SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-334
District Docket Nos. X-05-002E and X-05-005E

IN THE MATTER OF

FRANKLIN H. BARNES

AN ATTORNEY AT LAW

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

Decided: January 25, 2006

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

This matter was before us on a certification of default filed by the District X Ethics Committee ("DEC"), pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1992. He has no history of discipline.

On August 26, 2005, the secretary of the DEC sent a complaint by certified and regular mail to respondent's office address in Randolph, New Jersey. The certified mail receipt was

returned to the DEC signed by respondent; the regular mail envelope was not returned. On October 7, 2005, the DEC sent a second letter by certified and regular mail, advising respondent that, unless he filed an answer, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on his failure to answer the complaint. The certified mail receipt was returned signed by respondent. The regular mail envelope was not returned.

Although respondent contacted the DEC secretary and received an extension to file the answer to the complaint, he failed to do so. The DEC certified the record directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

Respondent represented Walter Williams,[1] the seller in a real estate transaction in which Anthony Rivers was the buyer. Patricia Cistaro represented Rivers and the grievant, Jane

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[1] Walter Williams' name also appears in the record as Arthur Williams and as Walter William.

Grigsby, in the real estate purchase.[2] At the closing, which took place on July 27, 2004, the parties entered into two escrow agreements – one for $25,000 in connection with the installation of a septic system, and one for $15,000 in connection with the installation of a well. Pursuant to the escrow agreements, Cistaro maintained the funds in her trust account.

Also at the closing, respondent signed a letter of undertaking in which he represented that, within three days (by July 30, 2004), he would take the necessary action to obtain the discharge of a lis pendens that had been recorded against the property.

On October 12, 2004, Cistaro wrote to respondent to obtain his client's consent to a release of a portion of the escrow funds so that Rivers could pay a contractor to begin drilling the well. Respondent did not reply to that letter or to Cistaro's second and third requests, dated December 6 and December 9, 2004, respectively. On December 10, 2004, Cistaro requested respondent's immediate authorization to release the escrow funds, cautioning him that, upon his failure to

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[2] Although Grigsby's name does not appear on any of the real estate documents, she is identified in the record as Rivers' "significant other."

cooperate, she would take the necessary action to enforce the escrow agreement and would seek attorney's fees and costs. On or before December 14, 2004, respondent authorized the release of a portion of the escrow funds.

On December 29, 2004, Cistaro sent to respondent for his signature an authorization for the release of the balance of the escrow funds for both the well and the septic system. On January 7, 2005, Cistaro sent a letter to respondent confirming that he had not replied to several telephone calls that her assistant had made and seeking his immediate authorization to release the escrow funds. Respondent "faxed" the authorization to Cistaro on January 9, 2005.

On January 21, 2005, Cistaro asked respondent for the status of the discharge of lis pendens that he had agreed to obtain by July 30, 2004. Because respondent never replied to Cistaro's request, she obtained and filed the discharge of lis pendens without his assistance.

The grievance was filed on December 14, 2004. On January 19, 2005, the DEC investigator sent a copy of the grievance to respondent, requesting a reply within ten days. The investigator sent to respondent a follow-up letter dated February 2, 2005. On February 16, 2005, the investigator left a telephone message

asking respondent to contact him. On February 22, 2005, respondent left a message stating that he would contact the investigator on February 24, 2005. Despite this representation, respondent did not call the investigator. Respondent also failed to reply to the investigator's subsequent February 25, 2005 letter.

The complaint charged respondent with lack of diligence, a violation of RPC 1.3, and failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b).

In addition to the above matter, we reviewed the Maas matter (District Docket No. X-05-002E). By letter issued the date of this decision, we remanded that matter to the Office of Attorney Ethics for an audit and investigation of potential knowing misappropriation. In this decision, we address only the misconduct alleged in the Grigsby matter (District Docket No. X-05-005E).

Service of process was properly made. The complaint contains sufficient facts to support findings of the violations charged. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

Respondent represented the seller in a real estate transaction. After a portion of the real estate proceeds had

been placed in escrow, Cistaro, the buyer's attorney, contacted respondent to obtain his client's consent to release a portion of the funds, pursuant to the escrow agreement. For two months, from October 12, 2004 to about December 14, 2004, respondent failed to reply to Cistaro's requests for authorization to release the funds. Later, he failed to reply to Cistaro's efforts to obtain his client's consent to release the remainder of the funds. In addition, he failed to honor the letter of undertaking in which he agreed to obtain a discharge of the lis pendens encumbering the property. As a result, Cistaro arranged for the discharge of the lis pendens.

Respondent's failure to reply promptly to Cistaro's request for his client's consent to release the escrow funds and his failure to obtain the discharge of the lis pendens constituted a violation of RPC 1.3. Also, respondent's failure to cooperate with disciplinary authorities violated RPC 8.1(b).

There remains the issue of the quantum of discipline for respondent's lack of diligence and failure to cooperate with disciplinary authorities. Discipline for conduct similar to respondent's generally ranges from an admonition to a reprimand, depending on whether the attorney has a disciplinary history and whether the matter proceeded by way of default. See, e.g., In the

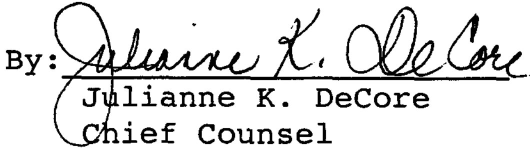
Matter of Frederick M. Testa, Docket No. DRB 01-319 (March 12, 2002) (admonition for lack of diligence in an estate matter and failure to cooperate with disciplinary authorities; attorney had received a prior admonition); In the Matter of Lenora Marshall, Docket No. DRB 01-207 (September 26, 2001) (admonition for lack of diligence and failure to communicate with disciplinary authorities; no prior discipline); In the Matter of Charles Deubel, III, Docket No. DRB 95-051 (May 16, 1995) (admonition for failure to record a deed for fifteen months after the closing of title, a violation of RPC 1.3); In re Zaluma, 176 N.J. 152 (2003) (reprimand in a default case for an attorney who failed to act with diligence in representing an estate, failed to communicate with a client, and failed to cooperate with disciplinary authorities; attorney had no prior discipline); In re Fox, 174 N.J. 534 (2001) (in a default case, reprimand imposed on an attorney who represented a client in a personal injury matter and, other than writing two letters, took no action on the client's behalf, failed to communicate with the client, and failed to cooperate with disciplinary authorities; the attorney had no prior discipline); and In re Mandle, Jr., 167 N.J. 609 (2001) (reprimand for an attorney who, while practicing law under the supervision of a proctor, failed to represent a client

diligently by not recording a deed and mortgage for five months after the closing and not properly disbursing the closing funds, instead allowing them to remain stagnant in his trust account; the attorney also failed to cooperate with the investigation of the ethics matter; the attorney had received two prior reprimands for conduct that included gross neglect, pattern of neglect, lack of diligence, failure to cooperate with disciplinary authorities, and failure to communicate with a client).

Here, although respondent has no disciplinary history, we consider the default nature of this matter as an aggravating factor. We, thus, determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct in the Grigsby matter. Members Boylan, Lolla, and Stanton did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
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