

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-185

IN THE MATTER OF :
: :
DENNIS C. LARSEN :
: :
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 21, 1993

Decided: February 28, 1994

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board based upon a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-7(b). That motion stemmed from respondent's suspension from the practice of law in the State of New York for a period of three years, effective October 1, 1992.

Respondent was admitted to the practice of law in New Jersey in 1970 and in New York in 1971.

On August 31, 1992, the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, entered an order suspending respondent for three years, effective October 1, 1992, for professional misconduct. That Court found that respondent had neglected two legal matters entrusted to him, failed to communicate with his client, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, failed to cooperate with an ethics investigation in three separate instances, and failed to register as an attorney and to maintain an office for the practice of law within the state of New York.

In addition, respondent failed to notify both the Director of the OAE and the Clerk of the Supreme Court of this 1992 discipline, as required by R. 1:20-7(a). Although respondent claimed to have been appealing the New York decision, the New York disciplinary counsel subsequently informed the OAE that respondent's appeal was dismissed in May 1993.

The OAE now requests that reciprocal discipline be imposed and that respondent be suspended in New Jersey for three years.

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends that the OAE's motion be granted and that respondent be reciprocally

disciplined in New Jersey for a period equal to his suspension in New York.

The Board adopts the findings of the New York Supreme Court, Appellate Division, that respondent made misrepresentations to clients after neglecting two legal matters, failed to cooperate with disciplinary authorities, and failed to maintain an office for the practice of law in New York. In re Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d), which directs that:

(d) The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

- (1) the disciplinary order of the foreign jurisdiction was not entered;
- (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
- (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (4) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (5) the misconduct established warrants substantially different discipline.

Respondent argued that he has been deprived of due process in New York. pointing to newly discovered evidence in the Capasso matter and to the lack of opportunity to cross-examine witnesses at

the disciplinary proceedings against him. After a careful review of the record, the Board concludes that the procedure followed in the foreign disciplinary matter did not constitute a deprivation of due process. If, however, respondent shall be successful in his efforts to re-open the disciplinary proceedings in New York, the Board will consider an application to re-open the within proceedings in New Jersey.

As to the appropriate discipline, respondent has not demonstrated that any of the exceptions contemplated in R. 1:20-7(d)(1) through (5) applies. The discipline accorded in New Jersey should, therefore, correspond to that imposed in New York. Moreover, respondent has not advanced any mitigating factors that have not already been considered by the New York Court. In fact, in imposing a three-year suspension from the practice of law there, the New York Court took into account respondent's prior unblemished record. In New Jersey, however, respondent was previously privately reprimanded, on December 13, 1988, for neglect and failure to communicate with his clients in three legal matters.

Respondent owed his clients in New York the duty to pursue their interests diligently. In re Smith, 101 N.J. 568, 571 (1986); In re Goldstaub, 90 N.J. 1, 5 (1982). When he neglected and failed to communicate with his clients, their cases suffered and they were forced to retain the services of other attorneys. In addition, respondent was obligated to be candid and to fully cooperate with the ethics investigation. In re Gavel, 22 N.J. 248, 263 (1956). By failing to cooperate with the New York disciplinary authorities,

respondent has exhibited disrespect to the Court. In re Grinchis,
75 N.J. 495, 496 (1978).

A six-member majority of the Board, therefore, unanimously recommends that the OAE's motion be granted and that a three-year suspension be imposed, to run concurrently with respondent's New York suspension. One member abstained. Three members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated:

2/25/74

By:



Raymond R. Trombadore
Chair
Disciplinary Review Board