SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-150
District Docket Nos. VB-2013-0008E
and VB-2013-0009E

IN THE MATTER OF	:
ARNOLD M. ABRAMOWITZ	:
AN ATTORNEY AT LAW	:

Decision

Decided: December 11, 2014

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 VB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with a pattern of neglect (RPC 1.1(b)), mistakenly cited as RPC 1.1(a), lack of diligence (RPC 1.3), failure to communicate with a client (RPC 1.4(b)), and failure to cooperate with disciplinary authorities (RPC 8.1(b) and R. 1:20-3(g)(3)). We determine to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 1976.

In 1995, respondent received an admonition for lack of diligence in pursuing his indigent client's appeal from a criminal conviction, resulting in the dismissal of the appeal for lack of prosecution. The client did not suffer irreparable harm because the court reinstated his appeal. In the Matter of Arnold M. Abramowitz, DRB 95-399 (November 28, 1995).

In 1996, respondent received a second admonition, this time for failure to keep his personal injury client informed about the status of his case and failure to comply with the client's numerous requests for information. We considered that the client was not harmed and that respondent was beset by personal problems, at the time of his ethics infractions. In the Matter of Arnold M. Abramowitz, DRB 95-480 (April 3, 1996).

In 1997, respondent received a third admonition, after he failed to comply with a district ethics committee's requests for information about a grievance filed against him. In the Matter of Arnold M. Abramowitz, DRB 97-150 (July 25, 1997).

On February 13, 2008, in a default matter, respondent received a reprimand for lack of diligence, failure to communicate with clients, and failure to cooperate in the ethics investigations of two separate client matters. In re Abramowitz, 193 N.J. 490 (2008).

On March 13, 2009, respondent was suspended for three months, in a default matter, for grossly neglecting a real estate transaction and preparing a RESPA statement containing false information. In re Abramowitz, 197 N.J. 505 (2009). Respondent was reinstated to the practice of law on August 26, 2009. In re Abramowitz, 200 N.J. 212 (2009).

In the matter currently before us, respondent filed a motion to vacate the default, on August 12, 2014. To vacate a default, respondent must overcome a two-pronged test: offer a reasonable explanation for the failure to answer the ethics complaint and assert a meritorious defense to the underlying charges.

As to his failure to answer the ethics complaint, respondent does not deny that he received the complaint and had ample time to answer it. Rather, he stated as follows:

> Every time I tried to respond to the Complaint, I became extremely anxious, suffered from anxiety attacks, which included heart palpitations, terrible anxiety bordering on physical pain, shortness of breath and profuse sweating as a consequence of those anxiety attacks occurred [sic] I put off filing an Answer as I was physically and emotionally unable to do so.
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> . . . .
>
> As I sit here preparing this motion, I am suffering from the same symptoms, my heart is racing, my shirt fairly soaked with sweat

> and I am trying to work through the shortness of breath and heart palpitations.
>
> [RC¶4-¶6.][1]

Respondent also claims that he was ill, "during the entire month of January and part of February," a circumstance that caused him additional stress and delayed the work on his cases. He added that, rather than deal with the anxiety attacks associated with the ethics matter, he "worked on files for [his] other clients." He provided no information about the nature of his two-month illness, in early 2014, which, combined with his anxiety attacks, allegedly prevented him from answering the complaint.

We note that respondent resorted to the very same, uncorroborated allegation of anxiety, in earlier motions to vacate defaults. Specifically, in his 2008 default matter (three-month suspension imposed), we analyzed certain similarities among respondent's motions to vacate defaults, including a 2007 default, in which respondent

> claimed only to have been "in contact" with a psychiatrist and psychologist to help him work through his anxiety and depression. Respondent did not, at that time, provide the names of his doctors, the dates of his treatment or any reports or prognoses from them. We noted in our decision that

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[1] "RC" refers to respondent's undated certification in support of his motion to vacate the default.

> respondent also raised a similar defense in the disciplinary matter that led to his 1996 admonition.
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> Respondent once again offered the very same anxiety and depression, with the same stressors, as the reason for his failure to answer the complaint before us. In his motion, respondent borrowed language from his prior unsuccessful motion to vacate the default. For example, in both 2007 and the current default, respondent stated that he tried to reply to the ethics "complaints," but would "suffer from intense anxiety and palpitations, shortness of breath, emotional pain and depression that bordered on physical pain."
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> The only salient difference between respondent's 2007 and 2008 arguments to vacate the default is his assertion that he has been treating with a psychiatrist for the past fifteen months. Although he has now provided the name of his psychiatrist, he has not provided any dates of his wife's illnesses, dates of psychiatric treatment or medical reports or prognosis from Dr. Cowan. Respondent, thus, has failed to document his claim of anxiety and depression, failed to causally connect them to his failure to answer the complaint, and failed to offer a prognosis for the future.
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> [In the Matter of Arnold M. Abramowitz, DRB 08-254 (December 10, 2008) (slip op. at 4-5.]

Respondent has, once again, gone back to the same dry well. In those earlier unsuccessful motions to vacate the defaults, he at least furnished some evidence, mostly anecdotal, that he was seeking medical treatment for his alleged problems. Here, he has offered no evidence at all to support his claims that illness

and anxiety attacks prevented him from filing an answer to the complaint.

With regard to prong two, meritorious defenses, one of the matters now before us, Benoit, centered on respondent's failure to record mortgages for one year, after a real estate closing. Respondent urged us to consider that the mortgage documents have now been recorded. But it is the one-year delay that makes respondent's conduct unethical. Attached to his motion is a document showing that the mortgage was recorded on May 20, 2009, one year after the closing.

In another matter, Henderson, respondent presented a "defense" that he has almost completed it.[2] Again, it is the delay in completing post-closing aspects of that 2012 real estate closing for a number of months that makes respondent's conduct improper. He failed to record the mortgage documents in that matter until May 20 and May 21, 2013 and conceded that, as of August 2014, he still had not obtained an executed subordination agreement between Henderson and a municipality. The absence of that executed document has prevented the title company from issuing a title insurance policy ever since the 2012 closing.

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[2] Apparently, with some prompting from the grievant, respondent continued to work on the Benoit and Henderson files after the April 2, 2013 grievance was filed.

In conclusion, respondent has satisfied neither prong of the test to vacate a default: a reasonable explanation for not filing an answer and the assertion of meritorious defenses to the charges against him. Therefore, we denied his motion to vacate the default.

Service of process was proper in this matter. On February 26, 2014, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent's last known office address, as listed in the attorney registration records, at 1064 Clinton Avenue, Irvington, New Jersey 07111. The certified mail receipt was returned, indicating delivery, having been signed, on March 3, 2014, by one "S. Pinckney." The regular mail was not returned.

On March 31, 2014, the DEC sent a letter to respondent at the same office address, by both certified and regular mail, advising him that, unless he filed an 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 sanction, and the complaint would be deemed amended to allege a willful violation of RPC 8.1(b). The certified mail receipt was returned indicating delivery, having been signed, on April 2, 2014, by "S. Pinckney." The regular mail was not returned.

On April 18, 2014, the DEC secretary received a telephone call from respondent, representing that he would file an answer, albeit late. He did not do so. As of May 15, 2014, the date of the certification of the record, respondent had not filed an answer to the ethics complaint.

I. The Gentry Henderson Loan

Sometime prior to December 2011, respondent was retained to conduct closings for the Department of Community affairs (DCA), related to DCA loans issued in connection with its Lead Hazard Control Assistance Program (LHCA). One such loan was issued to Gentry Henderson. Under respondent's agreement with the DCA, he was required to place all loan proceeds in escrow and make loan disbursements according to specific DCA instructions. The DCA also required him to maintain a disbursements ledger, which was to be submitted to the DCA on a routine basis to ensure that a clear and accurate accounting of loan transactions was maintained.

From December 27, 2011 to April 26, 2012, the DCA sent respondent closing documents for the Henderson loan, including two loan modifications. As settlement agent, respondent was required to obtain a title policy, record the mortgages, and

deliver a trust ledger to the DCA, evidencing all disbursements made on account of the transaction.

In March 2013, DCA research analyst Matthew Rudd, Esq., conducted an audit of respondent's file in the Henderson matter. Rudd noted that, contrary to the DCA's instructions, respondent had not provided the DCA with a copy of the title policy and that it appeared that the mortgages had not been executed, recorded, or returned to the DCA. Rudd wrote to respondent, requesting those missing and incomplete documents, as well as a status update. Respondent failed to comply with Rudd's requests "on numerous occasions."

Subsequently, the DCA obtained copies of Henderson's mortgages from a third party and discovered that, although the borrower had executed them contemporaneously with the transaction, respondent had not recorded them until May 2013. According to the complaint, respondent also failed to provide the DCA with a final title policy and failed to "address this matter" and to advise the DCA of the reasons for the delay in doing so.

After the filing of the grievance, the DEC investigator sent respondent letters and called him on the telephone, seeking information about the grievance and a copy of the Henderson

file. Respondent failed to reply to those requests for information and did not turn over his file to the investigator.

II. The Benoit Loan

This matter is virtually identical to the Henderson matter. Sometime prior to April 2012, the DCA retained respondent to handle the closing of an LHCA lead abatement loan to Marie Benoit. From April 13 to June 1, 2012, the DCA sent respondent closing documents, including two loan modifications. As closing agent, respondent was required to record all mortgages, deliver a trust ledger for the transaction showing all disbursements of loan proceeds, and obtain a final title policy.

In March 2013, after Rudd audited the Benoit transaction, he concluded that respondent had failed to provide the DCA with a copy of the final title policy, executed mortgages, and recorded mortgages. Rudd then wrote to respondent, asking for the missing documents and a status update. Respondent failed to reply to Rudd's requests "on numerous occasions."

Ultimately, Rudd obtained copies of the recorded mortgages from a third party and noted that, although Benoit had contemporaneously executed them, respondent had not recorded them until May 2013.

After the filing of the grievance, the DEC investigator sent respondent letters and called him on the telephone, seeking information about the Benoit closing and a copy of his file. Respondent neither replied to the investigator's requests for information nor turned over his file to the investigator.

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).

In these two matters, Henderson and Benoit, the DCA retained respondent to close two loan transactions under a lead abatement program. In both instances, respondent failed to record multiple mortgages for more than a year after the closings, thus placing the lender at risk that an intervening creditor could claim a prior position to that of the DCA. Respondent also failed to provide the DCA with the documents necessary for the issuance of a final title policy, thus leaving the DCA exposed to potential liability for title problems.

Respondent engaged in two instances of gross neglect, one each in the Henderson and Benoit matters, for which he was charged with a pattern of neglect. For a finding of a pattern of neglect, at least three instances of neglect are required. In

the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). When the neglect in these matters is combined with prior instances of neglect in respondent's 2008 and 2009 disciplinary matters, however, a pattern emerges. We, thus, find that respondent violated RPC 1.1(b).

Respondent also failed to keep the DCA informed about important events in the Henderson and Benoit matters and to reply to the DCA's numerous requests for information and documentation regarding the matters, violations of RPC 1.4(b).

Finally, respondent failed to comply with the DEC investigator's requests for information about the grievances and for the production of his files, a violation of RPC 8.1(b).

We now turn to the appropriate level of discipline for respondent's conduct.

In In re Carlin, 208 N.J. 592 (2012), an analogous case, the attorney was suspended for one year for misconduct in two client matters. The matters were presented on separate certifications of the record.[3] Carlin was found guilty of gross neglect in one of the matters. In both matters, Carlin lacked diligence, failed to communicate with the client, failed to set

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[3] One of the matters had previously been before us on a certification of default. After Carlin filed a motion to vacate the default, we remanded the matter for the filing of an answer and a hearing. Having failed to answer, Carlin effectively "double defaulted" in that matter.

forth, in writing, the basis or rate of his fee, and failed to cooperate with disciplinary authorities. Carlin was also found guilty of recordkeeping violations in one of the matters. Carlin's prior discipline included a 2003 reprimand involving three client matters; a 2006 censure involving one client matter; and a 2009 three-month suspension involving one client matter. Combined, Carlin engaged in misconduct in a total of seven client matters. When determining to impose a one-year suspension, we remarked that, "[o]bviously, then, respondent has difficulty not only meeting his obligations to his clients but also to the entire disciplinary system, including the Supreme Court."[4] In the Matter of Kevin Joseph Carlin, DRB 11-194 and 11-240 (December 6, 2011) (slip op. at 34).

This matter marks respondent's third default, one more than Carlin, if we do not credit Carlin with a "double default." Like Carlin, respondent is guilty of misconduct in seven client matters. Like Carlin, respondent has a significant disciplinary record: a 1995 admonition; a 1996 admonition; a 1997 admonition; a 2008 reprimand; and a 2009 three-month suspension. Like Carlin, over the years that he has practiced law, respondent has

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[4] The Supreme Court temporarily suspended Carlin, in 2011, for having failed to provide proctor reports to the OAE, as required in his earlier three-month suspension and reinstatement orders. He was still temporarily suspended when the one-year suspension matters were considered.

shown no regard for his clients, as well as the disciplinary system, having failed to cooperate with disciplinary authorities in four of the six disciplinary matters against him.

For the totality of the circumstances, including respondent's egregious pattern of indifference toward the ethics system, we determine to suspend him for one year, as in Carlin.

Members Yamner and Rivera did not participate. Member Singer abstained.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Arnold M. Abramowitz
Docket No. DRB 14-150

Decided: December 11, 2014

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera						X
Singer					X	
Yamner						X
Zmirich		X				
Total:		6			1	2

Ellen A. Brodsky
Chief Counsel