

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 01-232

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IN THE MATTER OF :  
ROBERT MICHAEL ARCAINI :  
AN ATTORNEY AT LAW :

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Decision

Argued: July 19, 2001

Decided: October 26, 2001

Richard J. Englehardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (“OAE”), based upon respondent’s eleven-month suspension from the practice of law in the State of Florida.

Respondent was admitted to the New Jersey and Florida bars in 1994. He has no history of discipline.

Respondent consented to two periods of suspension in Florida, totaling eleven months. On May 4, 2000, the Supreme Court of Florida suspended respondent for sixty days

for violations of *RPC* 1.1 (gross neglect), *RPC* 1.3 (lack of diligence) and *RPC* 1.4 (failure to communicate with a client). On April 12, 2001, the Supreme Court of Florida imposed a nine-month suspension for misconduct in two matters where respondent violated *RPC* 1.1, *RPC* 1.3, *RPC* 1.4, *RPC* 1.8(a) (conflict of interest, prohibited transactions), *RPC* 3.2 (failure to expedite litigation), *RPC* 4.3 (dealing with an unrepresented person) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

### ***The Garcia Matter***

Following a grievance filed by Orlando Garcia, respondent consented to a sixty-day suspension. He entered into a stipulation reciting that, after Garcia retained respondent in October 1997, respondent failed to appear at a calendar call or to obtain a continuance, resulting in the dismissal of the case with prejudice. Although respondent filed a motion to set aside the dismissal, that motion was denied. The judge, however, amended the prior order so that the dismissal was without prejudice. In addition, the order awarded attorneys' fees to the opposing party. During this time, respondent failed to return Garcia's telephone calls and did not send any correspondence to Garcia until June 1998, eight months after he was retained. Respondent did not perform any significant pre-trial services.

Respondent admitted that he violated the Florida counterparts to *RPC* 1.1, *RPC* 1.3 and *RPC* 1.4.

### *The Lapadu Matter*

Respondent's nine-month suspension was based on misconduct in this matter and the *Tarallo* matter, discussed below. After Alejandro Lapadu filed a grievance, respondent entered into a stipulation. According to the stipulation, Lapadu, a resident of Argentina, retained respondent to represent him in a foreclosure action involving a Miami Beach, Florida condominium. In September 1997, the court granted the mortgage company's motion for default, holding that respondent's motion to extend time to answer was moot. Although respondent alleged that his former legal assistant notified Lapadu of the default, respondent's client file did not contain any documentation that Lapadu was notified. In October 1997 the court issued a final judgment of foreclosure. In December 1997 the condominium was sold at a public sale. Respondent failed to communicate with Lapadu, who was informed of the sale of the condominium by another attorney, months after the sale.

In April 1996, Lapadu retained respondent for another case concerning alleged damages to the condominium. Respondent failed to notify Lapadu that he had agreed to the dismissal of two defendants. In September 1998 the court dismissed the case with prejudice for lack of prosecution. Although respondent attempted to justify his inaction by claiming that he had not received the remaining balance of his fee, the court file did not contain a motion to withdraw by respondent.

Respondent admitted that he violated the Florida counterparts to *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4 and *RPC* 3.2.

***The Tarallo Matter***

Respondent stipulated that in July 1997, he was retained by Odette Tarallo to represent her in a foreclosure action. Between July 1997 and January 1999, respondent also represented her in other legal matters. During 1998 and 1999, Tarallo occasionally worked for respondent and they developed an intimate relationship. During this time, respondent lent Tarallo money for living expenses, attorney fees, and for the refinancing of her home. In December 1998, Tarallo gave respondent three secondary mortgages as security for the funds he had lent her. In April 1999, respondent prepared a quitclaim deed for Tarallo's property. Tarallo then deeded the property to him. Respondent and Tarallo also entered into a written agreement reciting that she owed him \$10,000 and requiring her to deliver to respondent the payments on the first mortgage and maintenance fees. That agreement provided that, if Tarallo defaulted on her payments, respondent would immediately record the quitclaim deed.

Respondent asked another attorney to review the agreement and explain it to Tarallo. Respondent and Tarallo went to the attorney's office. The attorney briefly discussed the agreement with Tarallo to determine whether she understood its terms. Contrary to

respondent's statements, the attorney asserted that he never acted as Tarallo's attorney, but only as a witness.

In August 1999 respondent recorded the deed, reportedly because Tarallo failed to make the mortgage payments. In September 1999, respondent and Tarallo ended their intimate relationship. Between September 1999 and December 1999, respondent filed eviction proceedings against Tarallo. In August 2000, he deeded the property back to Tarallo.

Respondent agreed to give satisfactions or releases of the three mortgages to Tarallo and to pay the appropriate property taxes during 1999 and 2000, when he was the record owner of the property.

Respondent admitted that he violated the Florida counterparts to *RPC 1.8(a)* and *RPC 8.4(c)*. In addition, respondent admitted that he violated the following Florida provisions of the *Rules of Professional Conduct*: Rule 3-4.3 (misconduct and minor misconduct) and Rule 4-8.4(i) (a lawyer shall not engage in sexual conduct with a client that exploits the lawyer-client relationship).

The OAE urged us to impose an eleven-month suspension and to require that he be reinstated in Florida before he is permitted to apply for reinstatement in New Jersey, particularly in light of the Florida Supreme Court's order requiring respondent to "attend ethics school and pass the ethics portion of the Florida Bar exam prior to reinstatement."

\* \* \*

Following a review of the full record, we grant the OAE's motion for reciprocal discipline and determine that respondent should be suspended for eleven months and that he may not apply for reinstatement until he has been reinstated in Florida.

Reciprocal discipline proceedings in New Jersey are governed by *R. 1:20-14(a)(4)*, which provides as follows:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (E) the misconduct established warrants substantially different discipline.


A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). In New Jersey, one-year suspensions have been imposed for the combination of ethics infractions committed by respondent. *See, e.g., In re Smith*, 135 N.J. 122 (1994) (attorney engaged in gross neglect and a pattern of neglect, made misrepresentations to the client and failed to advise the client to seek independent counsel before entering into a business relationship with him); *In re Griffin*, 121 N.J. 245 (1990) (attorney entered into a business transaction with a client with whom he was cohabiting and whom he knew to be an alcoholic; client obtained a loan using her home as collateral and gave most of the proceeds to the attorney, who failed to make full disclosure of the consequences of the loan and who failed to advise the client to seek independent counsel); *In re Malfitano*, 121 N.J. 194 (1990) (attorney grossly neglected three matters, in one of the matters, the client gave up custody of her son because the attorney's failure to obtain *pendente lite* support resulted in her financial inability to provide for her son's care; the attorney also exhibited a pattern of neglect and lack of diligence, failed to communicate with clients, misrepresented to a client that he had filed a motion to reduce bail when he had not and failed to cooperate with disciplinary authorities).

Here, respondent's infractions were similar to that of the above attorneys. In two matters, he displayed gross neglect and lack of diligence and failed to communicate with clients, in one of the matters, he also failed to expedite litigation, and in a third matter, respondent took financial advantage of a client with whom he had an intimate relationship, improperly obtaining title to her home.

We unanimously voted to suspend respondent for eleven months. Because there is no indication that respondent ceased practicing in New Jersey, we determined that the suspension should be served prospectively. Respondent may not apply for reinstatement until he has been reinstated in Florida. Two members did not participate.

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

Dated: 10/26/01

By:   
Rocky L. Peterson  
Chair  
Disciplinary Review Board



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**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Robert Michael Arcaini  
Docket No. DRB 01-232**

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**Decided:                   October 26, 2001**

**Disposition:           eleven-month suspension**

<b>Members</b>	<b>Disbar</b>	<b>eleven-month suspension</b>	<b>Reprimand</b>	<b>Admonition</b>	<b>Dismiss</b>	<b>Disqualified</b>	<b>Did not participate</b>
<b>Peterson</b>		<b>X</b>					
<b>Maudsley</b>		<b>X</b>					
<b>Boylan</b>		<b>X</b>					
<b>Brody</b>		<b>X</b>					
<b>Lolla</b>							<b>X</b>
<b>O'Shaughnessy</b>		<b>X</b>					
<b>Pashman</b>		<b>X</b>					
<b>Schwartz</b>							<b>X</b>
<b>Wissinger</b>		<b>X</b>					
<b>Total:</b>		<b>7</b>					<b>2</b>

*Robyn M. Hill* 12/14/01  
**Robyn M. Hill**  
**Chief Counsel**