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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-081
District Docket No. VIII-05-002E

IN THE MATTER OF :
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:
RICHARD R. THOMAS, II :
:
:
AN ATTORNEY AT LAW :
:
:

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

Decided: July 25, 2006

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

This matter came before us on a certification of default
filed by the District VIII Ethics Committee ("DEC") pursuant to
R. 1:20-4(f). We determine that a one-year consecutive
suspension is warranted for respondent's failure to properly
represent a client, communicate with her, present her with a
writing setting forth the basis or rate of his fee, and his
significant ethics history.

Respondent was admitted to the New Jersey bar in 1996. At the relevant time he maintained a law office in New Brunswick, New Jersey.

He received an admonition in 2001, after he failed to comply with the terms of an agreement in lieu of discipline. His misconduct in the two matters giving rise to the admonition included failure to inform his clients that he was no longer acting as their attorney and failure to protect their interests upon termination of the representation. In the Matter of Richard R. Thomas, II, Docket No. DRB 01-083 (June 29, 2001).

On September 28, 2004, respondent received a one-year suspension, effective October 29, 2004, for improprieties in a real estate transaction in which he was the closing attorney. In re Thomas, 181 N.J. 327 (2004). He was involved in an unusual residential real estate transaction in which the buyer contributed virtually no funds toward the purchase, the seller received no consideration for the sale of her house, and a "mortgage broker/realtor" and possibly respondent, received all of the sales proceeds. The Court found that respondent engaged in gross neglect, lack of diligence, failure to communicate with a client, failure to provide a client a written retainer agreement, conflict of interest, failure to promptly deliver funds to the client or third person, recordkeeping violations, knowingly

making a false statement of material fact or law to a third person, knowingly making false statements of material fact in connection with a disciplinary matter, criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer and conduct involving dishonesty, fraud, deceit or misrepresentation. In re Thomas, II, 181 N.J. 327 (2004). The Court ordered that respondent was not to be reinstated until all pending ethics matters against him were resolved.

In 2005, respondent was suspended for three years for his involvement in a similar, unconventional real estate transaction where, again, the buyer contributed virtually no funds toward the purchase of the property and the seller received none of the sale proceeds, which were received by the mortgage broker/realtor and possibly respondent. The Court found respondent guilty of gross neglect, lack of diligence, failure to communicate with a client, failure to safeguard property, failure to make prompt disposition of funds, failure to comply with recordkeeping rules, violation of or attempt to violate the Rules of Professional Conduct, commission of a criminal act, and conduct involving dishonesty, fraud, deceit or misrepresentation. In re Thomas, II, 183 N.J. 230 (2005).

Service of process was proper. On November 9, 2005, the DEC sent respondent a copy of the complaint by regular and certified

mail, return receipt requested to 91 Claremont Road, Franklin Park, New Jersey 08823. The certified mail receipt was returned, with what appears to be respondent's signature. The certification of the record is silent about the regular mail. Respondent did not file an answer.

On December 8, 2005, the DEC sent a second letter to respondent by regular and certified mail, to the same address. The letter advised respondent that if he did not reply within five days the matter would be certified directly to the Board for the imposition of discipline and the complaint deemed amended to include a violation of RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority). The certified letter was returned stamped "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD." The regular mail was not returned. As of the date of the certification of the record, February 9, 2006, respondent had not filed an answer to the complaint.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect),¹ RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter and to comply with reasonable requests for information), RPC 1.5(b) (failure to provide a writing setting forth the basis or rate of the fee),

¹ Although the complaint charged respondent with engaging in a pattern of neglect, it did not cite RPC 1.1(b).

and R. 1:20-3(g)(3), more properly RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

According to the complaint, on January 29, 2004,² Sherrell Benders retained respondent to represent her in a consumer credit matter. After her car had been stolen, Benders stopped paying Ford Motor Credit Company. Ford sued Benders and obtained a \$30,000 judgment against her. The complaint further alleged that "Benders paid respondent \$600 to have the default judgment opened in her behalf. Mr. Muhammad [who was not identified in the record] paid respondent \$500 to proceed on Bender's [sic] case."

Respondent failed to file a lawsuit on Benders' behalf or to communicate with her. In July 2004, Benders wrote to respondent to request that he either complete the work for which he had been retained or return her retainer. On August 19, 2004, Benders again wrote to respondent, to no avail.

On October 22, 2004, Ford began garnishing Benders' wages. Because of Ford's judgment against her, Benders was unable to purchase a house.

According to the complaint, respondent failed to reply to the DEC's requests for information. Exhibit E, the investigator's certification, specified that she wrote to respondent on February

² The complaint erroneously states the year as 2005.

9, March 1, and October 22, 2005, requesting that respondent contact her in connection with Benders' grievance. Respondent, however, failed to do so.

The complaint thus charged that respondent engaged in gross neglect and lack of diligence by failing to handle Benders' matter; that his conduct in this and prior matters established a pattern of neglect; that he failed to communicate with Benders by failing to keep her informed about the status of her matter and by failing to reply to her reasonable requests for information; that he failed to provide Benders a retainer agreement; and that he failed to cooperate with the DEC investigation of Benders' grievance.

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).

Respondent's failure to provide any services to Benders after he accepted a retainer, established that he engaged in gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3). When considered with his prior ethics matters, his conduct constituted a pattern of neglect (RPC 1.1(b)). In addition, respondent failed to communicate with Benders (RPC 1.4(b)), failed to set forth in writing the basis or rate of his fee (RPC 1.5(b)), and failed to reply to the DEC's requests for information about Benders' grievance (RPC 8.1(b)).

The only issue left for determination is the quantum of discipline. Generally, in default matters involving similar ethics violations, the Court has imposed reprimands. See, e.g. In re DeBosh, 164 N.J. 618 (2000) (reprimand where the attorney engaged in gross neglect and lack of diligence, failed to communicate with client, failed to provide client a written retainer, and failed to cooperate with disciplinary authorities); In re Karasick, 169 N.J. 570 (2001) (reprimand where the attorney failed to communicate with his client for almost three years, failed to provide a written fee agreement to the client, and failed to cooperate with disciplinary authorities); and In re Hintze a/k/a Hintze-Wilce, 164 N.J. 548 (2000) (attorney reprimanded for neglecting to file her client's lawsuit or conducting an investigation, thereby engaging in gross neglect and lack of diligence, she also failed to communicate with the client and failed to cooperate with disciplinary authorities).

The Court recently imposed a reprimand for similar violations in a non-default matter. See, e.g., In re DeMasi, 186 N.J. 267 (2006) (attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to communicate the basis or rate of the fee in writing, and failure to cooperate with disciplinary authorities).

The Court has dispensed more severe discipline in defaults where attorneys have had ethics histories. See, e.g., In re Cubberley, 178 N.J. 103 (2003) (six-month suspension for attorney who engaged in gross neglect and lack of diligence by accepting a retainer to obtain a site plan approval for his client, but did no work in her behalf, failed to communicate with her and failed to cooperate with disciplinary authorities; his prior ethics history included an admonition, two reprimands, a temporary suspension for failing to cooperate with his designated proctor, a three- and a six-month suspension); In re Chidiac, 158 N.J. 2 (1999) (six-month suspension for attorney who did not comply with a court order requiring him to deposit funds with the clerk of the court, improperly released funds to his clients, failed to reply to motions, which failure resulted in the entry of a default judgment against his clients, and failed to inform the court that he had already disbursed funds to his client prior to filing a motion for reconsideration; his ethics history included a private reprimand and a three-year suspension); and In Girdler, 182 N.J. 40 (2004) (one-year suspension where the attorney failed to secure the release of escrow funds for his client after entering into a stipulation of settlement, failed to provide the client with closing documents, failed to communicate the status of the matter to the client, and failed to cooperate with the DEC investigation;

his ethics history included a private reprimand, a reprimand and two, three-month suspensions in default matters).

Recently the Court imposed a six-month suspension in In re Gallo, 186 N.J. 247 (2006). In Gallo, the attorney failed to file a workers' compensation claim, and for two years did nothing to advance the claim, allowing the statute of limitations to expire. He also failed to reply to his client's requests for information, failed to release the file and failed to cooperate with the DEC investigation. Although the attorney had a prior three-month suspension, it was for recordkeeping violations which had occurred fifteen years earlier. After the Court issued an Order to Show Cause, the attorney informally requested an adjournment of the matter, which the Court denied. Thereafter, the attorney failed to appear on the return date of the Order to Show Cause.

Respondent's conduct here involved only one matter. Benders retained respondent at the time he was embroiled in the defense of his first fraudulent real estate transaction. Perhaps because his attention was diverted by the ethics matter, he permitted Benders' matter to "slip through the cracks." Thereafter, when the DEC made several requests for a reply to Benders' grievance (starting in February 2005), respondent's earlier ethics matter was already pending with the Court. This may have contributed to his failure to reply to the grievance and ethics complaint in

Benders' matter. Nevertheless, Benders was entitled to proper representation, regardless of respondent's distraction by his earlier ethics problems. If respondent was incapable of focusing his attention to her case, he should not have accepted it, or alternatively, he should have advised her to seek new counsel.

In imposing discipline, we have considered the default nature of these proceedings, and have given considerable weight to the fact that respondent's ethics history (admonition, one-year suspension and three-year suspension) is significantly more serious than the attorneys' ethics histories in the defaults set out previously: Davis - three-month suspension (prior admonition and three-month suspension); Cubberley - six-month suspension (prior admonition, two reprimands, a three- and a six-month suspension); and Girdler - one-year suspension (prior private reprimand, reprimand and two, three-month suspensions).

Respondent's prior ethics problems should have heightened his sensitivity to Benders' case and his ethics responsibilities. It did not - he has ignored the entire process. In light of these factors and the Court's recent action in Gallo, we determine that a one-year consecutive suspension is warranted.

Members Boylan and Baugh 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

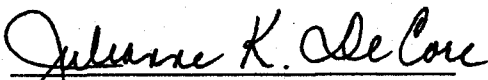
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Richard R. Thomas, II
Docket No. DRB 06-081

Decided: July 25, 2006

Disposition: One-year suspension

Members	One-year 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:	7				2


Julianne K. DeCore
Chief Counsel