

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-264

IN THE MATTER OF :
 :
A. DAVID DASHOFF :
 :
AN ATTORNEY AT LAW :

Decision
Default R. 1:20-4(f)(1)

Decided: September 30, 1997

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

Pursuant to R. 1:20-4(f)(1), the District IV Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by certified mail.

The formal complaint charged respondent with violations of RPC 1.3 (failure to act with due diligence), RPC 1.4(a) (fee overreaching), RPC 1.5(b) (recordkeeping) and RPC 1.7(a), RPC 1.7(b) and RPC 1.8(a) (conflict of interest).

Respondent was admitted to the New Jersey bar in 1976. He has an extensive prior history of discipline. In 1987 he was publicly reprimanded for misconduct in three matters. In one of those matters, he failed to zealously pursue a divorce action. In a second matter, he failed to record a deed and to so inform the client. In a third matter, he failed to complete discovery, as a result of which the case was dismissed. Respondent claimed that he had never received a copy of the other party's

~~motion to dismiss the complaint and that he had not discovered that the case had been dismissed~~
until more than three years later. Respondent was also found guilty of a pattern of neglect for his conduct in the two latter matters. Two years later, in 1989, respondent was privately reprimanded for failure to pursue a medical malpractice action and to keep his clients reasonably informed about the status of the matter. In 1995 respondent was suspended for three months for failure to maintain proper trust and business account records and failure to cooperate with disciplinary authorities.

According to the complaint filed in the case now before the Board, respondent was retained in or about April 1995 to represent Nicholas Grulich ("grievant") and a group of five others ("the investment group") in potential litigation for fraud against the sponsor/promoter of a real estate venture. Although there was no written fee agreement, the investment group paid respondent \$950 to investigate the case and file suit. The investment group believed that additional fees would be paid from any recovery against the sponsor at the conclusion of the litigation. Respondent allegedly did not agree to accept payment in this fashion. Instead, he required payment as services were performed.

Grievant and one other member of the investment group, Golbach, had previously worked for the sponsor and had solicited the other four members of the group to invest in the real estate venture. Grievant and Golbach received commissions for soliciting the other four individuals. The complaint charged that respondent should have known that grievant and Golbach were or could become targets of a criminal investigation against the sponsor, as well as co-defendants in a civil action brought by the other investors. Consequently, the complaint alleged, respondent should have known that his representation of both grievant and Golbach posed a conflict of interest as a result of his representation of the other four members of the group.

After respondent began the representation of the group, he received word from one member of the group that grievant could not be trusted and was directed to filter communications through him. The complaint charged that, in light of this communication, respondent should have known that his continued representation of grievant created a conflict of interest with his representation of the remaining members of the group.

Respondent continued to represent the investment group and to communicate with grievant. He did not disclose to grievant that he had received this communication from the other members of the investment group and he did not tell the other members of the group that he was still communicating freely with grievant.

In the summer of 1995 Golbach informed respondent that two of respondent's business associates, Palo and Orapallo, were also former employees of the real estate venture and, therefore, could become involved in the criminal investigation, the civil action or both. Golbach asked respondent to cease doing business with Palo and Orapallo. Respondent did not terminate his relationship with Palo and Orapallo and did not inform the other members of the investment group of his continued relationship with the two and of the possible conflict of interest.

In late 1995, after the investment group refused to make further fee payments, respondent closed his file without filing suit. Respondent had no records of time spent in the case to support any charges against the \$950 fee initially paid by the investment group. Respondent was charged with violations of RPC 1.3, RPC 1.4(a), RPC 1.5(a) and (b) and RPC 1.7(a) and (b).

The second count of the complaint alleged that, on two occasions, the DEC gave respondent a copy of the grievance and requested his written explanation. Respondent failed to reply to these communications. Subsequently, the OAE twice gave a copy of the grievance to respondent, asking

~~for a response. Again, respondent failed to reply to the OAE's request for information.~~

On February 5, 1996 the OAE telephoned respondent and arranged a meeting with him at his office on February 9, 1996. After respondent canceled the meeting, it was rescheduled for February 13, 1996. On that date, OAE investigator Mary Joe Bartzak appeared at respondent's office for the scheduled meeting. Respondent, however, called to say that he was unable to appear due to back problems. The meeting was once again rescheduled, this time for February 15, 1996. Respondent failed to appear on that date. Respondent was charged with a violation of RPC 8.1(b), in that he knowingly failed to respond to a lawful demand for information from disciplinary authorities.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. R.1:20-4(f)(1). The record contains sufficient evidence of respondent's unethical conduct to support the charges of lack of diligence, failure to keep the client reasonably informed, failure to communicate the basis of the fee to the client in writing, conflict of interest and failure to cooperate with the disciplinary authorities, all in violation of RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 1.7(a) and (b) and RPC 8.1(b). As to the charged violation of RPC 1.5(a), although the record does not disclose any effort by respondent to earn his retainer, it similarly does not establish that the charged retainer was itself unreasonable or that respondent overreached his clients in setting the retainer at \$950. The charge of violation of RPC 1.5(a), therefore, cannot be sustained.

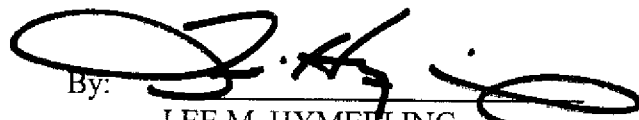
As to the level of discipline to be imposed, this is respondent's fourth encounter with the discipline system. Each bears some relationship to the current case, as in his failure to act diligently

or to keep his clients informed in the 1987 and 1989 actions, and his failure to cooperate in the 1995 suspension matter. Despite these three separate notices, respondent has failed to conform his conduct to the standards expected of a member of the bar of this state. Under the circumstances, a six-month suspension is appropriate. Cf. In re Bosies, 138 N.J. 169 (1994) (six-month suspension for pattern of neglect, lack of communication, lack of diligence and misrepresentation in four matters).

A six-member majority determined to suspend respondent for six months. One member dissented, based on his conclusion that additional facts were required to support a finding of a violation of RPC 1.7. Two members did not participate. The Board also determined to warn respondent that any further misconduct will be met with harsher discipline.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 9/30/97

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board