

13

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-120
District Docket No. XIV-05-008E

IN THE MATTER OF
ANTOINETTE M.J. BENTIVEGNA
AN ATTORNEY AT LAW

:
:
:
:
:
:
:
:

Decision

Argued: July 21, 2005

Decided: August 31, 2005

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

Respondent did not appear, despite proper service.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") following respondent's suspension in Pennsylvania for two years.

Respondent was admitted to the New Jersey bar in 1989 and to the Pennsylvania bar in 1991. She has no disciplinary history in New Jersey.

This matter was originally scheduled to be reviewed in May 2005 and was adjourned twice, first to June and then to July 2005, at respondent's request. Respondent did not appear for oral argument.

The charges against respondent stem from her representation of clients in four bankruptcy matters.

The Brown Matter

Respondent represented R. Warren Brown in a bankruptcy petition that was dismissed in September 1996. The dismissal order barred him from filing another bankruptcy petition for 180 days from the date of the order. Suzanne Brown, Warren's wife, represented herself in a bankruptcy petition filed in November 1995. In January 1997, Comnet Mortgage Services ("Comnet") filed a motion for relief from the automatic stay in Suzanne's bankruptcy matter. Warren asked respondent to assist in replying to Comnet's motion.

On February 12, 1997, the day before the scheduled hearing on Comnet's motion, respondent contacted Comnet's attorney,

Michael Dinney, misrepresented that she had been retained to represent both Warren and Suzanne Brown, and negotiated a settlement, via a series of telephone conversations, requiring the Browns to sign a written settlement agreement. Respondent did not have Suzanne's authority to settle the motion. Based on his understanding that a settlement had been reached, Dinney canceled the hearing set for February 13, 1997, and submitted a stipulation of settlement to respondent.

Although the stipulation recited that respondent represented the Browns, she failed to inform Dinney that she did not represent Suzanne and had no authority to settle the motion on her behalf. On April 8, 1997, Dinney filed a motion to enforce the agreement and for sanctions. Once again, respondent failed to inform Dinney that she did not represent Suzanne.

On May 1, 1997, Judge Diane Weiss Sigmund held a hearing on Dinney's motion to enforce the agreement. After respondent disclosed that she did not represent Suzanne, Judge Sigmund entered an order finding that respondent (1) misled Dinney into believing that she represented Suzanne, (2) failed to correct Dinney's reasonable belief, (3) engaged in deceptive conduct, and (4) did not testify credibly at the hearing as to when she

discovered that Dinney "mistakenly believed" that she represented Suzanne.

Judge Sigmund required respondent to pay counsel fees and expenses to Comnet, finding that respondent's conduct threatened the orderly administration of justice and warranted sanctions.

The Hammernik Matter

Respondent represented Robert Hammernik in both a divorce matter and a bankruptcy matter. The bankruptcy petition was dismissed in July 1999, because necessary documents had not been filed. From September 1999 to March 2000, respondent did not contact Hammernik.

On March 9, 2000, respondent filed a bankruptcy petition and an application to pay filing fees in installments, without Hammernik's knowledge or consent. In addition, respondent signed Hammernik's name to both documents without her client's authorization. Respondent did not inform Hammernik that she had filed the bankruptcy petition.

Also on March 9, 2000, Jeffrey Fournier, an attorney retained by Hammernik, filed a bankruptcy petition on Hammernik's behalf. Judge Sigmund conducted a hearing on March 23, 2000, and required respondent, Fournier, and Hammernik to

explain why two bankruptcy petitions were filed on Hammernik's behalf on the same date. On March 31, 2000, Sigmund issued an order dismissing the petition that respondent filed, finding that respondent did not have Hammernik's authority to initiate a bankruptcy matter on his behalf.

The Kennedy Matter

In September or October 1999, respondent twice met with Frances Kennedy about representing her husband¹ and herself in a bankruptcy matter. At the second meeting, Mrs. Kennedy signed a retainer agreement, paid a fee of \$100 to respondent, and authorized respondent to begin preparing a bankruptcy petition. Mrs. Kennedy informed respondent that the petition should be filed jointly, although the mortgage on the marital residence had been signed only by Mr. Kennedy. Respondent did not ask Mrs. Kennedy for permission to file and sign a bankruptcy petition for Mr. Kennedy.

In January 2005, after receiving notice that the marital home was scheduled for a sheriff's sale, Mrs. Kennedy left several messages for respondent. Eventually, respondent left a message for Mrs. Kennedy that everything was fine.

¹ Mr. Kennedy's first name does not appear in the record.

The Kennedys retained Jeffrey McCollough to file a bankruptcy petition on their behalf and left a telephone message so informing respondent. On February 4, 2000, McCollough filed a bankruptcy petition for the Kennedys. On February 10, 2000, respondent filed a bankruptcy petition on behalf of Mr. Kennedy and signed his name to the petition and to an application to pay filing fees in installments, all without his authorization. Respondent did not talk to Mr. Kennedy before filing the petition, Mrs. Kennedy did not authorize respondent to sign his name to any document, and respondent did not inform the Kennedys that she filed the bankruptcy petition.

The Kennedys discovered that respondent filed the petition when they received from the bankruptcy court a copy of the application to pay filing fees in installments. Mr. Kennedy notified Judge Sigmund that he had not authorized respondent to file a petition or to sign his name to any document. On March 23, 2000, the same date that Judge Sigmund held a hearing in the Hammernik matter, she conducted a hearing requiring respondent to explain why two bankruptcy petitions were filed on Mr. Kennedy's behalf.

On March 31, 2000, Judge Sigmund issued an order dismissing the petition that respondent had filed on Mr. Kennedy's behalf,

finding that respondent had no authority to do so and that respondent had made misrepresentations in pleadings filed with the court. The judge ordered respondent to return the \$100 fee that Mrs. Kennedy had paid.

The Rosen Matter

In February 1999, Gregg Rosen retained respondent to file a bankruptcy petition on his behalf. Although respondent filed the petition, it was dismissed, as was a second petition filed by respondent. On November 10, 1999, respondent filed a third bankruptcy petition on Rosen's behalf and an application to pay filing fees in installments. She also filed an application stating that, of the \$600 that she had received from Rosen, she had applied \$160 toward the filing fee and the remaining \$440 toward her \$1,200 retainer. Respondent misrepresented that she had used \$160 for the filing fee; she had not paid the filing fee in full. In a November 17, 1999 order, Judge Sigmund permitted payment of the filing fee in installments. Respondent failed to make the installment payments as required.

On January 7, 2000, Standard Federal Bank filed a motion for relief from the automatic stay, requesting that the bankruptcy petition be dismissed and that Rosen be prohibited

from filing another petition. Respondent neither filed an answer to the motion nor informed her client that it had been filed. On February 7, 2000, Judge Sigmund ordered that, if the bankruptcy petition were dismissed, Rosen would be barred from filing another petition for 180 days. Three days later, on February 10, 2000, while the bankruptcy case was pending, respondent filed a fourth petition on Rosen's behalf, signing Rosen's name on the petition. Respondent did not have Rosen's authority to file the petition or to sign his name. She did not inform Rosen that she had filed the fourth petition. On February 11, 2000, Judge Sigmund authorized Rosen to pay the filing fees in installments.

On February 17, 2000, Judge Sigmund dismissed Rosen's third bankruptcy petition because respondent had not timely paid the filing fees. Respondent did not inform Rosen of the dismissal.

In February 2000, Standard Federal Bank filed a motion to annul the automatic stay in the fourth bankruptcy case. Although respondent was served with a copy of the motion, she did not advise Rosen of it. Following a March 9, 2000 hearing on respondent's apparent violation of F.R.B.P.1006(b)(3), which provides that a filing fee must be paid in full before the debtor may pay an attorney, Judge Sigmund ordered respondent to return \$750 in fees that she had received from Rosen.

According to the Disciplinary Board of the Supreme Court of Pennsylvania ("Disciplinary Board"), respondent's testimony at the disciplinary hearing was not credible. The Disciplinary Board further found that respondent "did not exhibit sincere remorse for her misconduct."

The Disciplinary Board found respondent guilty of the following violations, which are comparable to the New Jersey RPCs: RPC 1.1, presumably (a) (gross neglect), RPC 1.2(a) (failure to abide by client's decision concerning objectives of representation), RPC 1.4(a) (failure to keep a client informed about the status of a matter and to comply with reasonable requests for information), RPC 1.4(b) (failure to explain a matter to the extent necessary to permit the client to make informed decisions), RPC 1.5(a) (excessive fee), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The Disciplinary Board summarized respondent's misconduct and testimony:

At the disciplinary hearing, Respondent appeared unaware of the serious implications of her actions, and her attempts to explain her actions resulted in her testimony being impeached. Respondent contradicted herself throughout her testimony. At certain points,

Respondent insisted she would never sign a client's name to a bankruptcy petition, and when she was confronted with the fact that she had done so, she stated it was only in one matter. Subsequently, she was reminded that she had done so in more than one matter, that being the Hammernik, Kennedy and Rosen cases. Respondent stated she would not represent a husband and wife in a bankruptcy matter without meeting both spouses, yet she filed a bankruptcy petition on Mr. Kennedy's behalf without ever having met him, and she proceeded to enter a settlement agreement for Mrs. Brown without having met her. In the Rosen matter, Respondent stated that Mr. Rosen failed to pay Respondent the entire filing fee for the bankruptcy petition. This was refuted by her sworn testimony at the March 9, 2000 Bankruptcy Court hearing, in which she admitted that she was responsible for satisfying the installment payment of the filing fee, and the "Application/Order for Fees" prepared by Respondent in Mr. Rosen's third bankruptcy petition, wherein Respondent alleged she received from Mr. Rosen the \$160 filing fee. In the Brown matter, Respondent stated that since she was handling a bankruptcy matter on behalf of Mr. Brown, she would not have informed opposing counsel that she represented Mrs. Brown. This testimony is not credible and is refuted by Michael Dinney's testimony, the letters, Stipulation and Motion to Enforce she received from Mr. Dinney, which placed Respondent on clear notice that the case was on behalf of Mrs. Brown, and by Respondent's own conduct. Respondent had no reasonable explanation for her actions.

[Disciplinary Board Report at 18 to 19.]

Although the hearing committee (similar to a District Ethics Committee in New Jersey) recommended a six-month suspension followed by three years of probation, the Disciplinary Board recommended that respondent be suspended for one year and one day.² One Disciplinary Board member dissented, voting for disbarment. The Supreme Court of Pennsylvania, however, imposed a two-year suspension, effective August 14, 2004.

The OAE urged us to impose a two-year suspension. Because, according to the New Jersey Lawyers' Fund for Client Protection, respondent has been ineligible to practice law in New Jersey since September 15, 1997, the OAE would not object if the suspension were imposed retroactively to August 14, 2004, the effective date of the Pennsylvania suspension.

Reciprocal discipline proceedings in New Jersey are governed by Rule 1:20-14(a)(4), which provides:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

² Rule 218(a) of the Pennsylvania Rules of Disciplinary Enforcement ("P.R.D.E.") requires attorneys suspended for more than one year to formally petition the Supreme Court of Pennsylvania for reinstatement.

- (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;
- (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 (E). Respondent's misconduct was serious. In the Brown matter, she misrepresented to opposing counsel that she represented Suzanne Brown; negotiated a settlement without authority, leading the attorney to cancel a hearing; and wasted judicial resources when the attorney had to file a motion to enforce the stipulation that respondent was not authorized to enter. The bankruptcy judge found that respondent's testimony was not credible and ordered her to pay counsel fees and expenses.

In the Hammernik matter, respondent filed a bankruptcy petition and signed her client's name without his knowledge or consent; she also wasted judicial resources when the bankruptcy judge was required to conduct a hearing to determine why two

petitions were filed on behalf of Hammernik by two different attorneys. The judge determined that respondent filed the petition without Hammernik's authority and dismissed it.

After Frances Kennedy discharged respondent and filed a bankruptcy petition through another attorney, respondent filed another petition and an application to pay filing fees in installments on Mr. Kennedy's behalf, and signed his name to those documents, all without his authorization. Again, the bankruptcy judge was constrained to conduct a hearing to determine why two petitions were filed on Mr. Kennedy's behalf. The judge, finding that respondent had no authority to file the petition and that she had made misrepresentations to the court in her pleadings, ordered respondent to return her legal fee to Mrs. Kennedy.

Finally, in the Rosen matter, respondent filed a fourth bankruptcy petition and signed her client's name, without his authority; misrepresented that he had not paid the filing fee; violated a bankruptcy rule prohibiting the payment of fees to an attorney before payment of a filing fee; failed to inform her client of the filing of two motions for relief from the automatic stay; and was ordered by the bankruptcy judge to return her legal fees to Rosen.

In sum, respondent was guilty of gross neglect, failure to abide by the client's decision concerning objectives of the representation, failure to keep a client informed about the status of a matter and to comply with reasonable requests for information, failure to explain a matter to the extent necessary to permit the client to make informed decisions, excessive fee, false statement of material fact or law to a tribunal, conduct involving dishonesty, fraud, deceit or misrepresentation, and conduct prejudicial to the administration of justice.

Attorneys in New Jersey who have been found guilty of similar violations have received suspensions of varying lengths, depending on the circumstances surrounding the misconduct. See, e.g., In re Olitsky, 158 N.J. 110 (1999) (attorney suspended for six months for gross neglect, pattern of neglect, failure to communicate with clients, failure to reduce fee agreement to writing, continued representation of a client after termination of the representation, and failure to surrender client property after termination); In re Kramer, 149 N.J. 19 (1997) (six-month suspension for attorney who refused to terminate representation of a client after being discharged and improperly obtained a proprietary interest in litigation); In re Weston, 118 N.J. 477 (1990) (attorney suspended for two years for engaging in

fraudulent misconduct by signing a deed and affidavit of title in the name of a client without authorization and misrepresenting to the buyer's attorney that the documents were genuine).

Here, we find as aggravating factors respondent's lack of candor in the underlying bankruptcy proceedings as well as in the disciplinary hearing, her lack of remorse, and her apparent failure to understand the seriousness of her misconduct. Respondent has not advanced mitigating factors or any explanation for her wrongdoing.

Respondent's misconduct involved four client matters and was more serious than that of Olitsky and Kramer. We, thus, determine that a two-year suspension, the same level of discipline ordered in Pennsylvania, is the appropriate level of discipline to be imposed in this matter. Five members further determine that the suspension should be imposed retroactively to the date of respondent's Pennsylvania suspension, August 14, 2004.

Chair Mary Maudsley voted for a prospective suspension, based on the aggravating factors of respondent's failure to either appear, or waive appearance, at oral argument before us, in conjunction with her failure to provide documentation to support her requests for adjournments in this matter.

Because, pursuant to P.R.D.E. 218(c), respondent will be required to demonstrate by clear and convincing evidence that she is a suitable candidate to return to the practice of law in Pennsylvania, we determine that she should be required to be reinstated in Pennsylvania before she may seek reinstatement in New Jersey. Members Robert Holmes, Esq., Louis Pashman, Esq., and Reginald Stanton, Esq. did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

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

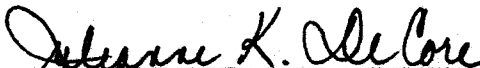
In the Matter of Antoinette M. J. Bentivegna
Docket No. DRB 05-120

Argued: July 21, 2005

Decided: August 31, 2005

Disposition: Two-year suspension

Members	Disbar	Two-year Suspension	Reprimand	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy		X			
Boylan		X			
Holmes					X
Lolla		X			
Neuwirth		X			
Pashman					X
Stanton					
Wissinger		X			
Total:		6			3


Julianne K. DeCore
Chief Counsel