SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-021
District Docket No. XIV-2012-0275E

IN THE MATTER OF	:
JOSEPH RAKOFSKY	:
AN ATTORNEY AT LAW	:

Dissent

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

In this matter, the District IX Ethics Committee (DEC) recommended that respondent receive two reprimands; the majority of the Disciplinary Review Board (DRB or Board) recommends that the Court impose a censure. I respectfully dissent from the latter recommendation.

Respondent was admitted to the New Jersey bar in 2010. He established his practice in Freehold. His law partners were Richard Borzouye, a New York lawyer, and Sherlock Grigsby, who was licensed in Washington D.C. The law firm bore respondent's name; its letterhead reflected the firm had offices in New Jersey, New York

and Washington, D.C. However, the letterhead did not indicate the jurisdictional limitations of either Borzouye or Grigsby.

MISREPRESENTATIONS

On the new firm's website and on a Yahoo Local advertisement, respondent stated that he founded his firm "on a commitment to set the standard for criminal defense in New York City." In furtherance of that admitted goal, he falsely misrepresented his qualifications as follows:

> That respondent worked on cases involving murder, embezzlement, tax evasion, civil RICO, securities fraud, bank fraud, insurance fraud, wire fraud, conspiracy, money laundering, identity theft, counterfeit credit card enterprise, and aggravated harassment;
>
> That respondent had experience defending people who were charged with the sale of and intent to sell crack, cocaine, PCP, heroin, marijuana, ecstasy, Oxycontin, Vicodin, Percocet, as well as the "manufacture, distribution, trafficking, possession, paraphernalia," in addition to individuals charged with drug prescription forgery and "all species" of pharmaceutical-related fraud;
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> That respondent was "experienced" and had "federal and state trial experience."

This was more than misrepresentation. As the majority found, a finding with which I wholeheartedly agree, "respondent's misrepresentations were not simply incomplete, inaccurate, misleading, or even half-truths. Instead, they were brazen lies,

incapable of substantiation . . . Respondent's representations were outright lies. He did not merely inflate his credentials. He fabricated them. Moreover, respondent conveyed the impression that he was some kind of a 'super lawyer.'"

UNAUTHORIZED PRACTICE OF LAW

Respondent was specifically charged with a violation of RPC 5.5(a) (unauthorized practice of law). The DEC found that, in the two matters charged, respondent engaged in the unauthorized practice of law in New York. The majority of the Board rejected that finding, holding "With respect to the unauthorized practice of law charges, we find that, **although respondent engaged in the practice of law, broadly speaking, his actions were not unauthorized because the legal services he provided were not specific to any particular jurisdiction, including the State of New York, and they were limited, in number and scope**", conversely likening the facts of this matter to those in In re Jackman, 165 N.J. 580 (2000), and relying in large part on the Court's analysis and holding in that case.

MARIA ESTEVE

Respondent was charged with the unauthorized practice of law in New York with regard to his representation of one Maria Esteve.

He met her at her office in Brooklyn and he admitted she hired him for an orally agreed to price of $5000. Her initial payment, in the amount of $2500, was made payable to the Rakofsky Law Firm, PC.[1] Apparently some of her business files had been taken into custody by the New York Police Department and she enlisted the services of the respondent to retrieve them. On Ms. Esteve's behalf, respondent made telephone calls to the police and actually accompanied her to the police department to retrieve her files. Although respondent admitted during his interview with the Office of Attorney Ethics that Esteve probably would not have contacted him but for the fact that he was a lawyer, he has continued to maintain that he was not hired for a legal matter and anyone could have helped her recover the documents from the police. Rather conveniently, and to me unbelievably, respondent could not recall whether he had identified himself as a lawyer when communicating with people at the police department. Likewise unbelievable is that the police would have spoken to respondent had he not identified and represented himself as her lawyer.

[1] Respondent apparently operated a law firm in New York bearing his name without the benefit of admission to the New York State bar.

RASHID AKHTER/RAINBOW CORP.

The second unauthorized practice of law charge involved respondent's representation of one Rashid Akhter with regard to a dispute about overtime pay due from Rainbow Corp., Akhter's employer. The retainer agreement identifies respondent as the attorney "in charge of, and responsible for, the administration of this matter." A draft complaint was prepared which stated that both Borzouye and respondent "(subject to PRO HAC VICE order)" represented Akhter; interestingly, this draft complaint contained a bar code number under the respondent's signature line.[2] Obviously, this bar code could not have referenced the Akhter matter as respondent had not yet applied for pro hac admission to handle the case. In any event, the draft complaint was used as a threat or leverage with Rainbow to effect a settlement of Akhter's claim, which settlement, according to respondent, but without any specificity, was realized with the "assistance" of Robert Leno, a New York attorney. In truth, admitted by respondent, Borzouye played no role in the handling and/or settlement of the Akhter matter, and we know nothing about how respondent "worked with

[2] The DEC observed that the draft complaint reflected a bar code number under the respondent's name. Although the DEC did not know the purpose of the number, it believed that its presence "raises concerns as to Respondent's truthfulness" because the code was either fictitious or had been assigned to him (respondent) in a prior matter.

local counsel" (Leno) in representing the interests of Akhter. The settlement check, in the amount of $9500, was deposited to and distributed from the respondent's firm trust account.

The Board found that, in both the Esteve and Akhter matters, respondent practiced law in New York without being licensed in that jurisdiction. However, relying on Jackman, it found such practice was not the "unauthorized" practice of law. In Esteve, the Board found respondent's services to her were "incidental" and involved a "transitory" legal activity which required little effort on respondent's part. In Akhter, the Board excuses respondent because, in some undefined way, he was assisted by Leno in effecting the settlement, brushing aside any concern about the mysterious and still unexplained bar code that appears on the draft complaint which respondent and no one else prepared.

Respectfully, I am not willing to accept, given the facts of this case, that respondent's practice of law in New York provided only "incidental" services to Esteve and Akhter, and it is my opinion that the entire record of this matter, taken together with the lack of credibility I attribute to respondent's version of events[3], belies the Board's majority determination. I am likewise unwilling to excuse or mitigate the egregious nature of the

[3] Please note that the Board too found the respondent's testimony "disingenuous".

totality of respondent's conduct by his lack of an ethics history, his inexperience and youth, or because of his immediate withdrawal of the offending advertising, the correction of his misleading letterhead, or the lack of harm to his clients.

The public and the profession, if the practice of law is still to be regarded as such and not a business, need to be protected from the conduct represented by the record. In my opinion that goal may only be achieved by the imposition of at least a three month suspension, not less, and even more if the Court were to find appropriate and be so inclined.

Maurice J. Gallipoli

Dated: August 27, 2015

By: 
Ellen A. Brodsky
Chief Counsel