

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-189

IN THE MATTER OF :
 :
DAVID SALVAGGIO :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: September 17, 2003

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

Pursuant to R.1:20-4(f), the District X Ethics Committee (“DEC”) 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.

On March 26, 2003, the DEC mailed a copy of the complaint to respondent by certified and regular mail to his last known office address listed in the New Jersey Lawyers’ Diary and Manual, 10 Pine Street, Morristown, New Jersey 07960. The certified mail receipt was returned, indicating delivery on April 1, 2003. The agent accepting delivery was S. Rivera, who is not identified in the record.

On April 26, 2003, the DEC sent a second letter to respondent, advising him that unless he filed an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and the record would be certified directly to the Board for the imposition of sanctions. The letter was sent to the above address by both certified and regular mail. The certified mail receipt was returned indicating delivery on April 29, 2003. The agent accepting delivery was S. Rivera. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1977. He maintains an office for the practice of law in Morristown, Morris County.

In April 2002, respondent was the subject of an agreement in lieu of discipline, based on his admission that he demonstrated a lack of diligence, failed to communicate, and failed to expedite litigation in a client matter. R.1:20-3(i)(2)(B)(i). Respondent agreed to apologize in writing to the grievant, make restitution of a \$750 retainer, return the grievant's personal property and attend the NJSBA Diversionary CLE Program. Respondent completed the requirements by November 6, 2002.

On July 21, 2003, after the matter had been certified to us as a default, respondent's counsel filed a motion to vacate the default. On July 24, 2003, the DEC investigator filed an objection to respondent's motion. Thereafter, by letter dated July 25, 2003, respondent's counsel replied to the investigator's letter.

In order to have a default vacated, a respondent must offer a reasonable explanation for his or her failure to answer the ethics complaint and assert a meritorious defense to the ethics charges. As to his failure to answer the ethics complaint, respondent

claimed that he suffers from clinical depression, which contributed to his failure to reply to the allegations against him. With regard to the meritorious defense requirement, respondent disputed the allegations in the complaint, and outlined the steps he had taken in his client's behalf.

Our review of the motion persuaded us that respondent did not overcome the first hurdle to vacating a default. We were not convinced that respondent's condition prevented his replying to the complaint. Respondent's failure to overcome this first hurdle required us to deny the motion.

Count One (The Ibelli Matter)

In or about January 2000, Dino Ibelli retained respondent to recover an engagement ring Ibelli had given to his former fiancé. Ibelli paid respondent \$750 as a retainer and gave him copies of the receipt and the appraisal for the ring. Respondent advised Ibelli that his would be an "easy case."

Over the course of the next several months, Ibelli telephoned respondent periodically for information about his case. Respondent failed to return the messages Ibelli left with his secretary. During the latter part of 2000, respondent advised Ibelli that his computer had malfunctioned, he had lost all of the information and he would "start the process" again. Thereafter, in or about March 2001, having not heard from respondent, Ibelli telephoned him. Respondent misrepresented to Ibelli that he had "sent the necessary paperwork to the Court." Ibelli did not hear further from respondent. In June 2001, Ibelli telephoned respondent for information on his case. Respondent stated

that he “did not realize [Ibelli] still wanted to pursue this.” Respondent explained that he had not been feeling well and was short-handed. Thus, he was behind in his work. Three months later, in September 2001, Ibelli contacted respondent and was advised that he had contacted the former fiancé and would be “sending a Court document out.” Respondent instructed Ibelli to call him in December 2001. Respondent failed to return his call. Subsequent calls were also fruitless. Ultimately, on February 28, 2002, respondent advised Ibelli to come to his office on March 6, 2002. During their meeting, respondent advised Ibelli that his former fiancé had moved and he would have to begin the process again. Respondent refunded Ibelli’s \$750 retainer. Soon thereafter, Ibelli spoke to respondent’s receptionist and asked for the return of the receipt and appraisal for the engagement ring. Although the complaint is unclear, it appears that the documents were not returned.

Count Two (Failure to Cooperate with Disciplinary Authorities)

By letter dated April 10, 2002, the DEC investigator asked respondent to reply to the allegations in Ibelli’s grievance. The investigator did not receive a reply and telephoned respondent, who advised that he had not received the April correspondence. By letter dated May 7, 2002, the investigator again forwarded the grievance to respondent, and again requested a written reply. No reply was forthcoming.

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct.

The complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate), RPC 3.2 (failure to expedite litigation), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Allegations are deemed admitted when the matter proceeds as a default. R.1:20-4(f)(1).

Respondent accepted a retainer from a client and failed to resolve the matter in the client's behalf. Indeed, the record does not reveal what, if any, action respondent took for Ibelli. In addition, he failed to reply to Ibelli's repeated telephone calls and misrepresented the status of the matter to him. At a minimum, a reprimand is mandated. "[I]ntentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). See also In re O'Connor, 174 N.J. 298 (2002) (reprimand in a default matter, where the attorney misrepresented to the client that he had filed a complaint and that the case was proceeding smoothly, and failed to reply to the client's requests for information; aggravating factors were the attorney's failure to abide by the terms of an agreement in lieu of discipline and failure to answer the complaint); and In re Onorevole, 144 N.J. 477 (1996) (reprimand where the attorney, for over six months, misrepresented to a client that he had filed a complaint; the attorney was also found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities).

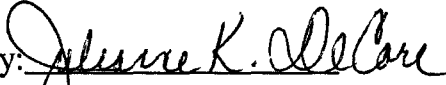
This matter is very similar to O'Connor. Although unlike O'Connor, this attorney complied with the terms of his agreement in lieu of discipline, he did not learn from his mistakes. During the time that he was going through the diversion process, he continued

to ignore the DEC's requests for information. In addition, he continued to act unethically toward Ibelli, at a time that he would already have been on notice that his conduct was improper. Yet, he continued to neglect his client and to ignore the DEC. We unanimously determined to impose a reprimand. We also determined to require respondent to submit, within ninety days, proof of fitness to practice law, as attested by a mental healthy professional approved by the Office of Attorney Ethics.

One member recused himself. Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

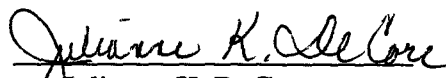
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of David Salvaggio
Docket No. DRB 03-189

Decided: September 17, 2003

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Boylan</i>			X				
<i>Holmes</i>			X				
<i>Lolla</i>			X				
<i>Pashman</i>							X
<i>Schwartz</i>							X
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
Total:			7				2


Julianne K. DeCore
Acting Chief Counsel