

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-040

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IN THE MATTER OF  
GERARD V. ROSS  
AN ATTORNEY AT LAW

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

Decided: June 12, 2000

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

Pursuant to R. 1:20-4(f), the District VC 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 November 18, 1999 the DEC sent a complaint by regular and certified mail to respondent's last known address, 12 Princeton Terrace, Belleville, New Jersey 07109. The certified mail was returned stamped "unclaimed." The complaint sent by regular mail was not returned. On December 17, 1999 the DEC sent a second letter to respondent by regular and certified mail, advising him that the failure to file an answer would constitute an admission of the allegations contained in the complaint and could result in his temporary suspension. The certified mail return receipt, bearing an illegible signature, shows that the letter was accepted on December 18, 1999. The copy sent by regular mail was not returned.

Respondent did not file an answer to the complaint. On January 27, 2000 the record was certified directly to us for the imposition of discipline, pursuant to *R. 1:20-4(f)(1)*.

Respondent was admitted to the New Jersey bar in 1988. He formerly maintained an office in Glen Ridge, Essex County, New Jersey. He was temporarily suspended on July 14, 1999 for failure to comply with a determination of a district fee arbitration committee. This is respondent's fourth default matter. In one matter (DRB No. 99-271), we determined to suspend him for three months for gross neglect, failure to communicate with a client, making false or misleading statements about the lawyer's services, conduct involving dishonesty, fraud, deceit or misrepresentation

and failure to cooperate with ethics authorities. That suspension will start running upon respondent's compliance with the requirements of his temporary suspension of July 14, 1999. In two additional default matters (DRB Nos. 99-357 and DRB 99-424), we determined to impose a combined three-month consecutive suspension; in one matter, respondent was found guilty of gross neglect, lack of diligence and failure to communicate with a client; in the second matter, he was found guilty of gross neglect, lack of diligence, conduct involving dishonesty, fraud, deceit or misrepresentation and failure to cooperate with the ethics authorities.

The complaint charged that in April 1997 respondent was retained by Gregory and Lisa Gowler, husband and wife, in connection with a constructive eviction action. The Gowlers had operated a liquor store in West Paterson, New Jersey for sixteen years and claimed loss of business as a result of construction work at the shopping center where the store was located. Although the Gowlers paid respondent a retainer of about \$2,500, respondent did not file a complaint.

At one point, the Gowlers were served with a notice of eviction, presumably for non-payment of rent. Respondent appeared on behalf of his clients, who were ultimately ordered to vacate the premises. In September 1997 they were evicted from the liquor store.

In October 1997 the Gowlers were served with a complaint for overdue rent. They brought the complaint to respondent and asked him to file an answer and a counterclaim seeking \$75,000 in damages. Because respondent did not answer the complaint, a default judgment was entered against the Gowlers in the amount of \$20,000. When the Gowlers tried to contact respondent to ascertain the status of the matter, they were frequently unable to reach him. On other occasions, respondent told the Gowlers not to worry about the complaint, assuring them that the answer must have been filed incorrectly.<sup>1</sup>

Eventually, the Gowlers retained another attorney, who negotiated a discounted judgment of \$14,000. The attorney also reviewed a contract for the sale of the liquor store, which had also been reviewed by respondent. According to the new attorney, the contract was one-sided in the buyer's favor. It provided that the buyer's deposit was refundable if the closing did not occur and contained no closing date. The new attorney restructured the contract to provide for the forfeiture of the deposit if the closing did not take place within a thirty-day period. In fact, the closing did not occur and the Gowlers applied the forfeited \$7,500 deposit to the \$14,000

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<sup>1</sup> It is not clear if respondent meant that the complaint had been filed incorrectly by the court clerk or by his office.

default judgment in favor of the landlord. The Gowlers paid the balance of the judgment, receiving a warrant of satisfaction.

The complaint also alleged that respondent failed to reply to two letters, dated March 9, 1999 and April 21, 1999, that the DEC investigator had sent him about the grievance.

The complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect), *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to communicate with client) and *RPC* 8.1 (failure to cooperate with ethics authorities).

\* \* \*

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

After agreeing to represent the Gowlers in a commercial tenancy matter, respondent failed to file a complaint. As a result, the landlord filed an eviction action, which led to the Gowlers' eviction from their store. To compound matters, respondent failed to file an answer to the complaint for past-due rent, resulting in the entry of a

\$20,000 default judgment against the Gowlers. Due to respondent's inaction, the Gowlers were evicted from the store that they had operated for sixteen years, had a \$20,000 default judgment entered against them and were deprived of the opportunity to litigate the constructive eviction matter and the counterclaim for damages that respondent neglected to file. If not for the efforts of their new counsel, the financial harm to the Gowlers would have been much more severe.

We found, thus, that respondent exhibited gross neglect, lack of diligence, failure to communicate and failure to cooperate with the ethics authorities. We also found that he engaged in conduct involving misrepresentation, in violation of *RPC* 8.4(c), based on his statement that an answer had been filed. Although respondent was not specifically charged with a violation of *RPC* 8.4(c), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of that *RPC*.

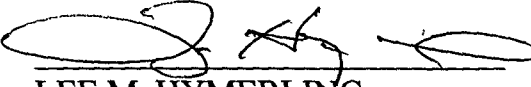
Ordinarily, such conduct, in the context of a default, will result in the imposition of a three-month suspension. *See, e.g., In re Gorman*, 156 *N.J.* 435 (1998) (three-month suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client and failure to cooperate with ethics authorities); *In re Banas*, 157 *N.J.* 18 (1999) (three-month suspension for gross neglect, lack of

diligence, failure to communicate with a client, failure to put basis of fee in writing and failure to cooperate with ethics authorities).

Here, because of respondent's extensive ethics history (temporary suspension in a fee arbitration plus three prior defaults) and the monetary injury to the clients, we unanimously determined that a six-month suspension is warranted. The suspension is to be served consecutively to the suspension imposed in the prior default matters. Moreover, upon reinstatement, respondent must practice law under the supervision of a proctor for a period of two years. One member did not participate.

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

Dated: 6/12/00

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Gerard V. Ross  
Docket No. DRB 00-040**

**Decided: June 12, 2000**

**Disposition: Six-Month Suspension**

Members	Disbar	6 Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		X					
Peterson		X					
Boylan							X
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
<b>Total:</b>							

*Robyn M. Hill* 9/28/00  
Robyn M. Hill  
Chief Counsel