

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-293

IN THE MATTER OF
STUART P. SCHLEM
AN ATTORNEY AT LAW

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

Decided: December 17, 2002

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

Pursuant to R. 1:20-4(f), the District IX 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.

Respondent was admitted to the New Jersey bar in 1983. He maintains a law office in Manalapan, New Jersey.

Respondent received a private reprimand in February 1994 for failure to communicate with a client, in violation of RPC 1.4(a). In the Matter of Stuart P. Schlem, Docket No. DRB 93-434 (February 16, 1994). In 2000, he received a reprimand for

recordkeeping deficiencies, in violation of R. 1:21-6 and RPC 1.15(d), and failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b). That matter proceeded on a default basis. In re Schlem, 165 N.J. 536 (2000).

* * *

On May 28, 2002, the DEC mailed a copy of the complaint in this matter to respondent by regular and certified mail, return receipt requested. The certified mail was returned indicating delivery on May 29, 2002. Exhibit A to certification of the record. The record is silent as to the regular mail. When respondent did not file an answer, the DEC sent him a second letter on June 24, 2002. Exhibit B to the certification shows that the letter was sent by certified mail, but it does not indicate whether it was also sent by regular mail. The record does not reveal if this letter was received or returned. The certification states that respondent did not file an answer.

* * *

The two-count complaint charged respondent with gross neglect, lack of diligence, failure to communicate with client, misrepresentation, pattern of neglect and failure to cooperate with the ethics investigation, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 8.4(c), RPC 1.1(b) and RPC 8.1(b), respectively.

The complaint alleged that, on November 6, 1997, Peter A. Horvath, Sr. (now deceased), his wife Agnes Horvath and Peter A. Horvath, Jr., retained respondent to represent their interests in a condemnation action brought by the New Jersey Transit Corporation against the elder Horvaths, as owners of property in Hamilton Township, New Jersey. Pursuant to the contingency fee agreement, respondent was obligated to provide, among other things, representation in any appeals, retrials and commissioner hearings resulting either from the condemnation proceedings or from any other claims the Horvaths might have against the New Jersey Transit Corporation.

Following a trial in Mercer County, the jury returned a verdict upholding the original condemnation award of \$3,000,000.

On April 27, 2000, Peter A. Horvath, Jr. directed respondent to file a notice of appeal. After respondent did so, he had no further communication with Horvath, Jr., except for an occasion in November 2000, when respondent requested Horvath, Jr. to pay for the transcript. Horvath, Jr. complied with the request. Thereafter, in March 2001, respondent contacted Horvath, Jr. and suggested that he pursue a settlement, rather than an appeal, which could be tied up in court "for years." Respondent failed to inform Horvath, Jr. that the appeal had already been dismissed on November 20, 2000 for respondent's failure to file a brief.

Unaware of the dismissal, Horvath, Jr. requested the opportunity to copy and review the trial transcripts so that he could decide whether to pursue a settlement in lieu of an appeal. Horvath, Jr. attempted unsuccessfully to contact respondent in March, April and May 2001. Finally, in May 2001, Horvath, Jr. contacted the Appellate Division

about the status of his appeal, only to discover that it had been dismissed. Thereafter, Horvath, Jr. renewed his attempts to communicate with respondent, to no avail.

By letter dated September 24, 2001, the DEC requested that respondent submit all relevant information in the matter within ten days. According to the complaint, respondent ignored that request and, as of the date of the complaint, had failed to cooperate with the DEC's investigation, despite being given additional opportunities to do so.

* * *

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to answer the complaint, the allegations are deemed admitted. R.1:20-4(f).

After filing the notice of appeal, respondent took no further action in the Horvath matter. Respondent had no further contact with Horvath, Jr. until November 2000, at which time he requested Horvath, Jr. to pay for the transcript. In fact, that same month, the appeal was dismissed because of respondent's failure to file a brief. His conduct in this regard violated RPC 1.1(a) and RPC 1.3. Also, his failure to inform Horvath, Jr. about the dismissal or to give him any information about the status of the case violated RPC 1.4(a).

In March 2001, several months after the appeal was dismissed, respondent suggested to Horvath, Jr. that a settlement be pursued, rather than an appeal.

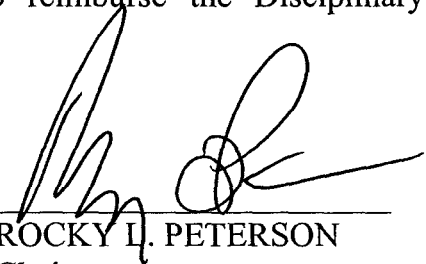
Respondent's failure to disclose the dismissal to Horvath, Jr. constituted a misrepresentation by silence, in violation of RPC 8.4(c). Crispen v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984) ("silence can be no less a misrepresentation than words"). In addition, respondent's failure to cooperate with the DEC's investigation violated RPC 8.1(b).

We dismissed the charged violation of RPC 1.1(b), however. Generally, such a finding is reserved for negligence in at least three matters. Because respondent's two prior disciplinary matters did not involve negligence, we do not find him guilty of a pattern of neglect.

In default matters involving similar violations, three-month suspensions have been imposed. See In re Hoffmann, 156 N.J. 579 (1999) (three-month suspension in a default matter for failure to communicate with client, failure to cooperate with disciplinary authorities and misrepresentation of status of the matter to the client); and In re Daly, 156 N.J. 541 (1999) (three-month suspension in a default matter for gross neglect, lack of diligence, failure to communicate with client, failure to promptly deliver funds to a client and misrepresentation).

We, therefore, unanimously determined to impose a three-month suspension.

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

By: 
ROCKY I. PETERSON
Chair
Disciplinary Review Board

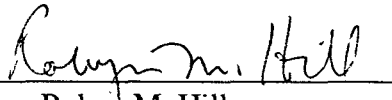
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Stuart P. Schlem
Docket No. DRB 02-293

Decided: December 17, 2002

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
Total:		9					

 12/19/02
Robyn M. Hill
Chief Counsel