SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-316

IN THE MATTER OF

PHILIP M. MORELL

AN ATTORNEY AT LAW

Decision

Argued: November 20, 2003

Decided: February 18, 2004

Richard J. Englehardt 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 on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's one-year suspension in New York, which was effective August 8, 2003.

Respondent was admitted to the New Jersey bar in 1988 and the New York bar in 1989. In a May 26, 1999, diversion matter, respondent signed an agreement in lieu of discipline, in which he admitted a violation of RPC 3.2 (failure to expedite litigation) and RPC 3.4 (fairness to opposing counsel) for failure to diligently prosecute a claim and to comply with his adversary's discovery requests. Respondent agreed to attend a diversion program and completed its

requirement on November 23, 1999. Robert T. Caruso v. Philip M. Morell, District Docket No. IIA-021E.

On June 9, 2003, the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, issued an opinion and order suspending respondent for one year, effective July 9, 2003, for engaging in conduct involving fraud, dishonesty, deceit or misrepresentation, in violation of New York Disciplinary Rule 1-102(a)(4).[1] Exhibit A. Upon respondent's application, the effective date of the New York suspension was extended to August 8, 2003. Exhibit B.

Respondent's suspension in New York was based on his misconduct in two client matters: a 1997 personal injury action and a 1995 collection matter. On June 9, 2003, Special Referee Thomas R. Sullivan, retired Justice of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, rendered a report, which set forth the following underlying facts:

1. Mr. & Mrs. Feldman had been involved in an automobile accident on Bronx River Parkway involving mostly soft tissue injuries. They retained an attorney named Rubenstein who started an action in Bronx Supreme Court. At that time the respondent was employed by Levy, Phillips & Konigsberg, but was preparing to leave that firm. At some point the Feldmans discharged Rubenstein and Hugh Jasne took over the case. The respondent had planned to form a partnership with Jasne when he left the Levy firm.
2. On or about June 6, 1997, Jasne failed to appear at a scheduled conference on the Feldmans' case and it was marked off the trial calendar and dismissed.
3. Thereafter the respondent, who had left Levy, Phillips prepared a motion to have the dismissal vacated and the case restored to the trial calendar.
4. On or about September 20, 1997, the respondent told the Feldmans that the motion had been granted and the case had been restored to the trial calendar.
5. When he so advised the Feldmans, the respondent knew that the motion

[1] New York Disciplinary Rule 1-102(a) (4) corresponds to New Jersey RPC 8.4(c).

had not yet been decided.

6. On many occasions thereafter, respondent falsely advised the Feldmans that their case was awaiting a trial date and was the subject of settlement conferences and negotiations. He knew that these representations were untrue and that none of these things were happening.

7. Respondent gave the Feldmans a copy of a note card which he falsely stated was a court document purportedly indicating that their case was scheduled for trial on December 9, 1997.

8. That note card had been fabricated by the respondent and he knew that the case was not scheduled for trial on that date.

9. Respondent falsely advised the Feldmans that the insurance carriers for the defendants had offered to settle the case for a total of $200,000. When he said that respondent knew that no such offer had been made, but the offer was for $140,000.

10. On or about December 8, 1997, respondent had the Feldmans execute a release for the purpose of settling the case for $200,000 even though he knew no such settlement offer had been made.

11. The motion to vacate the dismissal and restore the case to the trial calendar was finally granted by decision and order dated November 1, 1997.

12. Respondent provided the Feldmans with a copy of the order and decision. He had altered the decision by obscuring its date so that the Feldmans would not discover his prior misrepresentations about the date when the decision and order had been issued.

13. In or about June, 1985 respondent was retained by Russell Bateman to collect on a judgment that Bateman had against someone named Lauraine Topaz a.k.a. Lauraine Campbell.

14. Respondent made efforts to locate Ms. Topaz and/or any assets that could be used to satisfy the judgment. About January, 1996 respondent advised Bateman that he had located such assets. When he so advised Bateman, respondent knew that, in fact, no such assets had been located.

15. Respondent wrote Bateman a letter dated January 22, 1996 again stating that "a pool of assets" was available to apply to his judgment. However, when he wrote and mailed that letter, respondent knew that no such "pool of assets" had been located.

16. Respondent confessed his misrepresentations to Bateman sometime in April, 1996. Prior to that respondent had continued to tell Bateman that assets had been located, although he knew that no such assets had been located.

[Exhibit F, pp. 3-4.]

In imposing a one-year suspension on respondent, the Appellate Division took note of a number of mitigating factors:

> In determining an appropriate measure of discipline to impose, the respondent asks the court to consider his remorse, his complete cooperation with the petitioner, and his acceptance of full responsibility for his actions. The respondent concedes that his misconduct is not excused by the fact that the Feldmans' action was eventually restored to the court's trial calendar. The respondent derived no financial benefit from his misrepresentations and waived all fees and expenses. The Feldmans received approximately $100,000 from the settlement of their case.
>
> With respect to the Bateman matter, the respondent explained the efforts undertaken to locate assets of the judgment debtors. The respondent derived no financial benefits from his misrepresentations. After his misrepresentations, the respondent assumed responsibility for making Mr. Bateman whole and paid the amount of the judgment from his personal funds.
>
> The respondent notes that his misrepresentations and omissions occurred at a time of extreme personal and professional stress for which he sought psychological counseling and treatment. Other than a Letter of Admonition dated March 21, 2002, his record is unblemished.
>
> In his affidavit in response to the petitioner's motion to confirm, the respondent notes that he has corrected the problems associated with his misconduct by the addition of two partners and the use of new office techniques.
>
> [Exhibit A, p.3.]

The OAE urged us to impose a one-year suspension, the same duration as that imposed in New York.

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

> . . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon 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 matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(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).

Upon review of the full record, we determined to grant the OAE's motion. The Board adopted the findings of the New York court.

In New Jersey, similar misconduct has been met with a one-year suspension. See, e.g., In re Waters-Cato, 142 N.J. 472 (1995) (one-year suspension for gross neglect, pattern of neglect, misrepresentation and failure to disclose material facts, failure to cooperate with disciplinary authorities, and conduct prejudicial to the administration of justice; prior three-month suspension and private reprimand); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for misconduct in seven matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with the clients, failure to deliver client funds, failure to return files, failure to cooperate with disciplinary authorities, and misrepresentation of the status of matters to clients). Here, respondent told elaborate lies and fabricated documents, including a settlement statement for his clients' signature, and a court notice. Respondent altered a court order as well. We unanimously determined to impose a one-year suspension for his misconduct, retroactive to the August 8, 2003, New York suspension. Four members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Philip M. Morell
Docket No. DRB 03-316

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Disposition: One-year suspension

Members	*Disbar*	*One-year Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy							X
Boylan							X
Holmes							X
Lolla		X					
Pashman		X					
Schwartz							X
Stanton		X					
Wissinger		X					
Total:		5					4

Julianne K. DeCore
Chief Counsel