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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-077  
District Docket No. XIV-05-177

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IN THE MATTER OF :  
:   
BARRY W. HOROWITZ :  
:   
AN ATTORNEY AT LAW :  
:

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Decision

Argued: April 20, 2006

Decided: June 20, 2006

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

Respondent waived appearance for oral argument.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's default disbarment in New York.

The New York record does not specify the disciplinary rules that respondent violated. The focus, however, was on his failure to communicate with his clients, failure to cooperate

with disciplinary authorities, and essentially what amounted to abandonment of clients.<sup>1</sup>

Respondent was admitted to the New Jersey bar in 1986 and to the New York bar in 1970. He received a three-month suspension in July 2004, for practicing law while ineligible, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities. That matter was before us as a default. In re Horowitz, 180 N.J. 520 (2004). Respondent remains suspended to date.

Recently, the Court imposed a one-year suspension on respondent for gross neglect, lack of diligence, failure to communicate with the client, practicing law while ineligible, failure to cooperate with disciplinary authorities, and misrepresentation. In re Horowitz, N.J. (2006).

Finally, on the day we considered this matter, we also considered a default proceeding against respondent. We voted to impose a six-month suspension in that case.

In October 2004, the New York Departmental Disciplinary Committee for the First Judicial Department ("the New York

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<sup>1</sup> The OAE's brief states that respondent's conduct violated, among other rules, RPC 1.1(a) and (b), RPC 1.3, and RPC 8.1(b). The brief does not mention RPC 1.4. The record, however, indicates that respondent ceased communicating with his clients and ignored their attempts to reach him. Lack of diligence, gross neglect, and failure to communicate are all implicated when an attorney abandons a client's interests.

Committee") filed a notice of motion to suspend respondent, based on his failure to reply to the New York committee's numerous requests for written answers to six disciplinary grievances filed against him, all of which alleged neglect and failure to communicate with clients. The motion also alleged that respondent had failed to comply with two judicial subpoenas requiring his appearance before the New York committee, and that he had failed to comply with New York's attorney registration requirements.

When respondent did not reply to the New York committee's motion, he was suspended in New York in January 2005. The court's decision provided a synopsis of his misconduct. Essentially, in six client matters, respondent failed to pursue the clients' cases and to reply to their attempts to contact him. In addition, he failed to reply to the New York committee's numerous attempts to contact him via telephone and mail (certified, regular, and hand-delivered). He also failed to appear before the New York committee pursuant to two subpoenas issued by the court, one of which was personally served on him. Furthermore, he was delinquent in his registration with the Office of Court Administration and failed to supply that office with his new office telephone number. Finally, he failed to advise New York disciplinary authorities

or the court of his July 2004 suspension in New Jersey, as he was required to do.

In July 2005, the New York committee moved for respondent's disbarment, pursuant to 22 N.Y.C.R.R. §603.4(g), on the grounds that he had been suspended under 22 N.Y.C.R.R. §603.4(e), and had not appeared or applied in writing to the New York committee or the court for a hearing or reinstatement for six months from the date of the order of suspension.<sup>2</sup> Respondent neither appeared nor filed a reply to the committee's motion. In October 2005, respondent was disbarred in New York.

The OAE seeks respondent's disbarment in New Jersey.

Upon a de novo review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which directs that

[t]he Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds

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<sup>2</sup> N.Y.C.R.R. §603.4(g) states:

An application for suspension pursuant to Section 603.4(e) may state that an attorney who is suspended and who has not appeared or applied in writing to the Committee or the Court for a hearing or reinstatement for six months from the date of an order of suspension may be disbarred. If an application does state the foregoing, and the respondent does not appear or apply in writing to the Committee or the Court for a hearing or reinstatement within six months of the suspension date, the respondent may be disbarred without further notice.

on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) 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

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). As to paragraph (E), as the OAE noted, in New York a disbarred attorney may seek reinstatement after seven years. In the OAE's view, permanent disbarment, rather than a seven-year suspension, is the appropriate sanction in New Jersey.

Discipline in matters involving the abandonment of clients has ranged greatly, depending on a number of factors, including the presence of other ethics violations and the number of clients abandoned. See, e.g., In re Hoffman, 163 N.J. 4 (2000) (three-month suspension for attorney who abandoned two matters

involving four clients and failed to cooperate with disciplinary authorities; the matter proceeded on a default basis; ethics history included prior reprimand and three-month suspension); In re Greenawalt, 171 N.J. 472 (2002) (one-year suspension in default for attorney who abandoned his law practice; other violations included gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to timely remit trust funds to a client or third party, knowingly disobeying an obligation under the rules of a tribunal, failure to cooperate with disciplinary authorities, and failure to notify his clients of a prior suspension); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for misconduct that included abandonment of two clients, gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, failure to provide a written fee agreement, failure to protect client's interests on termination of the representation, false statement of material fact in a disciplinary matter, and misrepresentation arising from three client matters; ethics history limited to one private reprimand more than twenty years earlier); In re Bowman, 178 N.J. 24 (2003) (six-month suspension for attorney who abandoned one client; other violations included gross neglect, lack of diligence, failure to communicate, failure to protect client's interests after terminating the representation,

misrepresentation to client and tribunal, failure to cooperate with disciplinary authorities, and failure to comply with a court's directive; the matter proceeded as a default; ethics history included a private reprimand and a six-month suspension); In re Bowman, 178 N.J. 25 (2003) (one-year suspension consecutive to previously imposed six-month suspension; the attorney abandoned four clients; other violations included gross neglect, pattern of neglect, lack of diligence, failure to communicate with his clients, failure to protect his clients' interests on termination of the representation, failure to provide a written retainer agreement, communication with a person the attorney knows to be represented by counsel, failure to maintain reasonable efforts to ensure conduct of non-lawyer employee is compatible with attorney's professional obligations, failure to properly supervise non-lawyer employee, failure to cooperate with disciplinary authorities, and misrepresentation; default matter; ethics history included private reprimand, and two six-month suspensions); In re Kantor, 180 N.J. 226 (2004) (attorney disbarred in a default proceeding for abandonment of his law practice, which had ten active files, and for failure to cooperate with disciplinary authorities, including failure to appear on the return date of the Court's Order to Show Cause;

ethics history included a reprimand and a three-month suspension); and In re Hughes, 183 N.J. 473 (2005) (reprimand for abandonment of one client, lack of diligence, failure to communicate with clients and failure to protect clients' interests on termination of the representation in three cases; strong mitigating factors considered).

In ordering the attorney's disbarment in Kantor, supra, 180 N.J. 226, the Court stated:

Respondent abandoned his clients without notice to them or the slightest regard for their welfare . . . . Respondent also has shown an utter disregard for the disciplinary process as evidenced by his decision not to cooperate with the ethics investigation, to answer the complaint, to submit mitigation evidence to the DRB, or to respond to this Court's Order to Show Cause. This is not the first time respondent has been cited for failing to cooperate with an OAE investigation or the first time he has been disciplined. Respondent has presented no evidence in mitigation of his dereliction or in support of his fitness to practice law. There is nothing in the record to suggest that he is salvageable as an attorney.

[Id. at 232.]

Like most of the above attorneys, respondent has refused to cooperate with disciplinary authorities. He also allowed three New Jersey disciplinary matters against him to proceed as defaults, as well as the New York proceeding on which this motion for reciprocal discipline is based. He has harmed



clients in two states and has wasted judicial and disciplinary resources. Finally, he abandoned his clients' interests. As in Kantor, "[t]here is nothing in the record to suggest that he is salvageable as an attorney." We, therefore, see no reason to deviate from the disbarment imposed in New York and recommend respondent's disbarment. Vice-Chair Pashman did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board  
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Barry W. Horowitz  
Docket No. DRB 06-077


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Argued: April 20, 2006

Decided: June 20, 2006

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman						X
Baugh	X					
Boylan	X					
Frost	X					
Lolla	X					
Neuwirth	X					
Stanton	X					
Wissinger	X					
Total:	8					1

  
Julianne K. DeCore  
Chief Counsel