

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-094

IN THE MATTER OF :
JOSEPH P. GRABLER, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: February 5, 1990

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Geoffrey M. Greenberg appeared on behalf of the District IX Ethics Committee.

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 IX Ethics Committee.

Respondent was admitted to the New Jersey bar in 1964 and maintains an office in Middletown. This presentment concerns

respondent's conduct following a real estate closing in July 1986.¹ Immediately following the closing, respondent, who represented the buyers, paid the balance of the seller's ("grievant") mortgage out of the closing proceeds. In August 1986, respondent received a \$302 check from the bank, representing grievant's escrow funds remaining after satisfaction of the mortgage. The check was mailed to respondent with the expectation that it would be forwarded to grievant. In January 1987, grievant received a tax statement from the bank, showing interest paid on the mortgage, as well as the return of the \$302 escrow fund. When grievant contacted the bank, complaining he had not received the check for \$302, he was told that the check had been mailed to respondent.

Grievant telephoned respondent's office three times, without ever receiving a return phone call (T14).² Thereafter, grievant sent respondent a certified letter asking him to forward the check to grievant (P-3 in evidence). Grievant then retained an attorney, who telephoned respondent requesting the check. Respondent told grievant's attorney that he would look for the check, but that he

¹Initially, three disciplinary matters were to be considered at the December 6, 1988 ethics hearing. The Lind matter (IX-87-14E) and the Frattalone matter (IX-87-57E) were both dismissed for the grievants' failure to appear.

²T denotes the transcript of the district ethics committee hearing on December 6, 1988.

did not believe he had ever received the check from the bank. Grievant's attorney followed this telephone conversation with a letter on June 22, 1987, and with a second letter on July 8, 1987, again requesting a return of the check directly to grievant (P-4 and P-5 in evidence). On September 28, 1987, the district ethics committee secretary also sent respondent a letter requesting a prompt resolution of this matter (P-7 in evidence).

In January 1988, respondent brought his file to the district ethics committee investigator's office. Respondent testified that, in January 1988, he was prepared to swear under oath that he had never received the check from the bank. On the day he was to go to the investigator's office, however, he found the check in the file (T26). Apparently, his secretary had found the check in another file and placed it in the correct file. The check was dated August 15, 1986. There was no indication that respondent ever tried to negotiate the check.

Respondent testified that, immediately following the meeting with the investigator, he dictated a letter (with copies to the investigator and to the ethics committee) showing the return of the check to grievant's attorney. No one ever received this letter of January 1988; neither did grievant receive the check. In December 1988, the district ethics committee gave respondent one week to produce a copy of that dictated letter, which respondent failed to do.

At the Board hearing of September 20, 1989, respondent produced the original check. He did not know why the dictated letter and the check had never been mailed.

The district ethics committee found respondent's handling of this matter constituted gross negligence, in violation of RPC 1.1(a), and failure to safeguard the escrow check, in violation of RPC 1.15. The committee recommended a public reprimand.

CONCLUSION AND RECOMMENDATION

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

The record demonstrates that respondent was grossly negligent in the handling of the escrow check. Respondent's continuing failure, over three years, to return grievant's funds is inexcusable. Grievant was not respondent's client, but grievant relied on respondent's proper handling of the proceeds from the closing, including the return of any excess funds after satisfaction of the mortgage. An attorney's professional obligation may reach persons who have reason to rely on him even though they are not clients. In re Kasdan, 115 N.J. 472 (1989); In re Katz, 90 N.J. 272 (1982).

Furthermore, although respondent argued that he cooperated with both the ethics committee and the Board, his actions speak otherwise. In January 1988, he promised the ethics investigator he would send grievant the check, but did not follow through with this promise. In December 1988, respondent was again given another chance to satisfy his responsibilities when the committee gave him a week to produce the letter and the check, but he did not do so. Finally, in September 1989, he informed the Board that he had known of his possession of the check since January of 1989, but had done nothing to return the check to its rightful owner. Instead, he appeared at the Board hearing with the check, showing no remorse for his inaction.

An attorney is obligated to cooperate in ethics matters. In re Gavel, 22 N.J. 248, 263 (1956). By his inaction, respondent has given the appearance of valuing neither his law practice nor his license to practice law.

An attorney, as an officer of the Court, has the duty of good faith and honorable dealing with all judicial tribunals. In re Terner, 83 N.J. 536, 537, 539 (1980). Respondent's repetitive failure to cooperate with the courts and the ethics bodies evidences a flagrant contempt for our judicial system.

[Matter of Winberry, 101 N.J. 557, 567 (1986).]

Cases similar to respondent's generally result in a suspension from the practice of law. See, e.g., In re Rogovoy, 100 N.J. 556 (1985) (two-year suspension imposed for failure to cooperate with

local ethics committee and Supreme Court together with failure to recognize responsibility to clients and one incident of gross negligence); In re Smith, 101 N.J. 568 (1985) (suspension for three months for failure to pursue client's interest diligently and failure to cooperate with ethics committee or answer the complaint); In re Winberry, supra (suspension for two years for failure to handle an estate properly together with a pattern of obstructive behavior and delaying tactics).


Given the clear and convincing evidence of unethical conduct, the appropriate quantum of discipline must be determined. The purpose of discipline is not the punishment of the offender, but the protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required by every member of the profession. In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). In deciding the appropriate level of discipline, the circumstances surrounding the misconduct, including any mitigating factors, are to be taken into consideration.

Although mitigating factors are relevant, In re Hughes, 90 N.J. 32, 36 (1982), none has been presented here. As an aggravating factor, the Board is aware that respondent received a one-year suspension on February 1, 1989, for his gross neglect of four matters and several trust account irregularities. Matter of Grabler, 114 N.J. 1 (1989). Accordingly, based on the totality of

respondent's conduct, as well as respondent's prior discipline, the Board unanimously recommends that respondent receive a retroactive suspension for one year, concurrent with the present suspension. The Board also recommends that respondent's readmission to practice be conditioned upon his successful completion of the Skills and Methods course; that, upon reinstatement, he be required to practice under a proctorship for two years; and that he reimburse grievant for the \$302 in escrow funds plus interest from August, 1986 to the date of payment by respondent. Three members of the Board did not participate

The Board further recommends that respondent be required to reimburse the ethics financial committee for appropriate administrative costs.

DATED: 2/5/1990



Raymond R. Trombadore
Chair
Disciplinary Review Board