SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-230
District Docket No. IIB-2008-0008E

IN THE MATTER OF	
JEFF H. GOLDSMITH	
AN ATTORNEY AT LAW	

Decision

Decided: December 3, 2009

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

This matter came before us on a certification of default filed by the District IIB Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). It arose out of respondent's failure to timely complete post-closing steps in a real estate transaction. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1984. In 1994, he received a private reprimand for gross neglect, lack of diligence, and failure to communicate with a client. In the Matter of Jeff H. Goldsmith, DRB 94-010 (March 15, 1994). In 2002, he received an admonition for practicing law while ineligible to do so for failure to pay the annual assessment to

the New Jersey Lawyers' Fund for Client Protection and failing to comply with a diversionary agreement entered pursuant to R. 1:20-3(i)(2)(B)(i). In the Matter of Jeff H. Goldsmith, DRB 02-232 (October 7, 2002). On April 10, 2007, respondent received a censure for gross neglect, lack of diligence, failure to communicate with beneficiaries of an estate, and failure to promptly deliver $591,000 in estate funds to a third party, while acting as executor of a decedent's estate. In re Goldsmith, 190 N.J. 196 (2007).

Service of process was proper. On April 24, 2009, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent's office address as listed in the attorney registration system, 1605 John Street, Fort Lee, NJ 07024. The certified mail card was returned with an illegible signature. The regular mail was not returned.

Because respondent did not file an answer to the complaint, on June 12, 2009, the DEC sent him a letter notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us, pursuant to R. 1:20-4(f). The letter was sent to respondent's office address by certified and regular mail. The

certified mail was returned signed by "Donna Loughlin." The regular mail was not returned.

Respondent did not file an answer to the complaint.

On October 7, 2009, respondent filed a motion to vacate the default. In his motion, respondent admitted all of the essential allegations of the complaint. He also stated that he cooperated with the DEC investigation and intended to continue to cooperate with the DEC's resolution of this matter.[1]

Respondent explained why he did not file an answer to the complaint:

> 7. The reason(s) that I have not heretofore filed an Answer in this matter was my mistaken belief that inasmuch as the allegations contained in the Complaint are essentially correct . . . that I would be unable to put forward a defense. This, combined with embarrassment at having to appear before the Committee caused me to erroneously conclude that filing an Answer would be an exercise in futility.
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> 8. I realize, however, that having the matter proceed upon default could be construed as evincing disrespect for the Committee. I wish to continue to participate in the proceeding and cooperate with the Committee. I, therefore, ask the Committee's indulgence in permitting me to interpose the proposed Answer

[1] Office of Board Counsel confirmed that respondent met with the investigator, on July 25, 2008, and that he sent a letter to the investigator indicating his intention to cooperate with the investigation of the grievance.

> and permit the matter to proceed on anuncontested basis rather than upon default.
>
> [Cert¶7-Cert¶8.][2]

For the reasons expressed below, we determine to deny respondent's motion,[3] but not to enhance the degree of discipline that would be appropriate for respondent's violations, were this matter not proceeding on a default basis.

Our review of respondent's motion does not convince us that he purposely thwarted the disciplinary system's efforts to determine the extent and nature of the alleged unethical conduct and to achieve a fair and timely resolution of the charges against him. Rather, he believed that an answer was not required because he was not contesting the charges. Allegedly, he was unaware that his failure to file an answer could be viewed as failure to cooperate with disciplinary authorities and, as such, result in the imposition of more severe discipline. During a phone conversation with Office of Board Counsel about a service of process issue, respondent made

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[2] "Cert" refers to respondent's certification in support of his motion.

[3] Our decision to deny the motion is based on respondent's failure to satisfy the second prong of the test employed in default motions, that is, the submission of meritorious defenses to the charges.

it clear that he had no knowledge that a default was deemed disrespect to the attorney disciplinary system. He explained that his intent was simply to allow the matter to proceed as uncontested, believing that default was an acceptable approach to accomplish that goal. Within two days of learning otherwise, respondent filed a motion to vacate the default.

In light of the above, we see no reason to impose the enhancement penalty that is warranted in default matters, as an aggravating factor. In the past, special circumstances have justified not increasing the measure of discipline in default cases. See, e.g., In re Kearns, 179 N.J. 507 (2004) (reprimand; attorney charged with lack of diligence, failure to communicate with the client, and failure to promptly pay funds to a third party based on his derelictions in the representation of clients in the refinancing of their home mortgage; specifically, the attorney failed to pay off existing mortgages timely and failed to forward closing documents to the new mortgagee timely, causing creditors to threaten his clients with foreclosure; the appropriate measure of discipline was a reprimand, which we chose not to elevate to the next degree because it would be "too severe a penalty").

The facts alleged in the complaint are as follows:

On July 19, 2005, respondent represented Lyudmila Rymar, the grievant in this matter, in the purchase of a condominium in Old Bridge Township. Respondent sent the deed to the county clerk to be recorded, but the deed was returned to him for insufficient recording fees. Respondent failed to file the new deed until two years later, on July 17, 2007. As a direct result of respondent's delay in recording the deed, Rymar did not timely receive a title insurance policy for the property.

The complaint charged that respondent's failure to record the deed amounted to lack of diligence, a violation of RPC 1.3, and that his failure to send it for recording for the next two years demonstrated a pattern of neglect, a violation of RPC 1.1(b).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Here, respondent failed to attend to an important post-closing aspect of a real estate matter, a violation of RPC 1.3. After the deed was returned to him for a recording fee deficiency, respondent neglected to follow up with the county clerk for a period of two years.

When respondent's neglect of this matter is combined with his gross neglect in his two prior disciplinary matters, a pattern of neglect emerges. A finding of a pattern of neglect requires at least three instances of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Thus, we find respondent guilty of having violated RPC 1.1(b).

Failure to complete post-closing steps ordinarily warrants an admonition. See, e.g., In the Matter of Thomas S. Capron, DRB 04-294 (October 25, 2004) (failure to discharge a mortgage of record for eight years; gross neglect found); In the Matter of Diane K. Murray, DRB 98-342 (September 26, 2000) (failure to record a deed and to obtain title insurance for fifteen months and two and a half years after the closing, respectively; the attorney also failed to reply to the client's numerous requests for information about the matter and to reconcile her trust account records in a timely fashion; the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.15(d)); In the Matter of Charles Deubel, III, DRB 95-051 (May 16, 1995) (failure to record a deed for fifteen months after the closing of title, a violation of RPC 1.3); and In the Matter of Laura P. Scott, DRB 96-091 (May 2, 1996) (attorney did not remit certain fees to the title company and to the mortgage company until six months after the

losing; the attorney also failed to reply to her clients' numerous requests for information on potential unpaid closing costs and to deposit $500 in cash into either her trust account or her business account, from which the closing proceeds would then be disbursed; finally, the attorney did not submit to her clients proof of $97 in "reimbursement for costs/fees" and did not reimburse them for that amount; the attorney violated RPC 1.3, RPC 1.4(a), RPC 1.15(b), and RPC 1.15(d)).

For a pattern of neglect a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, the attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect). For respondent's within infractions alone, thus, a reprimand would be appropriate.

An aggravating factor, however, is respondent's prior disciplinary record, consisting of a 1994 private reprimand, a 2002 admonition, and a 2007 censure. Both the censure and the

private reprimand matters included similar misconduct (gross neglect and lack of diligence), all of which took place years earlier than the within infractions. Because of respondent's disciplinary record, we determine that the appropriate form of discipline for his current transgressions, a reprimand, should be elevated to a censure.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			

Julianne K. DeCore
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Chief Counsel