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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-308

IN THE MATTER OF :
:
STEVEN JOEL RUBIN :
:
AN ATTORNEY AT LAW :
:

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

Decided: April 8, 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 VII 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.

The procedural history of this matter shows that in 1993 it was originally before the Board on a recommendation for public discipline submitted by the District VIII Ethics Committee. That matter was reversed and on remand transferred to District VII on November 8, 1993. In the Board's view, the record was insufficient to make a determination. In light of the potentially serious nature of respondent's conduct, the Board directed that a further investigation and a new hearing be conducted. The Board also directed that, if respondent could not be located by diligent inquiry, notice of the hearing be made by publication. The Board did not retain jurisdiction.

The District VII Ethics Committee investigator attempted to serve respondent with a copy of the complaint (the same complaint filed by the District VIII Ethics Committee). During the course of his attempts to locate respondent, the investigator determined that respondent had been ineligible to practice law since 1991 because of his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Respondent's last known office address listed with the Lawyers' Fund for Client Protection, the Lawyers' Diary and local telephone directories was 24 North Avenue, Cranford, N.J. Because the District VIII complaint also mentioned addresses in Plainsboro and Franklin Park, the investigator also attempted to contact respondent at those addresses, without success.

On June 10, 1996, a final attempt at service of the complaint was made by regular and certified mail to respondent's last known office address in Cranford, N.J. Both were returned marked "Addressee Unknown." Notice of the filing of the complaint was then published in the Trenton Times on seven consecutive days, beginning on June 13, 1996. Service of the complaint was, therefore, presumed.

The formal complaint charged respondent with violations of RPC 1.5(a) (charge of an unreasonable fee); RPC 1.5(b) (failure to inform in writing the basis or rate of the fee); RPC 1.5(e) (improper division of fees between lawyers without client's consent); RPC 1.15(b) (failure to promptly deliver funds to a client); RPC 5.5(b) (assistance to a non-lawyer in the unauthorized practice of law) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent was admitted to the New Jersey bar in 1987. He has no prior ethics history.

The misconduct, as set forth in the two-count complaint, is as follows:

Respondent was recommended by Wilbert ~~Jones~~^{James} to grievants, Thomas and Maxine Doherty. Initially, the Dohertys retained James, from the Fidelity Management Foundation, Inc. and who held himself out as an attorney in the State of New Jersey, to represent them in the purchase of Maxine's ex-husband's one-half share of the former marital home. James indicated to the Dohertys that he would take on the representation for a total cost of \$3,000, which would be returned to the Dohertys from the ex-husband's one-half share of the money at the time of the closing. The Dohertys, in fact, paid James \$3,000. When James informed the Dohertys that he was too busy to handle the transaction, he recommended that the Dohertys consult with respondent. In January 1989, respondent and the Dohertys met to discuss the representation. At about that time, James indicated to the Dohertys that they should not worry about paying respondent a fee, as he had given respondent \$1,500 of the \$3,000 originally paid by the Dohertys. Both respondent and James represented to the Dohertys that Maxine's ex-husband would accept \$7,000 for his share of the marital home. In reality, the transaction cost the Dohertys \$43,000.

The closing took place on or about March 14, 1989. The Dohertys had borrowed \$87,000 from a mortgage company. On the RESPA statement there appeared, for the first time, an attorney fee to respondent in the amount of \$7,000 and a fee for personal financial services to James in the amount of \$8,500. Neither James, who turned out not to be an attorney licensed in New Jersey, nor respondent sent the Dohertys any bills.

Eventually, Maxine Doherty filed for fee arbitration against respondent to recover the \$7,000 sum. The fee committee ruled in her favor. On or about February 13, 1991, respondent refunded \$7,000 to Maxine Doherty.

The second count of the complaint alleged that, in connection with the Doherty transaction, respondent signed an escrow agreement providing that he would not record the deed executed by Maxine's ex-husband until such time as respondent sent a check in the amount of \$43,000 to the ex-husband's attorney. The \$43,000 sum represented the proceeds of the purchase of the ex-husband's interest in the former marital home. Contrary to the escrow agreement, respondent sent only \$42,000 to the ex-husband's attorney, with the notation "Full Satisfaction of Transfer of Title," thereby causing a shortfall of approximately \$950 in the net proceeds due the ex-husband. Respondent also released the deed for recording and delivery, contrary to the provisions of the agreement.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct.

This leaves only the issue of appropriate discipline. Conduct similar to that displayed by respondent has resulted in a term of suspension. See, e.g., In re Giles, 139 N.J. 468 (1995) (three-year suspension for, among other violations, pattern of neglect, gross neglect, charge of unreasonable fee, and failure to maintain a bona fide office; respondent had been previously suspended for one year); In re Thompson, 135 N.J. 125 (1994) (three-month suspension for fee overreaching.)

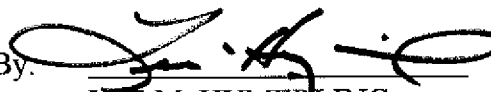
Respondent's actions in this matter involved numerous violations including, among others, fee overreaching, failure to inform in writing the basis or rate of the fee, assistance to non-lawyer in the unauthorized practice of law, conduct involving dishonesty, fraud, deceit or misrepresentation and improper division of fees between lawyers without the client's consent. The number and

seriousness of these violations warrant a suspension greater than three months. However, respondent's misconduct does not rise to the level of that involved in Giles and does not warrant a three-year suspension. Here, respondent's misconduct involved only one matter, as opposed to the five matters in Giles. Furthermore, unlike Giles, respondent has no prior ethics history.

Accordingly, the Board unanimously determined to suspend respondent for one year. Two members did not participate.

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

Dated: 4/8/97

By. 
LEE M. HYMERLING
Chair
Disciplinary Review Board