

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-116

IN THE MATTER OF :
: :
IMAN A. ABDALLAH :
: :
AN ATTORNEY AT LAW :
:

Decision

Argued: April 16, 1998

Decided: September 28, 1998

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

Respondent did not appear for oral argument, despite proper notice of the hearing.

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

This matter was before the Board on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's disbarment in New York for misconduct involving neglect of cases, lack of diligence, failure to communicate with clients, failure to return unearned retainers and lack of cooperation with the disciplinary authorities. In New York, disbarment is equivalent to a seven-year suspension.

Notice of the Board hearing was served upon defendant by United Parcel Service ("UPS"). The package was delivered on April 3, 1998. Although the first name of the individual accepting delivery is illegible, the last name is clearly Gold. Notice was also mailed to respondent by regular and certified mail. Although the certified mail was returned marked "unclaimed," the regular mail was not returned. In addition to service by UPS and presumed service by regular mail, notice was published in the New Jersey Lawyer, the New Jersey Law Journal and The Star-Ledger on March 23, 1998 and March 30, 1998.

Respondent was admitted to the New Jersey bar in 1989 and to the New York bar in 1990. He has no prior discipline history.

The New York ethics charges involved four separate complaints.

I. The Khavari Complaint

In October 1994 Dr. A. M. Khavari notified the New York Departmental Disciplinary Committee for the First Judicial Department ("Committee") that respondent had taken payment from him, had agreed to perform legal services and had failed to perform them. Respondent appeared before the committee in May 1995 and acknowledged his acceptance of a \$3,500 retainer from Khavari, as well as his failure to communicate with Khavari. Respondent claimed that various legal and personal matters prevented him from performing services for Khavari. Respondent added that he and Khavari were involved in civil litigation over the matter.

In August 1995 respondent told the committee that he was prepared to refund Khavari his entire retainer. He did not, however. In October 1996 Khavari notified the committee that the Civil Court of the City of New York had entered a judgment in his favor in the amount of \$4,170.34. The committee issued a letter of admonition to respondent, directing him to return the unused portion of the retainer to Khavari. As of June 1996 respondent still had not returned Khavari's retainer.

II. The Storch Complaint

In November 1994 Milton Storch contacted the committee to complain that respondent had failed to file a patent application, despite accepting a \$3,000 retainer to do so. In May 1995 respondent admitted to the committee that he had accepted the retainer, stating that he had not filed the application because of personal and other problems. In August 1995 respondent told the committee that he was working with Storch to resolve the matter. In October 1995 the committee learned that respondent had not yet filed the application. In November 1995 the committee issued a second letter of admonition to respondent, directing him to return the unused portion of the retainer to Storch within forty-five days. As of June 1996 respondent had not returned any funds to Storch.

III. The Gothe Complaint

In April 1995 Axel Gothe complained to the committee that he had retained respondent to file several patent and trademark applications. After one year, in which respondent failed to obtain the necessary documents, Gothe engaged another law firm to complete the matter. Gothe requested that respondent turn over his file to new counsel. In May 1995 respondent stated to the committee that he had not returned Gothe's file because it was extremely voluminous. Although, in August 1995, respondent represented to the committee that he had returned Gothe's file several days earlier, that was not true. As of October 1995 respondent still had not turned over the file to Gothe's new attorney. In November 1995 the committee issued a third letter of admonition, directing respondent to return Gothe's file and the unearned portion of the retainer within forty-five days.

IV. The Antonini Complaint

In June 1995 Michael Antonini complained to the committee that he paid respondent in full to represent him in a patent matter. For two years Antonini unsuccessfully requested a copy of the patent application from respondent. Respondent failed to keep Antonini or his new attorney updated on the progress of the matter. After the committee twice requested a reply to the complaint, in September 1995 respondent notified the committee that he would respond to Antonini's complaint. He did not, however.

In February 1996 the committee sent a letter to respondent confirming a meeting to discuss the Khavari, Storch, Goth and Antonini complaints. Respondent failed to reply to the letter and to appear at the meeting. Although the committee subpoenaed respondent to appear in June 1996, respondent did not reply or appear before the committee.

At the committee's request, the OAE served respondent in New Jersey with a subpoena to appear before the committee in July 1996. Respondent did not reply or appear before the committee.

Pursuant to N.Y.C.R.R. § 603.4(e)(1)(iv) (suspension for attorney's wilful failure to satisfy a judgment) and N.Y.C.R.R. § 603.4(e)(1)(I) (suspension for attorney who demonstrated contempt for, or disregard of, official notices to cooperate with the committee), the committee petitioned the Appellate Division of the Supreme Court of New York to suspend respondent until all disciplinary matters had been concluded. The court ordered the suspension on December 19, 1996. In re Abdallah, 227 A.D.2d 37, 651 N.Y.S.2d 458 (1996).

On September 30, 1997 the committee petitioned the Appellate Division of the Supreme Court of New York to disbar respondent, pursuant to N.Y.C.R.R. § 603.4(g), which provides as follows:

An application for suspension pursuant to section 603.4(e) may state that an attorney who is suspended and who has not appeared or applied in writing to the Committee or the Court for a hearing or reinstatement for six months from the date or any order of suspension may be disbarred. If an application does

state the foregoing, and the respondent does not appear or apply in writing to the Committee or the Court for a hearing or reinstatement within six months of the suspension date, the respondent may be disbarred without further notice.

The court disbarred respondent on December 11, 1997. In re Abdallah, 1997 WL 770943 (N.Y.A.D. 1 Dept. 1997).

The OAE urged the Board to suspend respondent in New Jersey for three years.

* * *

Upon a review of the full record, the Board determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), the Board adopted the committee's findings. In addition to the New York charges, respondent violated R. 1:20-14(a) when he failed to notify the OAE and the Clerk of the New Jersey Supreme Court of his New York disbarment.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides as follows:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of the subparagraphs (A) through (D). As to subparagraph (E), several factors establish that substantially different discipline is warranted. First, disbarment in New York is in reality a seven-year suspension, rather than permanent, as in New Jersey. See N.Y.C.R.R. § 603.14; In re Stier, 112 N.J. 22 (1988) (seven-year suspension in New Jersey is equivalent to disbarment in New York). Additionally, in New Jersey, an attorney found guilty of gross neglect or a pattern of neglect in four matters, failure to communicate with clients, failure to pursue those matters, failure to return admittedly unearned retainers and failure to cooperate with the disciplinary authorities would receive less than a seven-year suspension. See, e.g., In re Turner, 120 N.J. 706 (1990) (three-year suspension for pattern of neglect, failure to communicate and lack of diligence in representing sixteen separate clients over several years while addicted to cocaine); In re Terry, 137 N.J. 4 (1994) (three-and-one-half year suspension for abandoning three clients despite having been paid to complete their cases,

failure to deliver funds to a third party and failure to cooperate with the disciplinary authorities); In re Hurwitz, 135 N.J. 181 (1994) (three-year suspension for pattern of neglect and failure to cooperate with the disciplinary authorities in a series of five matters); In re Foushee, 149 N.J. 399 (1997) (three-year suspension for gross neglect, failure to communicate with clients, failure to have written fee agreements, failure to cooperate with the disciplinary authorities and misrepresentation in a series of four matters); In re Herron, 140 N.J. 229 (1995) (one-year suspension for lack of diligence, pattern of neglect, misrepresentation, gross neglect, failure to turn over a client file, failure to notify client of receipt of funds and failure to cooperate with disciplinary authorities; altogether seven matters were involved); In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for pattern of neglect, failure to refund a retainer, failure to communicate with clients, misrepresentation and failure to cooperate with disciplinary authorities, spread over four matters, with a prior public reprimand).

Moreover, the New York disciplinary system disbars an attorney for failing to reply to a disciplinary motion to suspend the attorney. N.Y.C.R.R. § 603.4(g). In New Jersey, when an attorney fails to reply to a motion to suspend him for ethics violations the matter proceeds as a default under R. 1:20-4(f). That rule also provides a procedure for the temporary suspension of an attorney who fails to answer, although failure to file an answer will normally result in an additional charge of violating RPC 8.1(b) (failure to cooperate with disciplinary authorities). Thus, contrary to New York, failure to reply to a New Jersey ethics

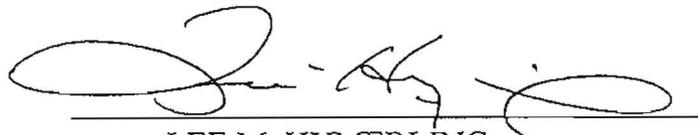
complaint does not, by itself, militate disbarment or even a seven-year suspension. It is, therefore, clear that the misconduct established in the New York matter “warrants substantially different discipline.” R. 1:20-14(a)(4)(E).

The purpose of discipline in this state is not to punish the attorney, but to protect the public against an attorney “who cannot or will not measure up to the high standard of responsibility required of every member of the profession.” In re Rosenthal, supra, 118 N.J. at 464 [citing In re Stout, 75 N.J. 321, 325 (1978)]. As in Herron, supra, respondent initially cooperated with the ethics authorities, but failed to follow through on his commitments and was eventually charged with a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities). After consideration of the relevant circumstances, the Board unanimously determined to impose a one-year suspension. In addition, prior to reinstatement respondent must pay the \$4,170.34 judgment to Khavari, return Gothe’s file and complete the core courses of the skills and methods program offered by the Institute for Continuing Legal Education. One member did not participate.

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

Dated: _____

9/28/98



LEE M. HYMERLING
Chair
Disciplinary Review Board