SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-264

IN THE MATTER OF	:
JACK H. BOYAJIAN	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 15, 2009

Decided: March 12, 2009

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Robert E. Margulies appeared on behalf of respondent.

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

This matter was before us on a stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent, a California attorney, is not admitted to the practice of law in New Jersey. Nevertheless, pursuant to RPC 8.5(a), we have jurisdiction over respondent. That rule states, in pertinent part: "A lawyer not admitted in this jurisdiction is subject also to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction."

This matter arose out of respondent's role as a principal and the non-attorney administrator of the firm Boyajian and Brandon, formerly JBC Legal Group, P.C., and its predecessor firm, JBC & Associates, P.C. The stipulation cited the following RPCs as "relevant": RPC 3.2 (a lawyer shall. . . treat with courtesy and consideration all persons involved in the legal process); RPC 5.1(a) (every law firm or organization authorized to practice law shall make reasonable efforts to ensure that member lawyers conform to the RPCs); RPC 5.1(b) (a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the RPCs); RPC 5.1(c) (a lawyer shall be responsible for another lawyer's violation of the RPCs if (1) the lawyer orders or ratifies the conduct involved or (2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action); RPC 5.3(b) (a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer); and RPC 8.4(a) (it is professional misconduct for a lawyer to violate or attempt to violate the RPCs,

knowingly assist or induce another to do so, or do so through the acts of another).

The OAE recommended a reprimand. We agree with that recommendation.

Respondent was admitted to the California bar in 1999. As of September 8, 2008, he has been on "involuntary inactive status" (temporary suspension, pending investigation) by the California bar. He has no prior discipline.

During the time in question, 2002 through 2004, respondent was a principal and the non-attorney administrator of the firm Boyajian and Brandon, formerly JBC Legal Group, P.C., and its predecessor firm, JBC & Associates, P.C. ("JBC").[1] JBC was engaged in the business of collecting debts owed to its clients. JBC employed attorneys who filed lawsuits in New Jersey Superior Court, as well as non-attorney debt collectors and supervisors. Respondent's supervising attorney was Marvin Brandon.[2]

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[1] Respondent was also a principal of Boyajian Law Offices. There are no allegations of misconduct stemming from respondent's conduct at that firm.

[2] On May 13, 2008, Brandon was reprimanded for essentially the same conduct as respondent's. In re Brandon, 194 N.J. 562 (2008). The facts in the Brandon matter were stipulated in the present matter because respondent was the owner of the firm where the misconduct occurred.

According to the stipulation, respondent failed to properly supervise JBC's attorneys and employees by not discovering the following events:

> (a) on at least eleven occasions, permitting employees/debt collectors to treat the recipients of JBC demand letters in an abusive and unprofessional and discourteous manner in violation of RPC 3.2;[3]
>
> (b) on at least eleven occasions, permitting JBC to operate in violation of the Fair Debt Collections Practices Act;[4]
>
> (c) on at least ten of the eleven occasions, failing to cease collection of recipients of JBC demand letters until verification of the debt that formed the basis for the alleged obligation;
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> (d) on at least ten of the eleven occasions, permitting the employees to threaten and/or harass the recipients of JBC demand letters;
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> (e) on at least six of the eleven occasions, failing to adequately investigate whether the alleged obligations asserted by JBC were meritorious;
>
> (f) allowing a culture to exist whereby the above unethical actions by the debt

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[3] Although the stipulation refers to eleven matters, it set forth facts in ten matters.

[4] The Fair Debt Collections Practices Act ["FDCPA"] sets out the rules for the type and degree to which debtors can be contacted about the collection of debts. It also prohibits certain conduct, including harassment, abuse, misrepresentations, and other unfair practices and collections tactics.

collectors were not discovered and immediately corrected.

[SC¶6(a)-SC¶6(f).][5]

Although respondent became aware that hundreds of complaints had been filed against his debt collection firms by people in all parts of the country, he took no action to change the level of supervision at the firms, other than to discipline and/or terminate employees after known violations of the FDCPA.

The Dohm Matter

In February 2003, JBC sent a letter to Marie Rossi Dohm, demanding payment of $208.71 from a dishonored check that Dohm allegedly wrote to Bradlees Department Store. Thereafter, a JBC employee falsely claimed to be an attorney and told Dohm that, if she did not immediately pay $400 via credit card, the amount due would increase to $700 and legal action would begin immediately. Dohm authorized a $400 charge to her credit card. Dohm then retained an attorney, who sent an April 2003 letter to JBC, advising that a stop-payment had been placed on the credit card and that JBC's actions were inappropriate, whereupon the harassment ceased.

[5] SC refers to section C of the stipulation, dated June 30, 2008.

According to the stipulation, JBC employees violated FDCPA, 15 U.S.C. §1692(e)(3) and (e)(5) and RPC 3.2.

The Coger Matter

In 2002, JBC contacted Dal Coger about a dishonored check that his wife wrote to Bradlees Department Store. Coger advised JBC that the original check had been written in December 1996, in the amount of $34.89. JBC demanded payment of $59.89, representing the original check amount plus a $25 return charge. Coger then gave JBC a check in the amount of $59.89, which cleared the bank in January 2003.

Thereafter, JBC contacted Coger, on approximately 100 occasions, demanding payment. Coger repeatedly advised JBC that JBC had already received the payment. Unnamed JBC employees acknowledged receipt of the $59.89, but demanded an additional $104.67. The calls stopped after an attorney contacted JBC on Coger's behalf.

According to the stipulation, JBC employees violated FDCPA, 15 U.S.C. §1692(d)(5) and (6), (e)(8), and RPC 3.2.

The Hill Matter

In April 2003, JBC sent a letter to "Mr. Hill" about a dishonored check from First Union Bank, in the amount of

$138.59. Hill contacted JBC by phone and letter and advised an employee that he never had an account at First Union Bank. He requested a copy of the front and back of the check. When JBC contacted Hill, he stated that he would supply an affidavit that he had not written the check.

One week later, First Union Bank confirmed, in a notarized writing to JBC, that Hill never had an account there and asked that JBC correct their records. The letter was sent via certified mail and facsimile, both of which JBC received. Two weeks later, First Union Bank again sent a facsimile to JBC, advising that Hill never had an account there and asking that they correct their records. First Union Bank received a fax confirmation.

JBC did not provide Hill with a copy of the front and back of the check. Furthermore, JBC employees threatened Hill with criminal prosecution, incarceration, and the destruction of his credit rating. Also, JBC employees called Hill various disparaging names during these conversations.

According to the stipulation, JBC employees violated FDCPA, 15 U.S.C. §1692(c), (d)(2),(e)(4),(5),(7) and (8), (g)(b), and RPC 3.2.

The Whalen Matter

JBC employees made numerous calls to James M. Whalen about an outstanding debt for an individual named John Jones. Whalen advised JBC that he was not Jones. He asked that JBC stop calling him because he had no knowledge of the debt.

In December 2003, JBC deleted Whalen's phone number from its system. However, Whalen continued to receive rude and abusive calls from JBC through January 2004.

According to the stipulation, JBC employees violated FDCPA 15 U.S.C. §1692(d)(5), (g)(b), and RPC 3.2.

The Lonergan Matter

In October 2003, Kathleen Lonergan received a letter from JBC about a check that she had written over ten years earlier, in the amount of $157.49. Upon receipt of the letter, Lonergan contacted JBC about the debt. She spoke to three JBC employees, one of whom threatened to terminate the call if Lonergan became angry.

Lonergan requested a copy of the check and the name of the payee. Despite a JBC employee's assurance that a copy of the check would be sent to Lonergan, it was not forthcoming. Lonergan then called JBC again, at which time another employee told her that they never send out copies of checks and that she

would be shown a copy of the check in court. JBC personnel threatened Lonergan that, if she failed to pay, they would take her to court and ruin her credit.

Thereafter, Lonergan wrote to JBC demanding a copy of the check or other proof of the debt. No proof was ever provided. JBC agreed to close the matter only after Lonergan filed a grievance with the OAE.

Respondent acknowledged that JBC's file was incomplete and did not include the name of the payee or a copy of the check.

According to the stipulation, JBC employees violated FDCPA 15 U.S.C. §1692(c), (g)(b), and RPC 3.2.

The Pettengill Matter

In October 2003, Andrea Pettengill received a letter from JBC attempting to collect a debt from a dishonored check allegedly written by her husband in 1994. Subsequently, JBC employees telephoned Pettengill on numerous occasions, threatening legal action, accusing the Pettengills of being "in receipt of stolen property," and sometimes hanging up. On several occasions Pettengill called and requested a copy of the front and back of the check, to no avail.

In January 2004, Pettengill sent a letter to JBC disputing the debt and requesting a copy of the check. JBC did not

provide a copy of the check. It continued to call Pettengill, sometimes demanding payment and threatening legal action and sometimes hanging up, when she answered.

According to the stipulation, JBC employees violated FDCPA 15 U.S.C. §1692(c),(d)(5), (e)(4) and (7), (g)(b), and RPC 3.2.

The Jacobs Matter

In May 2003, JBC sent Todd Jacobs a letter demanding payment of a dishonored check, in the amount of $95.30, payable to "Sports and Rec." Jacobs contacted JBC and requested proof of the returned check. After Jacobs did not receive such proof, he again contacted JBC. He was told that JBC would not provide him with copies but, instead, file a lawsuit against him, at which time he would be given a copy of the check. Jacobs then contacted his bank, which advised him that there was no evidence of the alleged check.

In November 2003, Jacobs received a letter from JBC alleging that the outstanding balance was $411.20. JBC employees repeatedly threatened to ruin Jacobs' credit if he did not pay the debt. Furthermore, JBC made harassing phone calls to Jacobs and his wife, at work.

According to the stipulation, JBC employees violated FDCPA 15 U.S.C. §1692(e)(2) and RPC 3.2.

The Scannella Matter

In January 2004, JBC sent a letter to Maria Scannella about an alleged debt to Jysk Linen & Bath, in the amount of $1,313. Later that month, Scannella's bankruptcy attorney sent a letter to JBC advising that Scannella had filed for bankruptcy, in April 2003, and had received a discharge under Chapter 7, in July 2003. Because the debt was discharged by the bankruptcy, JBC's attempt to collect the debt was a violation of the bankruptcy laws.

Moreover, JBC employee used rude and offensive language and threats of jail in his dealings with Scannella. JBC's harassing calls did not stop until late March 2004.

According to the stipulation, JBC employees violated FDCPA, 15 U.S.C. §1692(d)(2) and (6), (e)(4) and (5), (g)(b), and RPC 3.2.

The Price Matter

In October 2003, Sandra Price received a letter from JBC demanding payment of a dishonored check that she allegedly wrote to Kay Jewelers, in the amount of $74.35. Price advised JBC that she had not written that check and was not living in Lakeland, Florida, at the time the check was written

(presumably, where the jeweler or bank was located). Price asked JBC for a copy of the check, but did not receive one. She also called and wrote to JBC, explaining that this was a case of mistaken identity. She requested verification of the check.

Shortly thereafter, Price again called JBC to follow up on the matter. A JBC employee told her she had to go to the local police department to file a report, which she did. Thereafter, a Lakeland, Florida, police sergeant called JBC to get identifiers from the check. JBC employees refused to identify themselves and refused to provide the requested information. Price again contacted JBC and asked to speak to a supervisor or an attorney, but was not permitted access to either. Instead, a JBC employee told Price to send the police report, which she did. JBC closed the matter after Price filed a grievance with the OAE.

According to the stipulation, JBC employees violated FDCPA, 15 U.S.C. §1692(d)(5) and (6), (e)(3) and (g)(a) and (b), and RPC 3.2.

The Kennealy Matter

In April 2002, JBC sent a notice to Rae Kennealy about dishonored checks to Acme, totaling $291.49. Kennealy

immediately contacted JBC and arranged for payment the following month. Kennealy paid the debt on the promised date.

Four months later, in September, 2002, Kennealy received a notice from JBC that $700 was now due. Kennealy then called JBC and advised an employee that she had paid the debt. The employee hung up on her. When Kennealy called again, the employee told her to get a lawyer. Kennealy called JBC again, at which time another employee was extremely rude to her.

JBC made threatening phone calls to Kennealy on an almost daily basis, including one in which yet another employee told her that JBC would issue a warrant for her arrest and threatened to suspend her driver's license. Marvin Brandon confirmed that JBC received Kennealy's check, in May 2002, and had not properly closed her file.

According to the stipulation, JBC employees violated FDCPA, 15 U.S.C. §1692 (d)(1), (e)(2)(a), (e)(4), (5) and (7), and (g)(b), and RPC 3.2.

In each matter, respondent stipulated that he violated RPC 5.1, RPC 5.3(b), and RPC 8.4(a).[6] In the Whalen, Price and Kennealy matters, respondent also stipulated that he violated

[6] The stipulation does not specify a section of RPC 5.1. Presumably, sections (a), (b) and (c) are all intended.

RPC 3.2. The record does not explain why this additional violation was stipulated only in those three matters.

In mitigation, the parties stipulated that respondent closed his law offices in New Jersey and does not intend to ever open another law firm in New Jersey. Respondent hired Brandon to supervise and administer the JBC office and had in place a staff of non-lawyer supervisors and administrators to manage JBC. Respondent delegated to Brandon all New Jersey legal matters and never held himself out as a New Jersey attorney. He had written policies and all non-lawyer employees were educated and trained on the requirements of the FDCPA. When employee misconduct was discovered, they were disciplined, which, in some instances, included dismissals for violations of the FDCPA. Each written complaint brought to respondent's attention was investigated.

Following a review of the stipulation, we are satisfied that the stipulated facts support a finding that respondent's conduct was unethical.

As noted previously, respondent stipulated a violation of RPC 3.2 in three of the above matters. There is no indication, however, respondent himself failed to treat with courtesy and consideration any of the persons involved in these matters. We, therefore, find no violations of RPC 3.2. Instead, the improper

behavior was committed by respondent's employees. Under the circumstances, he is guilty of failure to supervise those employees, but not of the inappropriate conduct himself. As stipulated, however, respondent violated RPC 5.1, RPC 5.3, and RPC 8.4(a) by failing to adequately supervise the JBC employees, including Brandon.

There remains the issue of the appropriate sanction for respondent's misconduct. Attorneys who fail to supervise their nonlawyer staff are typically admonished or reprimanded. See, e.g., In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife; as a result, the paralegal forged the client's name on a retainer agreement and, later, on a release and two settlement checks; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record and the steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 4, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds; mitigating factors were the attorney's cooperation with the OAE, including entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and

the immediate corrective action that the attorney took); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failing to supervise non-attorney employees, which led to unexplained misuse of client trust funds and negligent misappropriation; the attorney also committed recordkeeping violations); In re Riedl, 172 N.J. 646 (2002) (attorney reprimanded for failure to supervise his paralegal by allowing the paralegal to sign trust account checks and gross neglect by failing to secure a discharge of mortgage for eighteen months after it was satisfied); In re Bergman, 165 N.J. 560 (2000) and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager who embezzled almost $360,000 from the firm's business and trust accounts and from a guardianship account; in mitigation, the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement); In re Moras, 151 N.J. 500 (1997) (attorney reprimanded for failure to adequately supervise his secretary, who stole $650 in client funds; failure to maintain required records; and failure to safeguard client funds; the attorney made restitution); and In re Hofing, 139 N.J. 444 (1995) (attorney reprimanded for failure to

supervise bookkeeper, which resulted in the embezzlement of almost half a million dollars in client funds; although unaware of the bookkeeper's theft, the attorney was found at fault because he had assigned all bookkeeping functions to one person, had a signed blank trust account checks, and had not reviewed any trust account bank statements for years; mitigating factors included his lack of knowledge of the theft, his unblemished disciplinary record, his reputation for honesty among his peers, his cooperation with the OAE and the prosecutor's office, his quick action in identifying the funds stolen, his prompt restitution to the clients, and the financial injury he sustained). But see In re Stransky, 130 N.J. 38 (1992) (attorney suspended for one year for similar misconduct; the attorney completely delegated the management of his attorney accounts to his wife/secretary/bookkeeper and improperly authorized her to sign trust account checks; over the course of one year, the wife embezzled $32,000 in client funds; the Court found that the attorney was "completely irresponsible in the management of his attorney accounts and totally abdicated his fiduciary responsibilities to his clients;" no mitigating factors).

Here, in mitigation, respondent advanced the safeguards that he had in place to ensure the proper conduct of his

employees and the fact that he took action against employees, when their misconduct was discovered. Respondent's intentions may have been good, but his actions were insufficient. The stipulation states that respondent was aware that hundreds of complaints had been lodged against his collection firms. Although there is no indication in the stipulation that respondent specifically knew of Brandon's inaction, he had to know that something was amiss, in light of the number of complaints. Armed with such knowledge, respondent should have done more. More stringent steps had to be taken to ensure the fair treatment of the individuals whom JBC contacted.

Respondent's inattention and inaction resulted in a firm-wide culture of appalling practices by his employees. Therefore, the scope of the misconduct takes this matter out of the realm of an admonition. As noted previously, Brandon, JBC's supervising attorney, received a reprimand for his role in these matters. Although it could be argued that, as the firm's principal, respondent was more accountable for these matters than Brandon, Brandon was in a better position to see the day-to-day misconduct of his employees. We find that the culpability of respondent and Brandon are on par: while one had the ultimate responsibility for JBC, the other had the better

vantage point to see JBC's failings. Therefore, a reprimand is appropriate here, as it was in Brandon.

Members Baugh, Boylan, Clark, and Lolla 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 Jack H. Boyajian
Docket No. DRB 08-264

Argued: January 15, 2009

Decided: March 12, 2009

Disposition: Reprimand

Members	Disbar	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:			5			4

Julianne K. DeCore
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Chief Counsel