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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-049
District Docket No. XIV-04-562

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

Decision
Default [R. 1:20-4(f)]

Decided: June 20, 2006

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics
("OAE") certified the record in this matter directly to us for
the imposition of discipline, following respondent's failure to
file an answer to the formal ethics complaint. The complaint
charges a violation of R. 1:20-20(b)(15) and, relatedly, RPC
8.1(b) and RPC 8.4(d), for failing to file an affidavit of
compliance with the terms of a suspension order entered against
him in July 2004.

Service of the complaint was proper. In September 2005,
the OAE sent a copy of the complaint to respondent by certified

and regular mail to 197 Route 18, Suite 102, East Brunswick, New Jersey 08816; P.O. Box 6918, Monroe Township, New Jersey 08831; and 12 Sherwood Drive, Monroe Township, New Jersey 08831.¹ The return receipt for the certified letter to 12 Sherwood Drive bears the signature of Iris Horowitz, who is not identified in the record. The regular mail was not returned. Both the certified and regular mail to the Route 18 address could not be forwarded by the post office and were returned to the OAE. The certified mail to P.O. Box 6918, Monroe Township, was returned unclaimed. The regular mail to that address was not returned.

In October 2005, the OAE sent a letter to respondent advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record certified to us for the imposition of sanction. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b), based on his failure to file an answer to the complaint.² The letter was sent by certified and regular mail to the P.O.

¹ The Route 18 address is respondent's former law office. The post office box in Monroe Township is listed in the New Jersey Lawyers' Fund for Client Protection's records as respondent's home address. According to the OAE's records, however, respondent's home address is 12 Sherwood Drive.

² The complaint had already charged respondent with violating RPC 8.1(b) for failing to reply to the OAE's requests for information.

Box 6918, Monroe Township, address, and to the 12 Sherwood Drive, Monroe Township, address. The certified mail for both addresses was returned unclaimed. The regular mail for both addresses was not returned. Respondent did not file an answer to the complaint.

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. The matter had been before us as a default. In re Horowitz, 180 N.J. 520 (2004).

More recently, the Court imposed a one-year suspension in a default proceeding where respondent was found guilty of 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).

On the day we considered the present matter, we also considered a motion for reciprocal discipline against respondent, based on his default disbarment in New York for

abandonment of his clients.³ We recommended that respondent be disbarred.

The present matter arises out of the Court's July 2004 order imposing a three-month suspension. The order required respondent to comply with R. 1:20-20, which obliges suspended attorneys to take certain steps and, in addition, to "within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the [OAE] Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Respondent failed to file the affidavit.

In November 2004, the OAE sent a letter to respondent, reminding him of the requirement that he file the R. 1:20-20 affidavit, and requesting a reply by December 10, 2004. The letter was sent via certified and regular mail to respondent's 12 Sherwood Drive and Route 18 addresses. The green card for the Sherwood Drive mail was returned to the OAE, signed by Iris Horowitz. The green card for the Route 18 address was

³ Respondent acknowledged receiving notice of that matter, which was sent to a Huntley, Illinois, address in March 2006. In September and October 2005, however, the official addresses for respondent were the ones used in the present matter.

returned to the OAE, signed by Lesley Shroyer, who is not identified in the record. Respondent neither replied to the letters nor filed the required affidavit.

In July 2005, a representative of the OAE visited respondent's office at the Route 18 address. Although respondent's name remained in the building directory, he no longer maintained an office on the premises. He was suspended at the time. On the same day, OAE personnel went to respondent's home address, 12 Sherwood Drive. Respondent was not at home. An envelope addressed to him and containing copies of the Court's July 2004 order of suspension, of R. 1:20-20, and of OAE contact information was left at his door. Two weeks later, the OAE telephoned respondent's home and office numbers, leaving messages for him to call the OAE. As of the date of the complaint, September 7, 2005, respondent had not contacted the OAE or filed the R. 1:20-20 affidavit.

For his non-compliance with R. 1:20-20, the complaint charged respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

A review of a sampling of cases involving the failure to file R. 1:20-20 affidavits is instructive. In March 2004, the Court decided In re Girdler, 179 N.J. 227 (2004), a default matter, and imposed a three-month suspension for a violation of R. 1:20-20, where the attorney's ethics history included a private reprimand, a public reprimand, and a three-month suspension in another default matter. In June 2004, the Court considered In re Mandle, 180 N.J. 158 (2004), a default matter that led to a one-year suspension, where the attorney had amassed three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions. In three of the matters, the attorney had failed to cooperate with disciplinary authorities.

In October 2004, the Court decided three R. 1:20-20 matters. In In re King, 181 N.J. 349 (2004), a default case, the Court imposed a one-year suspension upon an attorney with an extensive disciplinary history, including a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension, and a one-year suspension. The attorney had remained suspended since 1998, the date of her temporary suspension. In In re Raines, 181 N.J. 537 (2004), a non-default matter, the Court imposed a three-month

suspension where the attorney's ethics history included a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order. In the third October 2004 case, In re Moore, 181 N.J. 335 (2004), also a default, the Court imposed a reprimand where the attorney's disciplinary history included only a one-year suspension.

In January 2005, in In re McClure, 182 N.J. 312 (2005), the Court imposed a one-year suspension in a default matter, for failure to comply with R. 1:20-20 and failure to cooperate with disciplinary authorities. The attorney's disciplinary history included a 1999 admonition and two separate six-month suspensions.

Respondent's disciplinary history consists of a three-month suspension and a one-year suspension, making his disciplinary history somewhat worse than that in Moore, where the attorney received a reprimand. Ordinarily, therefore, we would impose a three-month suspension here.

However, this is respondent's third default. He continues to flout the disciplinary system and the Court Rules. Generally, in a default matter, the discipline is upgraded to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re

Nemshick, 180 N.J. 304 (2004) (in matter that proceeded as a default, three-month suspension imposed for infractions that usually result in a reprimand; no ethics history). Thus, we determine to impose a six-month suspension here. 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


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

In the Matter of Barry W. Horowitz
Docket No. DRB 06-049

Decided: June 20, 2006

Disposition: Six-month suspension

Members	Six-month Suspension	Reprimand	Admonition	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