SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 14-146 and
DRB 14-170
District Docket Nos. VIII-2013-0042E; VIII-2013-0043E; VIII-2013-0045E; VIII-2013-0010E; and VIII-2013-0031E

IN THE MATTERS OF	:
MICHAEL HALBFISH	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 18, 2014

Decided: December 4, 2014

Peter Hendricks appeared on behalf of the District VIII Ethics Committee (DRB 14-170).

Respondent did not appear, despite proper service.

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

These matters were before us by way of a certification of the record (DRB 14-146) and a recommendation for a two-year suspension (DRB 14-170), both filed by the District VIII Ethics

Committee (DEC).[1] These matters have been consolidated for our review. We recommend respondent's disbarment for the totality of his conduct, as aggravated by his disciplinary record and other significant factors.

Respondent was admitted to the New Jersey bar in 1997. In 2010, he was censured for misconduct in two matters. In re Halbfish, 203 N.J. 441 (2010). In one matter, respondent was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to withdraw from the representation. In the other matter, he was found guilty of negligent misappropriation and recordkeeping violations. The Court's order directed him to provide the Office of Attorney Ethics (OAE) with previously-requested information and to submit to the OAE, for two years, quarterly reconciliations of his trust account, prepared by a certified public accountant.

In 2011, respondent received a second censure for misconduct in three matters. In re Halbfish, 205 N.J. 105 (2011). There, he was found guilty of failure to communicate with clients, gross neglect, lack of diligence, failure to promptly turn over client property, and misrepresentation.

On September 18, 2013, respondent received a six-month

[1] At oral argument before us, the presenter urged us to recommend respondent's disbarment.

suspension for gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients in five matters. In re Halbfish, 215 N.J. 43 (2013). He remains suspended to date.

On September 17, 2014, the day before our scheduled review of these matters, the Office of Board Counsel (OBC) received correspondence from respondent, requesting that DRB 14-170 be stayed and transferred to Warren County. Respondent claimed that he was not properly notified of the ethics hearing in DRB 14-170. He did not deny that he was aware of that matter. In fact, he filed an answer to the complaint. His contention was that the original hearing, scheduled for December 2013, was rescheduled for January 2014 and that notice of that date was sent to his office. He argued that this notice was insufficient, because he was suspended at the time.

While it is true that respondent was suspended when the notice was sent to his office, the record reflects that he was also sent a reminder notice of the new hearing date to both his office and last known home addresses. In addition – and significantly – he was aware of the disciplinary matter under DRB 14-170, but did not follow up to find out its status. We note that he did not deny that he knew of the original hearing date and made no claim that he was not aware that it had been

rescheduled. We also note that, as discussed below, mail sent to his last known home address had been refused on two occasions, including mail from the Office of Board Counsel. Therefore, we denied his request to stay these proceedings.

Although, in the reference line of his letter, respondent listed the default matter docketed as DRB 14-146, he did not offer any explanation for his failure to file an answer to the complaint in that matter.

DOCKET NO. DRB 14-146 - DISTRICT DOCKET NOS. VIII-2013-0042E, VIII-2013-0043E, AND VIII-2013-0045E

Pursuant to R. 1:20-4(f), the DEC filed a certification of the record, following respondent's failure to file an answer to the complaint. Count one of the complaint charged respondent with gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to communicate with a client (RPC 1.4(b)). Counts one, two, and three charged respondent with failure to cooperate with ethics authorities.

Service of process was proper in this matter. On March 11, 2014, the DEC sent a copy of the complaint, by certified and regular mail, to respondent's last known home address. The certified mail was returned as unclaimed. The regular mail was not returned.

On April 21, 2014, the DEC sent a second letter to the same

address, by regular and certified mail, advising respondent that, if he did not file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail was returned with a handwritten note that read "customer refused." The regular mail was not returned.

As of May 9, 2014, the date of the certification of the record, respondent had not filed an answer to the complaint.

Count One - Gregorio Feliciano

On or about August 15, 2006, Gregorio Feliciano, the grievant in this matter, retained respondent to represent him in a consumer fraud action for breach of warranty, in connection with a 2005 Ford Expedition purchased from a dealership in North Brunswick, New Jersey. At the outset of the representation, Feliciano paid respondent a $3,000 non-refundable retainer.

Through the middle of 2008, Feliciano received several undated and unsigned documents from respondent. After approximately one year without any communication, Feliciano contacted respondent, who told him that, "[i]t is going to take

longer. I have been doing a lot of work on your case." In response, Feliciano requested a copy of his file. He never received it.

After no communication with respondent for another extended period, Feliciano sought out respondent at his Woodbridge office. He found it empty. After his own investigation, Feliciano located respondent's new office in Piscataway and met with him there. He confronted respondent about the move of the law office without notifying him, complaining that he "needed to do a personal search" to find the new office. Feliciano again asked for a copy of his file. Respondent told Feliciano that a copy of the file would require an additional $250 payment.

Thereafter, respondent again moved his office, without notifying Feliciano, who had gone back to the Piscataway office, only to find that it, too, was empty. Another search revealed that respondent's office was in Phillipsburg. This time, Feliciano contacted another attorney with whom he had previously worked, George Gussis, and requested that Gussis find out the status of his consumer fraud action. Gussis then conducted a search with the court, which showed that the complaint had been dismissed, without prejudice, on October 21, 2011.

On March 21, 2013, Gussis sent a letter to respondent, asking that he contact Feliciano to schedule a meeting to

discuss the reinstatement of the case or the transfer of the file. Although respondent did not reply to Gussis' letter, respondent sent Feliciano a text message, instructing Feliciano to contact him during business hours. Respondent failed to reply to Feliciano's subsequent attempts at communication.

On April 1, 2013, Gussis, having learned of the text message and of Feliciano's failed attempts to reach respondent, sent a second letter to respondent, again requesting that he contact Feliciano. The record is silent as to whether respondent replied to Gussis' second letter.

Court records confirm that the court dismissed Feliciano's case, on October 21, 2011, and that respondent filed an application to reinstate the matter, on December 16, 2011. The court denied that application.

By way of letters dated November 14 and December 18, 2013, the DEC investigator contacted respondent, at his home address, as part of his investigation of the grievance. Respondent failed to reply to the investigator's letters.

Count Two - Daniel Hyatt

In or about August 2012, grievant Daniel Hyatt retained respondent to represent him in a collection action. Hyatt paid him a $1,500 retainer. Although the complaint in that matter

was dismissed for respondent's failure to prosecute, respondent asked Hyatt for an additional retainer. The record is silent as to whether Hyatt paid additional monies.

On November 14, 2013, the DEC investigator sent a "Ten-Day Letter" to respondent, requesting that he reply to the grievance. Respondent ignored that request. On December 18, 2013, the investigator sent a second letter to respondent, requesting a reply by December 30, 2013. Respondent never complied with the investigator's requests.

Count Three - Francesco Taddeo

Grievant Francesco Taddeo, Esq., was respondent's adversary in a consumer fraud action in Union County Superior Court. The matter also involved a claim for breach of contract and legal fees.

During the course of the jury trial, respondent threatened Taddeo with a malpractice claim, if he did not agree to settlement terms, prior to a verdict.

By letters dated November 26 and December 18, 2013, the DEC investigator requested that respondent reply to the Taddeo grievance. Respondent failed to do so.

The complaint alleges sufficient facts to support the charges of unethical conduct in these three matters.

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)).

Although respondent accepted a fee to represent Feliciano and filed a complaint on his behalf, he permitted the complaint to be dismissed, presumably for lack of prosecution. In this regard, respondent was guilty of lack of diligence and gross neglect.

Additionally, respondent allowed the matter to drag on for years, without any communication with Feliciano. When Feliciano attempted to contact respondent, his calls went unanswered. This conduct constituted a violation of RPC 1.4(b).

Finally, respondent has clearly failed, at every turn, to cooperate with ethics authorities. He ignored the ethics investigator's attempts to obtain information about the Feliciano, Hyatt, and Taddeo grievances, violations of RPC 8.1(b).

Moreover, although several improprieties were not charged, we find them to be aggravating factors. Specifically, respondent failed to turn over Feliciano's file to him, despite at least two requests that he do so, during or after 2009. He also misrepresented the status of the matter to Feliciano, when he told him that he was doing a lot of work on his case. This statement was made three years after the representation had

begun. After the complaint was dismissed, on October 21, 2011, respondent did not inform Feliciano of the dismissal. Finally, respondent virtually abandoned Feliciano by twice moving his office, without notifying Feliciano, prompting Feliciano to resort to searches on his own to discover respondent's new office addresses.

DOCKET NO. DRB 14-170 - DISTRICT DOCKET NOS. VIII-2013-0010E AND VIII-2013-0031E

The two-count complaint charged respondent with gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to communicate with the client (RPC 1.4(b)).

Although respondent received notification of the January 31, 2014 DEC hearing, and despite the DEC's attempts to reach him on the day of the hearing, respondent failed to appear, as required by R. 1:20-6(c)(2)(D).

Count One – Maria Alves

On or about October 14, 2008, grievant Maria Alves retained respondent to represent her in a consumer fraud claim against Garden State Auctions, an automobile dealership that had sold her a car. Alves paid respondent $2,750, the full amount of his retainer. She also provided him with copies of documents

supporting her claim that Garden State Auctions had altered the odometer on the car.

From October 2008 through March 2010, Alves had no communication with respondent and, according to the complaint, he did no work on her matter. Alves attempted to contact respondent many times, without success. In March 2010, she began creating a record of her phone calls to respondent. She placed twenty phone calls to him, between March 2010 and December 2012, and either did not receive a response or was told that the case was progressing and that he had filed a claim on her behalf.

At some point, Alves became frustrated and requested her file, so that she could retain another attorney. She was unsuccessful in obtaining the file.

On or about June 20, 2011, Alves and her son traveled to respondent's office, in Piscataway, to ascertain the progress of the case. Once again, respondent told her that things were progressing in their normal course. Although Alves again asked for her file, respondent told her he did not have it with him.

Prior to that meeting, respondent had not informed Alves that he had relocated his office to Piscataway. She learned of his new address from his secretary. Alves added that she waited an hour and a half before respondent arrived for the meeting.

On or about January 5, 2013, Alves sent respondent a copy of the ethics grievance that she had filed against him. Three weeks later, on or about January 26, 2013, respondent visited Alves at her home, in Newark, and gave her a copy of a complaint, promising to file it. The complaint was filed on January 31, 2013, several days after the meeting and five years after respondent had been retained.

After that date, Alves last communicated with respondent on April 24, 2013, when she told him that she would give him another chance at handling her case. According to the DEC, "in all likelihood, [the complaint] has been dismissed."

Count Two - DuJean J. Laidlaw

On or about November 30, 2011, grievant DuJean Laidlaw retained respondent to defend him in a lawsuit filed by Ford Motor Credit. Laidlaw paid respondent a $2,500 retainer.

When Laidlaw retained respondent, he gave him copies of the complaint that Ford had filed, on October 26, 2011. On or about December 6, 2011, respondent filed an answer to the complaint against Laidlaw, sending a copy to Ford's attorney.

Later that same month, counsel for Ford filed a summary judgment motion. Laidlaw claimed that respondent did not inform him of that development. He recalled, however, seeing papers

opposing this motion, during a meeting in respondent's office, about one month after their initial appointment, on November 30, 2011. Laidlaw signed the affidavit in support of the opposition. Although respondent filed a January 18, 2012 brief and affidavit in opposition to the summary judgment motion, a default judgment had been entered against Laidlaw on the previous day.

Shortly thereafter, Laidlaw discovered, via his credit report, that a default judgment had been entered against him for $14,078. When Laidlaw asked respondent for an explanation, respondent replied that he was waiting for the judge to vacate the default. Respondent also told Laidlaw that the default had been entered because Ford had failed to provide "it" to him in time, but assured Laidlaw that he was working to vacate the default. Respondent did not identify what "it" was. When Laidlaw then contacted the court, he was given an explanation as to why the default judgment had been entered against him.

In July 2012, Laidlaw learned that Ford was seeking an execution of his wages to collect on the judgment. Laidlaw had not communicated with respondent since learning of the default, in January 2012. He then contacted respondent, who promised that he would take care of it. Subsequently, Laidlaw contacted respondent on several occasions. Each time, respondent

represented that he was waiting for the judge to vacate the default. That event never happened.

According to Laidlaw, his communication with respondent was very difficult. Laidlaw was always the one to initiate the contact. Respondent usually gave no more than one or two word answers and always fell back on the position that he was waiting for the judge to vacate the default. In addition, it was difficult to leave a message for respondent, because his voice mailbox usually was full.

In September 2012, Laidlaw met with respondent at a Panera Bread restaurant. At that time, he asked respondent what action was being taken on his behalf and what was being done to vacate the default judgment. Respondent repeated that he was waiting for the judge to vacate the default. Also at that meeting, Laidlaw requested a copy of his file, which respondent did not produce.

On October 8, 2012, Laidlaw sent an email to respondent, requesting a copy of respondent's letter asking the judge to vacate the default. Respondent did not comply with Laidlaw's request.

In the Alves matter, the DEC concluded that respondent was guilty of gross neglect and lack of diligence for failure to take any action for five years, after accepting a retainer from the client, conduct that the DEC characterized as "unconscionable." The DEC also determined that, by not

communicating with his client and by providing purposely vague answers or outright lies, respondent violated RPC 1.4(b).

As to his representation of Laidlaw, the DEC found that respondent violated RPC 1.1(a) and RPC 1.3, by failing to properly defend the action, in that he filed an opposition to the summary judgment motion after it had been granted and failed to follow through with a motion for reconsideration, or any other type of application to the court, and by not disclosing his failures to Laidlaw. The DEC also found that respondent violated RPC 1.4(b), by failing to reply to Laidlaw's reasonable inquiries about the progress of his case and by misrepresenting its status.

The DEC dismissed the charged violation of RPC 1.1(b) in both matters, noting that a pattern of neglect requires three instances of neglect and that, here, there were only two.

Despite respondent's failure to appear at the hearing, the DEC considered the mitigating factors presented in his answer to the formal ethics complaint. Specifically, respondent maintained that he had participated in many pro bono activities to educate the public on consumer fraud issues, that he has been actively involved in litigation on behalf of consumers, and that he has served on various bar association committees on consumer protection issues. The DEC noted, however, that, while these

potentially mitigating factors relate to respondent's work on behalf of consumers, the two grievants who testified at the ethics hearing were his clients and, as such, they were consumers of legal services who were poorly served by respondent.

Respondent also asserted, in his answer, that his ethics problems arose out of his association with John Tunney, now a disbarred lawyer. In re Tunney, 209 N.J. 427 (2012). Because respondent chose not to appear at the ethics hearing, the DEC did not hear an explanation as to how respondent's association with Tunney detrimentally affected him in any way.

As to aggravating factors, the DEC considered respondent's extensive disciplinary history and his failure to appear at the hearing. Moreover, the DEC expressed concern about respondent's failure to meet the needs of his clients, as such conduct goes to the very fabric and foundation of the public's trust in the legal profession.

The DEC recommended a two-year suspension, to run consecutively with any existing suspensions, finding that respondent is a threat to the public and that his actions in these two matters are continuing examples of the damage that he has inflicted on his clients.

Following a de novo review of the record, we are satisfied

that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

Unquestionably, in both the Alves and Laidlaw matters, respondent's behavior constituted gross neglect, lack of diligence, and failure to communicate with the clients, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). He did not file a complaint until five years after Alves retained him and then only after he learned that Alves was about to file an ethics grievance against him. He hardly communicated with Alves and she was always the one who initiated the contact.

More seriously, he lied to Alves for years. He misrepresented the status of the matter to her, knowing that a complaint had not yet been filed. Moreover, he practically abandoned Alves by relocating his office and never informing her of how she could contact him. He also failed to turn over her file to her, despite repeated requests. Although respondent was not charged with the above violations, we consider them as aggravating factors.

In the Laidlaw matter, respondent sat idly by, while a summary judgment motion was filed and a default and a judgment were entered against Laidlaw, all without Laidlaw's knowledge. Laidlaw learned of the judgment months later, through his credit report, and became aware of the wage execution action on his

own. Respondent did not keep him apprised of the status of the matter, did not explain to him the consequences of the events that were occurring, and failed to take any action to reverse the outcomes. Instead, he repeatedly told Laidlaw that he was waiting for the judge to vacate the default, all of which were blatant misrepresentations. He knew that he had not even filed a motion to vacate the default.

Finally, although the record does not specify the amount of damage done to Laidlaw in this matter, at the very least his ability to defend against Ford's debt collection action was significantly reduced, if not eliminated.

Altogether, in these combined five client matters, respondent was guilty of gross neglect, a pattern of neglect, lack of diligence, failure to cooperate with disciplinary authorities and, in three of them he failed to adequately communicate with the clients, violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), and RPC 8.1(b). Further, three of these client matters were before us by way of default (Feliciano, Hyatt and Taddeo). In the other two client matters (Alves and Laidlaw), although respondent filed an answer to the complaint, he never appeared for the ethics hearing, as the rules required him to do.

Attorneys who mishandle multiple client matters generally

receive suspensions of either six months or one year. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney was guilty of lack of diligence in six of them, failure to communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; in addition, in one of the matters the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and recordkeeping violations; no ethics history); In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged); In re Brown, 167 N.J. 611 (2001) (one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions, and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his

whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the disciplinary matter proceeded as a default; prior reprimand); and In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes and blamed clients and courts therefor).

Here, in DRB 14-170, the DEC recommended a two-year suspension, to run concurrently with respondent's existing term of suspension.[2] Obviously, this recommendation could not have taken into consideration the three additional matters before us by way of default.

Altogether, since 2010, respondent will have been

[2] As indicated earlier, respondent was suspended for six months, effective October 18, 2013. He has not been reinstated.

disciplined for his behavior in fifteen client matters. Fourteen of those matters involve some form of the aforementioned violations, as well as others. Indeed, a temporal relationship between the current matters and the ones for which respondent has been disciplined shows that he has not learned from his past ethics errors. He received censures in 2010 and 2011 and a six-month suspension in 2013. The behavior giving rise to those matters occurred between 2004 and 2010. Here, the misconduct in the Feliciano matter (2006-2011) and in the Alves matter (2008-2013) also took place, in part, during that same period. Although the behavior in the Hyatt (2012-2013), Taddeo (2013), and Laidlaw (2011-2012) matters occurred after that period, it is indicative of respondent's propensity for ignoring his professional responsibilities to his clients and utterly disregarding their well-being.

Furthermore, his obstinate refusal to acknowledge his duty to cooperate with disciplinary authorities is evident. He defaulted in three of these matters, failed to appear for the ethics hearing on the other two, and refused to accept service of the five-day letter in DRB 14-146, as well as the notice of the oral argument before us. "Disrespect to an ethics committee . . . constitutes disrespect to [the Supreme] Court, as such a committee is an arm of the Court." In re Grinchis, 75 N.J. 495

(1978). To compound these improprieties, respondent did not file an answer to the complaint in DRB 14-146, allowing it to proceed before us on a default basis. In a default matter, the otherwise appropriate discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities. In re Kivler, 193 N.J. 332, 342 (2008).

Of greater concern to us is the danger that respondent poses to the public. The protection of the public requires appropriate measures to ensure that respondent will no longer victimize his clients, including by abandoning them, as he did in some of the present matters.

The totality of respondent's behavior in all matters, past and present, is ample proof that he is unsalvageable and that no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another case, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that [sic] his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we [should] expect that his assault on the Rules of Professional Conduct [will] continue." In re Vincenti, 152 N.J. 253, 254 (1998).

In view of all of the foregoing, we are convinced that

nothing short of disbarment is justified for this respondent. We so recommend to the Court.[3]

We further determine to require respondent to reimburse the Discipline 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

[3] We refrain from requiring that respondent disgorge the fee to the clients, only because there is evidence that he did some work for them, as opposed to none. We require that a retainer be refunded to the client only when no work at all has been performed. When some, but not all, of the work has been done, the issue of an appropriate refund should be handled by a fee arbitration committee.

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Michael D. Halbfish
Docket Nos. DRB 14-146 and DRB 14-170

Argued: September 18, 2014

Decided: December 4, 2014

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera						X
Singer	X					
Yamner						X
Zmirich	X					
Total:	7					2

Ellen A. Brodsky
Chief Counsel