Although the attorney provided no defense for his actions, he had no prior disciplinary record and did show remorse. The Court imposed a three-month suspension.

In In re Rogovoy, 100 N.J. 556 (1985), the attorney neglected a matrimonial matter and failed to communicate with another client. In addition he failed to cooperate with the ethics investigator's requests for information, failed to file an answer to the complaint and failed to appear before the Court on an order to show cause why he should not be suspended. The attorney testified that he was rebelling against the ethics system. The Court imposed a two-year suspension, retroactive to the date of the attorney's temporary suspension.

In In re Winberry, 101 N.J. 538 (1986), the attorney exhibited a pattern of contumacious behavior in four matters. He failed to comply with court orders, leading to two bench warrants being

issued for his arrest, and resulting in his being found in contempt of court. The attorney also failed to cooperate with the ethics system by failing to appear at the hearings. He had been the subject of disciplinary hearings since 1975 and had caused formal hearings to be adjourned over ten times. Further, he failed to submit to medical and psychological evaluations, as agreed before the Board. In addition, the attorney used estate funds for his personal interests, failed to file federal estate returns and acted in a dual capacity as trustee and debtor of the estate. The Court imposed a two-year suspension.

A review of the transcript of the committee hearing indicates that the panel asked respondent to explain his conduct in the handling of the Leichtle estate. Respondent did not attempt to offer testimony to excuse his conduct but, when pressed, testified as to a problem with skin cancer and partnership changes at his law firm, as well as the slump in the real-estate market, which affected his real estate based practice. These factors, which he testified were present at the time that the estate matter was before Judge Stanton, caused respondent to "burn out" (T4/23/91 25 -32). Respondent admitted before the Board that he was not diligent in the underlying matter and stated that he had "screwed-up."

Respondent also testified before both the committee and the Board that he no longer wishes to maintain a full-time law practice, but wishes to retain his license to practice law to enable him to do work such as closings for family members. He also

explained to the committee that he wished to be able to say that he has a valid license and to have the ability to return to the practice of law.

The presenter suggested to the Board that the time already served by respondent, nearly two years, be deemed sufficient discipline for his misconduct. The Board is of the opinion that the within misconduct, particularly respondent's actions in ignoring the court's orders to provide an accounting of the Leichtle estate, as well as his contumacious attitude toward the disciplinary authorities, would indeed warrant a two-year suspension. Accordingly, the Board unanimously recommends that respondent be suspended for a period of two years, retroactive to the date of his temporary suspension.

The presenter argued to the Board that respondent's "burnout" suggests some level of psychiatric instability and recommended to the Board that respondent's reinstatement to the practice of law be conditioned on a psychiatric examination by a psychiatrist approved by the OAE. The Board disagrees, finding that the testimony on the record does not indicate that he suffers from a psychological disorder. Accordingly, the Board disagrees with the OAE and does not recommend such an examination. However, the Board does recommend that, should the scope of respondent's practice go beyond the occasional representation of a relative, he be required to practice under the supervision of a proctor for a period of one year.

The Board agrees with the recommendation of the OAE that the

current restraints on respondent's trust account be immediately lifted. Due to the burden of these restraints, the Board is of the opinion that they should be lifted prior to the ultimate disposition of this matter by the Court.

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

Dated: 11/12/1991

By: Raymond R. Trombadore
Chair
Disciplinary Review Board