SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-087

IN THE MATTER OF

LUBA ANNENKO

AN ATTORNEY AT LAW

Decision

Argued: May 11, 2000

Decided: September 18, 2000

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1983. At the relevant time, she maintained an office for the practice of law in Merchantville, Camden County.

She was restored to the practice of law by order dated July 19, 1999. In re Annenko, 159 N.J. 564 (1999).

* * *

Respondent has an extensive ethics record. On May 19, 1988 she received a private reprimand for gross neglect and failure to communicate with a client for eighteen months and allowing a complaint to be dismissed for lack of prosecution.

On April 21, 1992 respondent received a second private reprimand for lack of diligence. Respondent failed to file an answer on the client's behalf, resulting in the entry of a default judgment. Furthermore, respondent failed to take action, as requested by the client, on a writ of execution on the judgment.

On May 6, 1999 respondent was temporarily suspended for failure to comply with a fee arbitration award. In re Annenko, 158 N.J. 184 (1999). She was restored to the practice of law by Court order dated July 19, 1999. In re Annenko, 159 N.J. 564(1999).

In October 1999 we voted to suspend respondent for six months for gross neglect, lack of diligence and failure to communicate with clients in three separate matters. Respondent also violated the recordkeeping requirements of RPC 1.15(d) and R. 1:21-6 and the bona fide office requirements of RPC 5.5(a). Finally, respondent failed to cooperate with the OAE, in violation of RPC 8.1(b). The matter is pending review by the Supreme Court.

* * *

The procedural history of this matter is as follows:

On August 18, 1998 we voted to suspend respondent for three months in a default matter for gross neglect, lack of diligence, failure to communicate and failure to cooperate with the disciplinary authorities. After the Court issued an order for a three-month suspension, respondent moved to stay the order. The Court granted the motion and remanded the matter summarily to us to permit respondent to move to vacate our decision and to remand the matter to the DEC.

On February 23, 1999 we granted respondent's application to vacate the default. After respondent filed an answer, hearings were held on August 16 and December 18, 1999. The matter is now ripe for our review.

* * *

On or about June 15, 1995 Jonathan Kellem retained respondent to represent him in a post-judgment matrimonial proceeding seeking to terminate his child support obligations. Kellem signed a written retainer agreement and paid respondent a legal fee of $600. On November 5, 1995 Kellem met with respondent at her office to sign his certification in support of the motion. Kellem testified at the DEC hearing that, although the certification contained several errors, he signed that document with the understanding that corrections would be made and the motion papers filed.

Thereafter, Kellem attempted to contact respondent by telephone at least through December 1995, to no avail. According to Kellem, he was unable to ascertain the status of

his matter until January 1996, when respondent called and told him that she would "check on the status of his matter and get back to him." Respondent never did so. In fact, respondent never filed the motion. The entire file, made a part of the record, consisted of an unfiled set of motion papers, including Kellem's signed certification.

In respondent's answer to the ethics complaint and testimony before the DEC, she blamed Kellem for the lack of activity in the case. Specifically, respondent claimed that it was Kellem's failure to provide additional information about his and his children's work histories that prevented her from filing the motion and an accompanying case information statement. Respondent testified that she attempted numerous times to obtain that information from Kellem, a claim that Kellem vehemently denied, calling respondent a "liar." Respondent introduced no evidence of attempts to contact Kellem, either by telephone or by writing, during the entire representation.

The complaint also alleged that respondent failed to cooperate with the OAE, in violation of RPC 8.1(b). The DEC first sent the Kellem grievance to respondent on January 19, 1996, requesting a reply within ten days. Respondent did not reply. On February 2, 1996 the DEC sent another letter to respondent, requesting a reply within five days. After receiving an extension of time, respondent submitted a reply on February 19, 1996. In August 1996 the OAE requested respondent to produce certain financial records, in order to complete the investigation. Although respondent agreed to submit those records, she failed to do so. On September 25, 1996 the OAE telephoned her and also sent a facsimile requesting the records by September 27, 1996. Respondent wrote to the OAE on September 27, 1996, claiming that

she was under a doctor's care. In October 1996 the OAE telephoned respondent several times, asking when it could expect the records. On October 24, 1996 the OAE requested, in writing, (1) a reply to its prior correspondence, (2) a doctor's note indicating the nature of respondent's illness and (3) information on whether she had ever filed the motion on Kellem's behalf. Respondent failed to comply with the OAE's requests. On November 21, 1996 the OAE visited respondent's office seeking the requested records. Respondent indicated that, although the records were not immediately available, she would produce them. On November 22, 1996 the OAE scheduled a demand audit of respondent's books for December 5, 1996. Respondent, however, did not appear for the audit. As an explanation, respondent testified that she had been physically assaulted in her home on December 1, 1996:

> With reference to the December 5 [sic], both the doctor and my attorney knew that I had been assaulted on December 1, which is why I could not show up for the audit. I had planned to go. I do have for R-2 a copy of the police report and maybe that's why they were so secretive. They just didn't want to divulge that I was not in very good physical shape at that point. I just assumed that they told you.
>
> [T63][1]

Exhibit R-2 is a municipal complaint against an individual charged with simple assault by "grabbing [respondent] about the neck and choking her." Dated December 1, 1996, that complaint is the only evidence introduced to refute the allegation that respondent failed to cooperate with the OAE. There is no evidence that respondent attempted to inform the ethics authorities that she would not be in attendance on December 5, 1996. Respondent also

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[1]T refers to the transcript of the DEC hearing conducted on December 8, 1999.

suggested that non-specific injuries sustained in a 1992 automobile accident manifested themselves some four years later, in August and September 1996, rendering her unable to "get her act together." However, there is no medical proof of any conditions that may have rendered respondent unable to cooperate with the disciplinary authorities at any stage of the investigation of this matter.

* * *

The DEC found that respondent exhibited a lack of diligence in her handling of the Kellem matter. Without explanation, the DEC declined to find a violation of RPC 1.1(a). The DEC also found that respondent failed to communicate with Kellem, in violation of RPC 1.4(a), and failed to cooperate with the ethics authorities, in violation of RPC 8.1(b).

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Despite the remand, there is no new evidence to exonerate respondent from the charges leveled against her. If anything, the case against respondent is stronger now with the addition of Kellem's testimony. Kellem, like so many clients of this respondent, retained her, paid for the representation in advance and received nothing in return. Thereafter, Kellem

attempted unsuccessfully to contact respondent for information about his case. In typical fashion, respondent ignored Kellem and later blamed him for problems in the case, caused by respondent's own misconduct. If respondent were to be believed, it was Kellem who was difficult to reach to produce information about the case. Respondent, however, presented no record of a single written or telephonic attempt to communicate with Kellem. Incredibly, despite those obvious improprieties in the representation, respondent claimed in her answer that she diligently represented Kellem. In reality, respondent never filed a single document in her client's behalf. Finally, respondent claimed that she cooperated with the ethics authorities to the extent that she could, but that medical problems stood in her way. Those claims, however, are wholly unsubstantiated.

We conclude, thus, that the DEC correctly found violations of RPC 1.3, RPC 1.4(a) and RPC 8.1(b). Apparently, the DEC did not find a violation of RPC 1.1(a) because respondent prepared a certification, notice of motion, proposed form of order and case information statement for Kellem. Yet, those documents were never filed. In fact, respondent did no further work in Kellem's behalf, beyond the preparation of the documents. Unquestionably, thus, respondent's conduct in this regard violated RPC 1.1(a).

Since this matter was first heard in 1998, respondent has again been before us. In October 1999 we voted to suspend respondent for six months for misconduct in three other matters. Here, now, given respondent's extensive ethics record and her failure to recognize her wrongdoing, we unanimously determine to impose a three-month suspension, to be served at the conclusion of respondent's recent six-month suspension. See In the Matter of Steven

M. Olitsky, 154 N.J. 177 (1998) (three-month suspension for a combination of gross neglect, lack of diligence, failure to communicate and failure to utilize retainer agreements. The enhanced discipline was based on the attorney's ethics history, which included a prior private reprimand, an admonition and three-month suspension.); and In re Brantley, 139 N.J. 465 (1995) (where the attorney received a three-month suspension for a combination of pattern of neglect, lack of diligence, failure to communicate and failure to cooperate with the DEC in three matters. The attorney had a prior one-year suspension and three private reprimands.)

One member did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 9/18/00

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Luba Annenko
Docket No. DRB 00-087

Argued: **May 11, 2000**

Decided: **September 18, 2000**

Disposition: **Three-month suspension**

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz							X
Wissinger		X					
Total:		8					1

By Isabel Frank 12/05/00
Robyn M. Hill
Chief Counsel