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SUPREME COURT OF NEW JERSEY

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February 24, 2015

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Nicholas Fitzgerald
Docket No. DRB 14-378
District Docket No. XIV-2014-0435E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand), filed by the Office of Attorney Ethics pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate measure of discipline for respondent's misconduct.

Specifically, on April 11, 2013, Lawrence Pinck and Justin Pinck, partners in the law firm of Pinck & Pinck, L.L.P., determined to sell their law practice to respondent. The sale involved the transfer of about 130 active client files, which took place just three days later, on April 14, 2013.

By letters dated April 14, 15, and 16, 2013, Lawrence Pinck notified the Pinck & Pinck clients that their files had been transferred to respondent. The letters stated, in part: ". . . we assure you that your case will be completed in a prompt and professional manner, without additional expense or inconvenience."

Respondent concededly reviewed and approved the contents of the Pinck & Pinck letters, thereby agreeing that he would not charge additional fees to complete the matters. Respondent stipulated that, despite that agreement, he charged extra fees in forty-four of them.

In addition, as purchaser of a law practice, respondent was required to place an announcement or notice of the sale in the New Jersey Law Journal, at least thirty days prior to the effective date of the transfer. RPC 1.17(c)(3). Respondent admitted that he had not done so.

Finally, as sellers, the Pincks were required to notify clients of the sale of the law practice, not fewer than sixty days prior to the transfer, and to obtain their written consent to the transfer. Respondent was aware that the Pincks had not done so. Despite that knowledge, respondent completed the transaction, including the transfer of the files, without regard to the sellers' required publication, thereby violating the RPC 1.7(c)(2), through the acts of the Pincks.

Respondent stipulated to violations of RPC 1.17(c)(2) (failure to timely notify clients of the sale of the attorney's law practice, at least sixty days prior to the actual transfer of the law practice), RPC 1.17(c)(3) (failure, as purchasing attorney of a law practice, to publish a notice of the transfer in the New Jersey Law Journal, at least thirty days in advance of the transfer date), RPC 1.17(d) (improperly charging additional fees to transferred clients, by reason of the sale of the law practice), and RPC 8.4(a) (violating the RPCs through the acts of another).

The Board concluded that respondent's misconduct was somewhat akin to that of the attorney in In the Matter of Mark L. Breitman, DRB 13-382 (February 18, 2014), where the attorney received an admonition. Breitman purchased another attorney's law practice, which included at least fifty-eight active cases, and failed to publish the required notice of sale in the New Jersey Law Journal. Although Breitman claimed that the seller had agreed to do so, the Board found that the responsibility was Breitman's alone, as the purchaser. His failure to do so violated RPC 1.17(c)(3).

The Board found that respondent's actions were more serious than Breitman's, in that respondent failed to publish the notice regarding 130 matters, compared to Breitman's fifty-eight matters.

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Respondent also entered into the transaction knowing that the Pincks had not notified the clients ahead of time, as required by the rules. Finally, he improperly charged additional fees to forty-four transferred clients.

The Board distinguished respondent's conduct from that of the Pincks, each of whom received a three-month suspension. While the Pincks were found guilty of the same RPC violations as respondent, the Pincks were also guilty of additional misconduct, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to take steps to protect their clients' interests upon termination of the representations. Justin Pinck also made misrepresentations to clients in three matters. In re Pinck, 218 N.J. 264 (2014) (Lawrence Pinck) and In re Pinck, 218 N.J. 267 (2014) (Justin Pinck).

In mitigation, the Board considered respondent's deep remorse for his conduct, which arose out of a hastily arranged purchase, and his lack of prior discipline, since his 1985 admission to the bar.

Enclosed are the following documents:

1. OAE's letter to the Board dated December 16, 2014.
2. Notice of motion for discipline by consent, dated May 7, 2014.
3. Stipulation of discipline by consent, dated May 5, 2014.
4. Affidavit of consent, dated May 5, 2014.
5. Ethics history, dated February 24, 2015.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa
encls.

I/M/O Nicholas Fitzgerald, DRB 14-378

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c: Bonnie C. Frost, Chair (via e-mail)
 Disciplinary Review Board (w/o encls.)
Charles Centinaro, Director
 Office of Attorney Ethics (w/o encls.)
Michael J. Sweeney, First Assistant Ethics Counsel
 Office of Attorney Ethics (w/o encls.)
Glenn R. Reiser, Respondent's Counsel (w/o encls.)