SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-254
District Docket No. XIV-07-149E

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

Decision

Decided: December 10, 2008

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 Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f). The complaint alleged that respondent prepared a RESPA statement containing false information and that he grossly neglected a real estate transaction. We voted to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1976.

In 1995, respondent received an admonition after he lacked diligence in pursuing his indigent client's appeal from a criminal conviction. Although the client had filed a notice of

appeal pro se, respondent failed to pursue the matter, resulting in its dismissal for lack of prosecution. We considered that 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 an admonition after he failed to keep his personal injury client informed about the status of his case and failed to comply with his 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 an admonition after he failed to comply with the district ethics committee's requests for information about a grievance filed against him. We found no clear and convincing evidence of the remaining charges 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 with ethics authorities in the ethics investigations of two separate client matters. In re Abramowitz 193 N.J. 490 (2008).

On November 10, 2008, the Office of Board Counsel received a motion to vacate the default in the above matter. In order to vacate default matters, a respondent must overcome a two-pronged test. First, a respondent must offer a reasonable explanation for his/her failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges.

As to his failure to answer the ethics complaint, respondent admitted that he received and had ample time to file an answer, but he did not do so, having been frozen with anxiety every time he attempted to answer the complaint. According to respondent's certification in support of his motion he "would suffer from intense anxiety and palpitations, shortness of breath, emotional pain and depression that bordered on physical pain." Respondent stated that he is being treated for depression by a psychiatrist, Dr. Daniel Cowan, who has placed him on the antidepressant Cymbalta.

In his certification, respondent claimed that he shared a law practice with his brother, Robert, who acted as the firm's managing attorney. In 2006, the brother retired, leaving him to handle all of the administrative aspects of the firm, in addition to handling the clients' cases. Respondent also claimed to have been out of the office for a time, tending to

his ill wife, who had three surgeries related to a bilateral mastectomy and a MRSA staphylococcus infection.

Respondent provided no dates for his wife's illnesses, to show that they coincided with the time of his ethics infractions.

In his certification, respondent admitted that he grossly neglected the post-closing aspects of the underlying real estate transaction by failing to record the deed and the mortgage. He denied, however, that the RESPA statement misrepresented the terms of the transaction, as alleged in the complaint.

On November 14, 2008, the OAE filed with us an opposition letter-brief to respondent's motion. The OAE pointed out that, in respondent's earlier November 2007 default matter (reprimand), he had filed a remarkably similar motion to vacate the default. We denied that motion, in which respondent claimed to have been unable to answer the complaint due to anxiety and depression, caused by the same stressors – his wife's illnesses and his brother's retirement from the law firm.

At the time of the 2007 default, 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 respondent also raised a similar defense in the disciplinary matter that led to his 1996 admonition.

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."

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.

Because respondent has not satisfied the first prong of the test to vacate the default, that is, he has not shown that

depression caused him to neglect the ethics complaint, we determined to deny his motion to vacate the default and to proceed with our review of this case on a default basis.

Service of process was proper. On May 12, 2008, the OAE sent a copy of the complaint to respondent, by certified and regular mail, at the address listed for him in the New Jersey Lawyers' Diary and Manual, 1064 Clinton Avenue, Irvington, New Jersey 07111. A certified mail receipt indicated delivery on May 15, 2008. The signature of the agent accepting delivery is illegible. The regular mail was not returned.

On June 9, 2008, the OAE sent a "five-day" letter to respondent at the same Irvington address, by 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 matter would be certified directly to us, pursuant to R. 1:20-4(f). The certified mail envelope was returned indicating delivery on June 13, 2008, having been signed by S. Pinckney. The regular mail was not returned.

Respondent did not file an answer to the complaint.

The conduct that led to the charges against respondent are as follows.

In December 2005, respondent represented Five Points Construction Co., Inc. ("FPC") in the purchase of real estate in East Orange, New Jersey. In order to fund the purchase, FPC

obtained a $120,000 mortgage and loan from Northern Source, L.L.C.

Jean Theodore, FPC's owner, promised respondent that he would bring to the closing $3,709.80, the cash amount due from the buyer at closing. On December 23, 2005, respondent prepared the RESPA statement with that amount included as cash from the buyer. Theodore, however, arrived without the funds. He assured respondent that, through his son, he would deliver them at a later date. He never did so, however.

Respondent thereafter disbursed funds from his trust account to satisfy the closing obligations (including $2,000 of his own funds deposited in the trust account to cover the shortage), except for a $600 realty transfer fee and $1,582 title premium. He also failed to record the deed and the mortgage in Essex County, as required.

At one point, FPC defaulted on the mortgage loan. On April 27, 2006, the lender filed a claim under its title policy with Journeyman Title Insurance Company, only to learn that the mortgage and the deed had not been recorded.

On six occasions in May 2006, Journeyman Title's president called respondent's office to request that he pay the premium and record the deed and the mortgage. Respondent did not reply to those inquiries.

On August 8, 2006, the sellers' attorney prepared and the parties executed a replacement deed, which was recorded on August 14, 2006.

Journeyman Title paid the realty transfer fee and filed a claim for reimbursement with Fidelity National Financial.

The complaint charged respondent with having violated RPC 1.1(a) (gross neglect) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Following a review of the record, we find that the complaint contains sufficient facts to support a finding of unethical conduct. Because respondent failed to answer the complaint, the allegations of the complaint are deemed admitted (R. 1:20-4(f)).

Respondent represented FPC in its purchase of property in East Orange. However, respondent improperly prepared a RESPA for the parties, indicating that FPC, through its owner, Theodore, paid $3,709.80 in cash, at closing, to satisfy a portion of the purchase price. In fact, Theodore brought no funds with him to the closing. Respondent then made disbursements out of the closing proceeds and $2,000 of his own funds and settled the matter using the RESPA that contained false information. Respondent, thus, violated RPC 8.4(c).

Respondent also grossly neglected the case by failing to attend to post-closing details. He neglected to the mortgage

and deed, failed to pay the realty transfer fee and failed to pay the title insurance premium. In so doing, he violated RPC 1.1(a).

Attorneys who neglect the post-closing aspects of real estate transactions have received admonitions. See, e.g., In the Matter of Thomas S. Capron, DRB 04-294 (October 25, 2004) (attorney failed 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) (attorney failed 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, thereby violating 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) (attorney failed 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 the mortgage company until six months after the closing; 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)).

Attorneys who prepare closing documents containing misrepresentations have received varied discipline, depending on the number of misrepresentations involved, the presence of other ethics infractions, and the attorney's disciplinary history. Reprimands are usually imposed when the misrepresentations are unaccompanied by additional instances of misconduct. See, e.g., In re Spector, 157 N.J. 530 (1999) (attorney concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (attorney concealed secondary financing from the primary lender and prepared two different RESPA statements); and In re Blanch, 140 N.J. 519 (1995) (attorney failed to disclose secondary financing to a mortgage company, contrary to its written instructions).

A reprimand may still result when, as is the case here, the misrepresentation is combined with other unethical acts, such as gross neglect. See, e.g., In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who, despite being obligated to

escrow a $16,000 deposit shown on a RESPA, failed to verify and collect it, a violation of RPC 1.1(a); in granting the mortgage, the lender relied on the attorney's representation about the deposit; the attorney also failed to disclose the existence of a second mortgage prohibited by the lender; the attorney's misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee).

Here, respondent prepared a misleading RESPA and grossly neglected the case, as did attorney Agrait, who received a reprimand. In default matters, however, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). Thus, at least a censure is warranted for respondent's misconduct.

In further aggravation, however, respondent has a significant disciplinary history, including three admonitions and a recent reprimand in yet another default. We, therefore, determine that the appropriate discipline in this matter is a three-month suspension.

Member Boylan did not participate.

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

In the Matter of Arnold M. Abramowitz
Docket No. DRB 08-254

Decided: December 10, 2008

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan						X
Clark		X				
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		8				1

Julianne K. DeCore
Chief Counsel