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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-377 and 98-378

IN THE MATTER OF :

BRYAN F. FERRICK :

AND :

RONALD KURZEJA :

ATTORNEYS AT LAW :

Decision

Argued: November 19, 1998

Decided: May 13, 1999

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Respondents appeared pro se.

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

These matters are before the Board based on a recommendation for discipline filed by the District IIIA Ethics Committee ("DEC").

Respondent Bryan F. Ferrick was admitted to the New Jersey bar in 1990. Respondent Ronald Kurzeja was admitted to the New Jersey bar in 1986. Respondents are partners in a law practice and presently maintain an office in Shrewsbury, New Jersey.

Both respondents were admonished in October 1997 for sending targeted direct-mail solicitation letters to residential property owners in New Jersey that contained false and misleading statements, in violation of RPC 7.1(a)(1), that were likely to create an unjustified expectation about the results that respondents could achieve, in violation of RPC 7.1(a)(2), and that contained statements comparing respondents' services with those of other lawyers, in violation of RPC 7.1(a)(3).

* * *

The alleged misconduct arose from respondents' direct-mail solicitation of property owners in Wildwood, Brigantine and Longport, New Jersey and their filing of tax appeals on behalf of 238 Wildwood property owners and 280 Brigantine property owners.

The Wildwood Tax Appeals

In January 1994, respondents sent direct-mail solicitation letters to hundreds of property owners in Wildwood, Cape May County, New Jersey, soliciting appeals of property tax assessments for the 1994 tax year. The letters contained the following language:

> Our firm hires a highly regarded appraiser, at our cost, to prepare an appraisal report to contest your assessment, and the attorneys of the firm attend all necessary conferences.

On or about March 28, 1994, respondents filed 238 tax appeals on behalf of Wildwood property owners with the Cape May County Tax Board ("Cape May Board"). On each of the tax appeal petitions, respondents stated that the basis for the appeal was that "current assessment does not reflect fair market value" and "discrimination." The hearings on the appeals were scheduled for May 16 and 17, 1994.

By letter dated March 28, 1994, respondents requested from Joseph Gallagher, Wildwood's tax assessor, copies of property record cards for their clients' properties. The March 28, 1994 letter also stated that respondents would contact Gallagher to request property record cards "for the specific comparable sales we intend to rely upon" and that respondents' appraiser would contact Gallagher after "the reports on our clients' properties are completed."

On April 28, 1994, respondent Ferrick "faxed" to Gallagher a list of twenty-three properties that his appraiser intended to use as comparable properties and requested property cards for those properties.

On May 6, 1994, respondent Ferrick and an assistant went to Gallagher's office and made copies of the cards for the subject and comparable properties. According to respondent Ferrick, some of the cards were missing crucial information. Gallagher testified that he gave respondent Ferrick everything that was available and that Wildwood's property cards for

condominium units did not contain the information that respondent Ferrick complained he did not get.

Respondents never retained an appraiser to prepare appraisal reports for their clients' properties and, on May 16, 1994, respondent Ferrick appeared before the Cape May Board without an appraiser. According to respondents, Wildwood stalled the production of the property record cards; therefore, they did not have adequate time to obtain appraisals. They claimed that they did not request an adjournment of the hearings because they believed that the adjournment request would be denied. However, the tax administrator for Cape May County testified that it was the Cape May Board's policy to automatically grant the first adjournment request, especially when the taxpayer had retained an appraiser.

Respondent Ferrick did not present any testimony or documentary evidence to the Cape May Board. None of respondents' clients were present because respondents had told them that they did not need to appear.

Respondent Ferrick made a motion to reduce the assessed value on all 238 properties by 13.86%. The 13.86% reduction was obtained by dividing the city's assessment for each property by its 1994 "Chapter 123 ratio." The "Chapter 123 ratio" is the average ratio of assessed value to market value of all property in a municipality. Glen Wall Assocs. v. Township of Wall, 99 N.J. 265, 271, n.2 (1985). Respondents' position was that the equalization ratio of "Chapter 123" required all towns to assess properties at 100% of their value. Because Wildwood had an

upper ratio of 113.86%, respondents argued that all of Wildwood was "over-assessed." Respondents relied on N.J.S.A. 54:3-22 and Glen Wall Assocs.

During the hearing, respondent Ferrick withdrew several appeals while others were dismissed upon motion by Wildwood because the property owners had not paid their taxes. Wildwood moved to dismiss the remaining petitions for failure to prosecute. In turn, the Cape May Board dismissed the appeals because of insufficient evidence.

Respondents then filed approximately ninety separate tax appeal complaints in the tax court, Cape May County. Wildwood moved to dismiss the complaints on the grounds that the tax court lacked jurisdiction, pursuant to N.J.S.A. 54:51A-1c(2), because the matters had not been prosecuted before the Cape May Board. On September 29, 1994, the Honorable Marvin N. Rimm conducted a de novo hearing in one of the appeals, the Adelizzi matter. Respondent Kurzeja appeared on behalf of the property owners. Respondent Ferrick and Gallagher testified at the hearing.

At the hearing before Judge Rimm, respondent Ferrick admitted that he had not submitted any evidence to the Cape May Board and that he considered the list of comparable sales to be a "submission" that provided a basis for granting his motion, rather than formal evidence. Respondent Ferrick also admitted that the comparable properties included commercial properties, as well as condominiums and single-family residences, and that he had simply submitted the list of twenty-three comparables without any indication of the relevancy of any comparable property to any subject property.

Judge Rimm found that respondents had failed to prosecute the tax appeals before the Cape May Board because they had not submitted any evidence of the fair market value of the subject properties. He rejected the list of twenty-three comparable sales, finding that it was not an acceptable appraisal methodology by which to fix the true values of the 238 residential properties. Furthermore, Judge Rimm found no authority for respondents' Glenn Wall argument to reduce Wildwood's assessment for each property by dividing it by the 1994 "Chapter 123" ratio.

Judge Rimm also rejected respondents' contention that Wildwood had stalled discovery, thereby preventing them from obtaining appraisals. He found that the "undisputed testimony before the court is that the City of Wildwood gave [respondents] everything that it had with regard to the subject properties" as well as the comparable properties. He further found that respondents never hired an appraiser and never intended to present evidence of value to the Cape May Board. Finally, Judge Rimm found respondent Ferrick to be an "evasive" witness and stated that he seriously doubted respondent Ferrick's credibility.

Judge Rimm granted Wildwood's motion to dismiss the complaint for failure to prosecute before the Cape May Board. A judgment of dismissal was entered on October 5, 1994. On November 9, 1994, Judge Rimm applied his findings in Adelizzi to the remaining eighty-nine complaints and dismissed them for failure to prosecute before the Cape May Board. The Appellate Division affirmed Judge Rimm's dismissals in Ganifas Trust v. City of Wildwood, 15 N.J.Tax 722 (App. Div. 1996).

The OAE alleged that respondents' conduct with regard to the Wildwood tax appeals violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 1.1(a) (gross neglect) and RPC 1.1(b) (pattern of neglect).

The Brigantine Tax Appeals

On or about April 1, 1994, respondents filed approximately 280 tax appeals on behalf of property owners in Brigantine with the Atlantic County Tax Board ("Atlantic Board"). The tax assessor for Brigantine, Steven Flitcraft, served cross-appeals on those properties, which sought to increase the property assessment. Hearings on the appeals were scheduled for several days in May, June and July 1994. Respondent Ferrick handled the appeals for the firm.

It was the policy of the Atlantic Board to resolve as many cases as possible on each hearing date and adjourn any unresolved cases to the next hearing date. At the June 8, 1994 hearing, respondent Ferrick and Timothy Maguire, the attorney for Brigantine, asked the Atlantic Board for time to discuss settlement of the cases. The Atlantic Board granted their request. Thereafter, respondent Ferrick, Maguire and Flitcraft met on the hearing dates and spent most of the time in settlement discussions.

The crucial dates were July 13 and 25, 1994. The testimonies of respondents and of the OAE's witnesses were at variance as to what occurred on those dates.

According to the Atlantic County Tax Administrator, Lois Finifter, respondent Ferrick met with Maguire and Flitcraft, then stated that the balance of the tax appeals were withdrawn

or settled. Finifter asked Maguire if Brigantine intended to withdraw its cross-appeals in the cases withdrawn by respondent Ferrick. When Maguire replied that not all cross-appeals were being withdrawn, Finifter advised him that the Atlantic Board was prepared to hear the cross-appeals that afternoon. According to Finifter, respondent Ferrick announced that he was leaving and not participating in the hearings. In response to further questions from Finifter, respondent Ferrick replied that he did not consent to the increases, but that he was not going to present any evidence and was not going to cross-examine Flitcraft. Finifter testified that respondent Ferrick "made it quite clear that, as far as he was concerned, he was finished in Brigantine" and that he had left before the Atlantic Board heard Brigantine's cross-appeals. Furthermore, respondent Ferrick did not appear on a subsequent hearing date, July 25, 1994. The Atlantic Board increased the assessments for the thirty-three properties that were the subjects of the cross-appeals.

Flitcraft, too, testified that, when the subject of the cross-appeals came up, respondent Ferrick commented that the cross-appeals had no merit and that the Atlantic Board should take no action. According to Flitcraft, respondent Ferrick was asked if he intended to cross-examine Flitcraft on Brigantine's valuation. Respondent Ferrick replied "no" and then left before the cross-appeals were heard. Initially, Flitcraft testified that all thirty-three cross-appeals were heard on July 13, 1994. However, after reviewing his July 20, 1994 communication to respondent Ferrick, he stated that only the cross-appeals for the 5200 block of Brigantine were heard on July 13, 1994 and that the remainder of the thirty-three were heard on July 25, 1994.

Maguire testified that he had no specific recollection of the dates of the 1994 Brigantine tax appeals. However, he specifically recalled that Finifter had told respondent Ferrick that Brigantine was going to proceed with its cross-appeals. According to Maguire, respondent Ferrick had stated, "I don't necessarily agree with that but do what you have to do. . . ." According to Maguire, after that statement respondent Ferrick left. Maguire was certain that respondent Ferrick had left prior to the hearing on Brigantine's cross-appeals, that respondent Ferrick knew the cross-appeals were going to be heard and that respondent Ferrick had made it clear that he was no longer going to participate in the hearings.

In contrast to the above witnesses, respondent Ferrick testified that he was present on July 13, 1994 when the Atlantic Board heard the cross-appeals. According to respondent Ferrick, the hearings concerned only eight client properties on the 5200 block, not all thirty-three cross-appeals. Respondent Ferrick testified that he allowed the cross-appeals to go forward because his own appraiser had determined that the properties were under-assessed. He stated that he did not cross-examine Flitcraft because Flitcraft's testimony was inconsistent and Flitcraft was "killing his own case." According to respondent Ferrick, he entered a general objection as each case was called and his strategy was to later win the cases in tax court.

Respondent Ferrick testified that he was not advised of the July 25, 1994 hearing date and was not aware that the cross-appeals for the remaining twenty-five properties were going to be heard at that time.

Respondent Ferrick also testified that his appraiser, Leonard Jacobs, was present during the July 13, 1994 hearing, but did not testify. Finifter, Flitcraft and Maguire, in turn, testified that Jacobs was not present on July 13, 1994, although he had been at one or two of the initial Atlantic Board meetings. Jacobs did not testify at the ethics hearing.

The OAE alleged that respondent Ferrick's conduct with regard to the Brigantine cross-appeals violated RPC 1.1(a) (gross neglect) and RPC 1.1(b) (pattern of neglect). Although the complaint charged that respondent Ferrick recklessly abandoned thirty-three clients at the July 13, 1994 hearing, the complaint was amended at the ethics hearing to allege that he abandoned only six clients who owned property on the 5200 block and whose property taxes were increased.

The OAE also alleged that both respondents violated RPC 1.4(b) because, prior to the filing of the tax appeals, they did not inform their clients that, by filing an appeal, Brigantine would have a right to file a cross-appeal that could result in an increase of their property tax assessment. According to respondent Kurzeja, he did not communicate the risk to his clients because the probability of the cross-appeal was, in his opinion, "nil, remote, effectively non-existent." Respondent Ferrick, too, testified that he did not consider the possibility of a cross-appeal and, therefore, did not advise his clients accordingly.

The LoRusso Matter

Frank and Gloria LoRusso owned property on the 5200 block in Brigantine and retained respondents to file a tax appeal. Brigantine filed a cross-appeal that sought to raise the property

assessment. Respondents obtained an appraisal of the property that showed a higher value than the 1994 assessment. However, respondents never advised the LoRussos of the appraisal results.

Respondents withdrew the LoRusso petition during the Atlantic Board hearings. Nevertheless, Brigantine proceeded with its cross-appeal. The Atlantic Board increased the LoRussos' property assessment from $185,600 to $354,400 and their property taxes from $4,100 to $8,300.

By letter dated August 31, 1994, Mr. LoRusso advised respondents that he was no longer in need of their services and was going to handle the appeal of the Atlantic Board's judgment himself. Mr. LoRusso filed a pro se complaint in the tax court on September 13, 1994. Respondents admitted, in their answer, that they filed another complaint on behalf of the LoRussos on September 16, 1994 without their knowledge or consent. Respondents justified the duplicate filing as an action to protect their clients' interest.

Despite the admission made in respondents' answer, respondent Ferrick testified at the ethics hearing that Frank LoRusso had telephoned him on his car phone and had told him that he was on his way to the courthouse to file his pro se complaint. During that telephone conversation, according to respondent Ferrick, he told Mr. LoRusso to go ahead and file it, but that he was also going to file a complaint on the LoRussos' behalf. According to respondent Ferrick, Mr. LoRusso responded, "OK file it."

Respondent Ferrick's testimony at the ethics hearing also contradicted his earlier testimony before Judge Rimm. On January 27, 1995, Judge Rimm held a hearing concerning

the circumstances surrounding the dual tax court filings on behalf of LoRusso. During that hearing, respondent Ferrick did not mention the alleged telephone conversation with Mr. LoRusso. Indeed, at that January 1995 hearing, respondent Ferrick admitted that the complaint had been filed without the LoRussos' consent and in contravention of the LoRussos' termination of the representation. According to respondent Ferrick, he did not became aware until November or December 1994 that Mr. LoRusso, too, had filed a complaint. Respondent Ferrick admitted that, after he learned that there were two complaints, he did not do anything to straighten out the situation until January 1995. Respondent Ferrick also admitted, at the January 1995 hearing, that it was the first time that he had met his clients in person.

The complaint filed by respondents was withdrawn by respondent Ferrick during the January 1995 hearing and dismissed by the court. The LoRussos proceeded on their pro se complaint and settled the matter for a total assessment of $215,000.

The OAE alleged that respondents' actions in the LoRusso matter violated RPC 1.16(a)(3) (failure to withdraw from representation upon discharge by the client) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The Lowen Matter

Arthur and Lee Lowen were also Brigantine property owners who retained respondents to appeal their property tax assessment. The Lowens also suffered an increase in their property assessment from $156,900 to $173,300.

The Lowens filed a pro se complaint in tax court on August 23, 1994 and respondents filed a complaint on the Lowens' behalf on September 16, 1994. By letter dated September 28, 1994, the Lowens informed respondents that they had filed their own appeal and discharged them.

After receiving the Lowens' letter, respondents failed to withdraw their complaint. According to respondent Ferrick, the Lowens were friends of his father and he "knew" that the Lowens did not understand the tax appeal process. He was concerned that their complaint was inadequate or that they had not made proper service on all parties.

On March 28, 1995, Judge Rimm held a hearing concerning the two tax court complaints filed on behalf of the Lowens. The complaint filed by respondents was dismissed and the Lowens settled the matter by obtaining a reduction of the new assessment to the original 1994 assessment.

During the ethics hearing, respondent Ferrick recalled that, immediately after he and respondent Kurzeja received the Lowens' discharge letter, he requested that respondent Kurzeja contact the Lowens and resolve the matter. He further recalled that a few days later respondent Kurzeja had indicated to him that the issue had been resolved. Respondent Kurzeja, in turn, did not recall speaking with the Lowens in the fall of 1994, but added that he might have done so.

As in the LoRusso matter, the OAE alleged that respondents' conduct in the Lowen matter violated RPC 1.16(a)(3) and RPC 8.4(d).

The Longport Direct-Mail Solicitation

In January 1994, respondents sent out form solicitation letters to hundreds of property owners in Longport, Atlantic County, New Jersey, soliciting appeals of property tax assessments for the 1994 tax year. The letter contained the following statements:

> Past success is no guarantee of future results, but due to the expertise of our highly qualified appraiser, the vast majority of our clients obtained significant relief in 1993 at the Tax Board. (Nearly 300 taxpayers in Longport reduced their assessments in 1993 tax appeals).

Respondents admitted that they mailed the letters and that they had not handled any tax appeals in Longport in 1993.

The OAE alleged that respondents' mailings violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent Ferrick admitted that the letter carried the alleged false inference. However, respondents continued to argue that such inference was lost when taken in context of the entire letter.

* * *

The OAE urged that respondent Ferrick be suspended for a period of six months and respondent Kurzeja for a period of three months. The OAE also requested that respondents be required to make restitution to the six Brigantine property owners for the amount of their increased taxes for the period 1994 through 1997.

* * *

The DEC found that respondents were guilty of gross neglect in their handling of the Wildwood tax appeals, but made no finding with respect to the allegation of a pattern of neglect. The DEC determined that respondents' failure to retain an appraiser to prepare reports for the Wildwood appeals did not rise to the level of a violation of RPC 8.4(c) because there was not clear and convincing proof that "when the mailings went out, respondents never intended to hire an appraiser."

With respect to the Brigantine tax appeals, the DEC found that respondent Ferrick was guilty of gross neglect for leaving the Atlantic Board hearings before Brigantine's cross-appeals were heard and that both respondents were guilty of failure to advise their Brigantine clients that, if they appealed their tax assessment, Brigantine would have the right to cross-appeal for an increase in the existing assessment.

With respect to the LoRusso and Lowen matters, the DEC found that respondents' filing of duplicate complaints did not violate RPC 1.16(a)(3) or RPC 8.4(d).

Finally, the DEC found that respondents' direct-mail solicitation letters to property owners in Longport violated RPC 8.4(c) because the letters implied that they had handled the successful 1993 Longport appeals.

The DEC recommended that respondent Ferrick be suspended for three months and that respondent Kurzeja be reprimanded. The DEC also recommended that respondents be required

to make restitution to the six Brigantine property owners for the increase in their taxes from 1994 through 1997.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondents were guilty of unethical conduct is fully supported by clear and convincing evidence. There is ample evidence that respondents grossly neglected their Wildwood clients' cases by failing to obtain appraisals or other evidence of the fair market value of the properties and failing to present any evidence to the Cape May Board. The record reflects that, from the outset, respondents gave short shrift to the Wildwood cases. They never treated them as individual cases. Respondents waited until the end of March to file all 238 appeals. They had not even retained an appraiser prior to filing the petitions. For 238 residential appeals, they submitted a list of twenty-three properties that they intended to use as comparables. Respondents never indicated the relevancy of the comparable properties to the subject properties. Two of the properties on the list did not exist and the list included commercial properties, which were clearly not applicable to the subject residential properties.

Respondents' contention that Wildwood interfered with their ability to obtain appraisals is without merit. It is clear from the record that Wildwood produced all of the property record cards requested by respondent. Furthermore, respondents' assertion that they did not request an adjournment because they believed the request would be denied is not credible. They were experienced attorneys who knew that, even if they expected a denial of the request, the request

should be made in order to protect their right to appeal. Furthermore, respondents had successfully appealed to the tax court an earlier refusal of an adjournment request. Finally, the Cape May tax administrator testified that it was the policy of the Cape May Board to grant the first adjournment request, particularly if the taxpayer intended to have an appraiser testify at the hearing.

Respondents' handling of tax appeals on behalf of their Wildwood clients constituted gross neglect, in violation of RPC 1.1(a), and their neglect of the 238 cases amounted to a pattern of neglect, in violation of RPC 1.1(b).

Also, respondents' failure to retain an appraiser to value their clients' properties after representing that they would do so in their solicitation letter violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). One member of the Board would have dismissed this count for the same reason as the DEC; namely, that there was not clear and convincing evidence that respondents did not intend to hire an appraiser at the time they sent their solicitation letters.[1] However, the remaining members of the Board were convinced that respondents' conduct with respect to their clients was deceitful. Their letter represented that "our firm hires a highly regarded appraiser, at our cost . . . ." According to respondents, they attempted to retain an appraiser on or about April 1, 1994, but were unsuccessful. There was no evidence adduced at the hearing of the extent of their efforts. Nor was there any explanation

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[1] Although one member would have dismissed this count, the dismissal did not change the appropriate level of discipline, in the opinion of that member.

of why they were able to retain an appraiser for their Brigantine clients, but not for their Wildwood clients. At best, respondents made some attempt to retain an appraiser to complete 238 appraisals only six weeks before the tax board hearings. They clearly were not concerned about retaining a "highly regarded" appraiser if they did not even look for any appraiser until six weeks before the hearings. Respondents' conduct, thus, violated RPC 8.4(c).

Respondents also violated RPC 8.4(c) in their Longport mail solicitation letter. The use of the parenthetical ("Nearly 300 taxpayers in Longport reduced their assessments in 1993 tax appeals") immediately after the statement that the "vast majority of our clients obtained significant relief in 1993 at the Tax Board" clearly implied that it was respondents who had handled the successful 1993 Longport appeals. That was untrue. Therefore, respondents made a misrepresentation, in violation of RPC 8.4(c).

With respect to the Brigantine tax appeals, there was no dispute that respondents did not advise their clients that, if they appealed their property assessments, Brigantine could cross-appeal and seek to raise the assessments. Therefore, respondents violated RPC 1.4(b).

There is a factual dispute as to whether respondent Ferrick abandoned his Brigantine clients on July 13, 1994 and left the hearings before Brigantine presented evidence on its cross-appeals. Respondent Ferrick admitted that he presented no evidence at the tax hearings and did not cross-examine Brigantine's tax assessor. However, he claimed that he had remained for the hearings and had made a general objection to each of the cross-appeals to preserve his clients' cases for the tax court. Respondent Ferrick also testified that the only cases scheduled for July

13, 1994 were those for the 5200 block and that he understood that Brigantine had agreed to withdraw the remainder of the thirty-three cross-appeals. In contrast, although there were some discrepancies in their testimony, Finifter, Flitcraft and Maguire testified that respondent Ferrick had left before the Atlantic Board's hearings on Brigantine's cross-appeals and had indicated that he would not be participating in the hearings.

The DEC found that, in contrast to the testimony of the OAE's three witnesses, respondent Ferrick's testimony in this regard was not credible. The DEC noted that, despite some discrepancies in their testimony, all three witnesses were certain that respondent Ferrick walked out prior to the hearings. The Board agrees with and defers to the credibility assessments of the DEC, finding that the record clearly and convincingly establishes that respondent Ferrick abandoned his clients and violated RPC 1.1(a) and RPC 1.1(b).

With respect to the LoRusso and Lowen matters, respondents filed complaints in the tax court after their clients had already filed their own complaints and did not seek to withdraw their complaints after they were discharged by their clients. After Judge Rimm held hearings on the circumstances surrounding the filing of the duplicate complaints, the complaints filed by respondents were dismissed, and the LoRussos and the Lowens settled with Brigantine. Respondents contended that their actions were not violative of RPC 1.16(a) or RPC 8.4(d) because they were intended to protect their clients' interests, pursuant to RPC 1.16(d). Respondents maintained that they were concerned that the clients' complaints might be inadequate or that the clients might not have properly served all necessary parties. Respondents

filed the tax court complaints at no cost to their clients. In light of the foregoing, the Board finds that respondents' filing of the duplicate complaints did not violate RPC 1.16(a) or RPC 8.4(d).

There remains the issue of discipline. Respondent Kurzeja was guilty of misrepresentations in the Wildwood and Longport solicitation letters, gross neglect and pattern of neglect in the Wildwood tax appeal cases and failure to advise the Brigantine clients that their tax assessments could be increased if they filed tax appeals. [2] Misconduct similar to that of respondent Kurzeja has resulted in a reprimand to a three-month suspension. See In re Martin, 132 N.J. 261 (1993) (reprimand where attorney misrepresented the status of a case to clients, grossly neglected the case, exhibited a pattern of neglect, and failed to communicate with clients); In re Caola, 117 N.J. 108 (1989) (reprimand where attorney sent a solicitation letter to a prospective client that contained misrepresentations concerning the attorney's background and experience); In re Palombi, 152 N.J. 453 (1998) (three-month suspension where attorney made a misleading communication that implied he could achieve results that would have violated the ethics rules and did not inform his client that the action would violate the ethics rules) and In re Olitsky, 154 N.J. 177 (1998) (three-month suspension where attorney grossly neglected four matters, exhibited a pattern of neglect, lacked diligence, failed to keep his clients informed and failed to prepare a written retainer agreement).

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[2] Although respondents received an admonition for a direct-mail solicitation letter that contained false and misleading statements, that discipline was not considered an aggravating factor because the letter at issue in the prior matter was sent in 1997 and the Wildwood and Longport letters were sent in 1994.

In addition to the misconduct committed by respondent Kurzeja, respondent Ferrick is also charged with having abandoned his six Brigantine clients when he knew that the Atlantic Board was going to hear Brigantine's cross-appeals to increase the clients' taxes. This additional misconduct warrants an increase in the level of discipline. See, e.g., In re Bock, 128 N.J. 270 (1992) (six-month suspension where attorney, while serving as a part-time municipal court judge and lawyer, abandoned both positions by feigning his own death).

The Board is convinced that a period of suspension is warranted for both respondents because of their misrepresentations in order to obtain clients, their gross neglect of the clients' cases and the number of clients that were affected by respondents' misconduct. Furthermore, respondent Ferrick exhibited a lack of candor in the hearings both before Judge Rimm and the DEC and expressed no regret for the harm he caused his clients. Therefore, the Board unanimously determined to suspend respondent Kurzeja for three months and to suspend respondent Ferrick for six months. Three members did not participate.

The Board determined not to require respondents to make restitution to the six Brigantine clients whose taxes were increased. Although the Board has ordered restitution in the past, those cases typically involved an attorney's failure to deliver trust or escrow funds to a client or to return an unearned retainer to the client. In the Board's view, the disciplinary system should not be employed as a collection agency for aggrieved clients or as an alternative to the courts.

The Board also directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/13/99

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bryan F. Ferrick
Docket No. DRB 98-377

Argued: November 19, 1998

Decided: May 13, 1999

Disposition: Six-Month Suspension

Members	Disbar	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali							x
Brody		x					
Cole		x					
Lolla		x					
Maudsley							x
Peterson		x					
Schwartz		x					
Thompson							
Total:		6					3

Robyn M. Hill 6/14/99
Robyn M. Hill
Chief Counsel