

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-082

IN THE MATTER OF :
MEIRON BAR-NADAV :
AN ATTORNEY AT LAW :

Decision

Argued: June 20, 2002

Decided: August 22, 2002

Richard C. McDonnell appeared on behalf of the District II-B Ethics Committee.

Respondent appeared pro se.

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 II-B Ethics Committee (“DEC”). Respondent was admitted to the New Jersey bar in 1997. He maintains an office for the practice of law in Hackensack, New Jersey. He has no disciplinary history.

The ethics complaint alleged violations of RPC 1.4(a) (failure to communicate with clients), RPC 1.16(a)(3) (failure to withdraw from representation upon being discharged by the client), RPC 3.3(a)(1) (false statement of material fact or law to a

tribunal), RPC 3.3(a)(4) (offering evidence the attorney knows to be false) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Osman Matter (District Docket No. II-B-00-034E)

On June 12, 2000, Ofat Osman retained respondent to file a divorce complaint against her husband, Mohamed. She paid him a \$1,200 retainer. Respondent gave Osman the form for the case information statement (“CIS”) at that time.

By letter dated June 24, 2000, respondent told Mohamed that he had been retained to “represent [Osman] regarding certain marital problems. I have been advised by her that there is an excellent chance of amicably resolving all outstanding issues that currently exist between you.” Respondent requested that Mohamed or his attorney contact him and cautioned that, if he did not hear from someone, “within 10 days, I will have no other alternative then [sic] to follow my client’s wishes to start a suit for divorce.”

On July 7, 2000, Mohamed’s attorney replied that Mohamed intended to seek a reconciliation with his wife. Respondent purportedly forwarded that letter to Osman with a cover letter, on July 11, 2000, and requested that she advise him if the reconciliation efforts proved unsuccessful. Osman denied having received the letters.¹

¹ Important issues in this case are whether respondent fabricated this July 11, 2000 letter and an August 23, 2000 letter.

By letter dated August 21, 2000, Osman complained to respondent that he had not replied to the “several messages” that she had left on his answering machine, asking if her husband or his attorney had contacted him. Osman also asked if respondent had filed the divorce complaint, “since you stated that you would do so within 10 days.” Finally, Osman stated that, if she did not hear from respondent “within 10 days, I will have no choice but to contact another attorney to take over this matter.” The certified mail receipt shows that respondent received Osman’s letter on August 31, 2000.

Respondent purportedly replied to Osman’s August 21st letter on August 23rd, eight days before the receipt of the letter, as noted on the certified mail green card. He enclosed a copy of a divorce complaint, which he requested that Osman sign and return, and another copy of Mohamed’s attorney’s July 7th letter. Respondent’s letter stated that, “when I did not hear from you, I assumed that the letter was correct and that you and your husband had reconciled.” Osman denied having received the letter.

By letter dated September 26, 2000, Osman terminated respondent’s services because he had not filed the complaint, had not communicated with her since his retention and had not replied to her telephone calls. She requested that he return the \$1,200 retainer because his “contract with the Legal Club of America provide [sic] me with a free consultation visit and that is all you provided me with.”²

Respondent testified that he spoke with Mohamed’s attorney shortly after

² Osman was referred to respondent by her legal insurance plan, Legal Club of America.

receiving the July 2nd letter and understood that Mohamed wanted to reconcile with Osman. He stated that he sent the July 2nd letter to Osman on July 11th. Respondent contended that, even after Osman returned the completed CIS on July 13th, he “felt at the time they were probably still talking” and that he did not know that Osman wanted him to file the complaint until he received her August 23rd letter. He stated that he did not communicate with Osman about the CIS after the initial consultation. As to Osman’s testimony that she found the CIS so difficult to complete that she answered, “I don’t know” to many of the questions, respondent replied:

A. This – which question did she not understand?

Q. I don’t know. She testified that she gave you a form that was not totally complete because she couldn’t answer all of the questions on the CIS.

A. I don’t know. I don’t know the answer to that.

Respondent’s testimony as to when he drafted the complaint was inconsistent. He initially testified that he drafted the complaint prior to August 23rd, but that there was a delay in sending it to Osman because he was out of the office “for a few weeks,” beginning “the end of July beginning of August.” However, in his later testimony at the ethics hearing, as well as in his August 23rd letter to Osman and in his reply to the grievance, respondent indicated that he drafted the complaint on August 23rd, after receiving Osman’s August 21st letter.

Despite the fact that the certified mail receipt shows that respondent did not receive Osman’s August 21st letter until August 31st, respondent asserted that his August

23rd letter was genuine. He contended that he received the letter via regular mail prior to August 23rd. As seen below, however, Osman testified that she did not send the letter by regular mail. Respondent also contended that, during the investigation, he told the presenter that he had received the letter by regular mail. The presenter, however, disputed respondent's testimony.

According to respondent, after receiving Osman's September 26th letter on October 20th, he tried to call her on one occasion, although he could not remember the date. Respondent testified that he did nothing further because he could not file the complaint until Osman signed it, noting that, if "she wanted to file for divorce, she would have signed the complaint and sent it back in."

Respondent believed that he had spoken on the telephone with Osman on three occasions, after he was retained. However, his testimony on the subject was confusing and contradictory. Respondent testified as follows:

Q. Can you tell me when [the telephone conversations] took place and what they were about?

A. After [Osman] called the Legal Club of America and before I called after I received a Fed Ex copy, I called because I spoke with her daughter and then the daughter gave me her phone number and that's when I called her so I don't recall the date of the Fed Ex but it was the date of the Fed Ex the day that I received it is when we spoke. I think there was one other time, I don't remember.

Q. So you're saying you spoke to her about the fees or you didn't really? You spoke to her about the fees? I thought you said you didn't.

A. We didn't discuss the fees other than that I didn't understand the billing. I had just gotten into the legal club at that time and I didn't

understand the limitation on billing.

Q. But that was your first conversation with Mrs. Osman concerning billing by phone?

A. That was the only conversation we had about that.

Q. Then your second conversation was in I believe October 20th when you got her Fed Ex?

A. Yes, after I got the Fed Ex I called...and the daughter had given me – I don't know if she three-way [sic] the call or give [sic] me the number to call but that's when we spoke.

Q. That was the second conversation, when was the third?

A. When she called Legal Club, again it was prior to that.

Q. And that was concerning the termination of your services when she called the Legal Club?

A. She said she wasn't happy because she called me, that she wanted a call back I think the next day and/or that same day and I didn't call her back the same day.

Respondent's statement that he spoke with Osman after receiving her September 26th letter, delivered by Federal Express on October 20th, is contrary to his earlier testimony that his attempt to call Osman at that time was unsuccessful. Respondent was not questioned below about this discrepancy. In his reply to the grievance, respondent mentioned only one conversation with Osman, which allegedly occurred after he received her September 26th letter.

Respondent stated that he attempted to return Osman's \$1,200 retainer on October 25, 2000, but that she did not accept the certified mail. In his October 25th letter to

Osman, respondent stated that he was “enclosing the full refund check to you...As you have been informed, I have been out ill for some time. The initial consultation you received is free and you will not be charged for it.” Respondent denied that he had returned Osman’s retainer because he had done nothing after the initial consultation.

According to respondent, he returned the entire retainer because

when [Osman] came to me, she came to me from the Legal Club of America. Part of the Legal Club of America is that you can only bill so much. I think it was like the max you can bill for any day in court was \$150 the max, all the consultations had to be free, the letters essentially were free, that’s why I didn’t refer to them, it was free so I wasn’t charging her. I was sending her back the whole thing.

Respondent maintained that, under the Legal Club plan, he was not permitted to charge Osman for drafting the complaint or for completing the CIS, although he later stated that he believed that he could charge one hour of time for preparing the complaint.

When questioned about his statement in his October 25th letter that he had “been out ill for some time,” respondent testified that he suffered from Crohn’s Disease and “would miss like two or three days at a time but then I would come in so it wasn’t like I didn’t attend to my practice, I was still able to do things.”

Osman testified that, when respondent gave her the CIS form on June 12, 2000, he simply told her to complete it and return it to him. She stated that, because she had difficulty understanding the CIS, she telephoned respondent “several times” for assistance, but he never returned her calls. According to Osman, she finally completed the CIS to the best of her ability, but had to reply “I don’t know” to many of the

questions. Osman stated that she gave the CIS to respondent's receptionist on July 13, 2000 and telephoned respondent approximately one week later, but he did not return her call. Osman testified that respondent never communicated with her after June 12, 2000.

Osman denied having received the July 11th and August 23rd letters from respondent. She also denied having received a copy of the complaint or the completed CIS. Osman disputed respondent's suggestion that Mohamed had intercepted respondent's letters, stating that she, not Mohamed, was home when their mail was delivered. Osman pointed out that respondent could not have replied to her August 21st letter on August 23rd because she had not mailed it until August 23rd and the certified mail receipt showed that it was delivered on August 31st. With respect to respondent's testimony that he received the letter by regular mail, Osman testified that she had sent it by certified mail only.

Osman stated that her September 26, 2000 letter terminating respondent's services "was rejected three times by [respondent's] office on October 2nd, 7th and 17th." Therefore, according to Osman, she sent the letter by Federal Express, using the address of her daughter's employer; the letter was delivered to respondent on October 20, 2000.

Osman testified that, as of the date of the DEC hearing, she was still married to Mohamed. She explained that they were "separated" because they slept in different rooms, although they continued to reside in the same house. She explained that she had

contacted other lawyers but there is – I can't afford and I can't trust anyone at this point really, it's my children on the line here and I can't trust attorneys at this point. You know when you have bad experience, you just

have to [sic] and I can't afford it so I'm separated and I'm discussing divorce.

The complaint charged that respondent violated RPC 1.4(a), RPC 3.3(a)(1), RPC 3.3(a)(4) and RPC 8.4(c).

The Babino Matter (District Docket No. II-B-00-033E)

In February 2000, John Babino retained respondent to assist him in having his driving privileges restored. Babino paid a \$1,000 retainer to respondent.

On October 23, 2000, respondent gave Babino a \$500 check. In this disciplinary matter, respondent has taken inconsistent positions as to the reason for that check. In his January 14, 2001 reply to the grievance, he stated that the check represented a refund of one-half of his retainer and that his "professional services were terminated at that time." However, in his answer to the ethics complaint and at the hearing, respondent maintained that his services were not terminated in October 2000. He contended that he and Babino had agreed that he would file the required motions to restore Babino's driver's license and that Babino would return the \$500 after the filing of the motions and a court hearing. Babino, on the other hand, testified that he terminated respondent's services and that the \$500 was a partial refund of the retainer.

In November 2000, respondent filed motions in the Chatham and Hackensack municipal courts to have Babino's sentences for driving while suspended and driving while intoxicated run concurrently or, in the alternative, to reduce the sentences. By

letter dated November 22, 2000, the Chatham municipal court notified the Division of Motor Vehicles (“DMV”) that the ten-year and the thirteen-month license suspensions were to run concurrently. On December 6, 2000, the Hackensack municipal court issued an order that Babino’s 1997 sentence for driving while suspended be vacated and his suspension lifted.

Babino testified that, when he retained respondent, he expected that respondent would file the required motions immediately. He further testified that he called respondent on numerous occasions and left messages on his voice mail, but did not receive any return calls. According to Babino, respondent would occasionally answer the telephone on Friday afternoons and, on the occasions he was able to speak with respondent, he merely gave various excuses for his failure to file the motions.³

According to Babino, he finally met with respondent in August 2000, at which time respondent told him that, instead of filing the motions, he

was going to talk to motor vehicle because he had friends in motor vehicle that could take care of something, that I had no idea what he was talking about, and I gave him until October to do something either file a motion or get me some kind of written evidence of paperwork on what was happening with my license. That never happened and in October when we came to an agreement, he gave me back \$500 of my money and that was it.

Babino was adamant that he had terminated respondent’s services on October 23, 2000. He complained that, despite his requests, respondent never returned his file.

³ Respondent testified that he had no employees and seemed to indicate that he had no arrangement for his office to be staffed when he was not there. The complaint did not charge, however, that respondent failed to comply with the bona fide office rule. Similarly, that issue

Babino did not know why respondent had filed the motions after he was discharged from the representation.

Paul Garjian, Esq., a friend of respondent, testified that, at respondent's request, he attended a meeting among respondent, Babino and Babino's wife in October 2000. At that meeting, according to Garjian, respondent remitted \$1,000 to Babino, with the understanding that \$500 would be returned to respondent when he obtained a court hearing. It was clear to Garjian that Babino understood that respondent would continue to represent him.

As noted earlier, respondent denied that Babino had terminated his services in October 2000. Rather, according to respondent, he remitted \$500 of the \$1,000 retainer, with the understanding that Babino would repay the \$500 after respondent filed the motions and obtained a court hearing. As to respondent's statement, in his reply to the grievance, that his services had been terminated on October 23, 2000, respondent labeled it a mistake.⁴ Respondent also contended that, during the ethics investigation, he had told the presenter that the statement was a mistake. The presenter denied respondent's contention.

Respondent admitted that he did not state, in his answer to the complaint, that Garjian was present at the October 23rd meeting. However, he maintained, he informed the ethics investigator of Garjian's presence. The presenter denied this contention as

was not explored at the hearing.

well.

Respondent also admitted that, prior to filing the motions, he was aware that Babino had filed a grievance against him. Respondent explained that he filed the motions anyway because

[Babino] explained to me he didn't want to do it but his wife was angry, too, his wife had actually paid the thousand dollars. His wife probably comes [sic] from the same account, I don't know. I like him. If I didn't like him, I wouldn't have done any of the work.

That testimony is inconsistent with respondent's testimony that he was afraid of Babino and that he requested that Garjian attend the October 23 meeting because he was concerned that Babino would attack him and he "needed [Garjian] to hit 911."

With respect to his failure to return Babino's telephone calls, respondent testified that he experienced problems receiving his voicemail messages in 2000. However, the only documentation of problems with respondent's voicemail service was in 2001, not 2000. Respondent also contended that he spoke with Babino on several occasions, although he admitted that he never communicated in writing with Babino.

As to the delay in filing the motions, respondent offered inconsistent testimony. He initially testified that he did not file the motions because he attempted to obtain an administrative hearing with the DMV and he wanted "to get the administrative hearing done first." According to respondent, he telephoned the DMV four or five times to

⁴ Although the grievance is not in evidence, respondent's reply to the grievance indicates that Babino complained that respondent had not taken any action on his behalf.

request a hearing, but never received a notice of hearing. Respondent had no proof of his conversations with the DMV. He admitted that he never submitted a written request for a hearing and never sent a letter to the DMV complaining that a hearing had not been scheduled.

Later, respondent testified that he undertook “a two tier attack. One you go by way of motions in the court and the other was through the administrative hearing,” indicating that he was doing both concurrently. However, respondent also testified that, when the DMV finally returned his telephone calls in October 2000, he told the DMV that he no longer wanted the administrative hearing because he intended to file the motions.

Respondent also blamed the delay in filing the motions on the fact that he did not have a certified abstract of Babino’s driving record. He stated that he had sent a written request to the DMV, but that it had been returned because he had sent the wrong fee amount. According to respondent, he did not resubmit the request with the correct fee because Babino had offered to get the abstract, but had obtained an incomplete, uncertified record. Respondent testified that he “called [DMV] again and talked to somebody and they ended up sending me [an uncertified abstract].” Despite the lack of a certified abstract, respondent ultimately filed the motions.

The complaint charged that respondent violated RPC 1.4(a) and RPC 1.16(a)(3).

* * *

The DEC found respondent guilty of all of the charges contained in the complaint. In the Osman matter, the DEC determined that respondent failed to return Osman's telephone calls, failed to promptly comply with her reasonable requests for information and created two false documents, which he gave to the investigator. In the Babino matter, the DEC found that respondent failed to promptly comply with Babino's reasonable requests for information and "failed to withdraw from representation after being discharged by [Babino]."

The DEC recommended that respondent be reprimanded, that he be required to complete "legal education courses relative to Ethics and the conduct of a law practice" and that he be required to practice under the supervision of a proctor for a "reasonable" period of time.

* * *

At oral argument before us, respondent brought out facts not contained in the record, concerning his wife's illness and a "computer records expert." We did not consider respondent's statements because (1) they were not part of the record, (2) he was represented by able counsel at the ethics hearing and (3) he did not file a motion to supplement the record.⁵

⁵ Respondent was aware that, if he wished to supplement the record, he would have to file a motion with us and serve the DEC. He was so advised when he questioned Office of Board Counsel about bringing an unrelated issue to our attention. Respondent did not file any motion.

* * *

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

Many of the DEC's findings rest on an assessment of the credibility of the witnesses, particularly respondent. Although the DEC did not state so directly, it obviously found that respondent was not a credible witness. We agree with the DEC's assessment. Respondent's testimony was frequently inconsistent and differed from statements made prior to the hearing. In fact, we developed a sense from the record that, at times, respondent was "making it up" as he went along, changing his testimony to evade the unethical implications of his actions. In contrast, the testimony of Osman and Babino was credible and corroborated by documentary evidence.

Osman testified that respondent failed to return her telephone calls or to otherwise communicate with her. Her August 21 and September 26, 2000 letters corroborate that testimony. As set forth above, respondent offered conflicting statements as to his communications with Osman after his retention. In his reply to the grievance, he mentioned only one conversation, which took place after she had terminated his services. At the ethics hearing, he testified that he believed that he had spoken with her on three occasions. However, his testimony was confusing and contradictory. We, therefore, found clear and convincing evidence that respondent failed to communicate with Osman

and to reply to her requests for information.

We also found clear and convincing evidence that respondent created his July 11th and August 23rd letters, after receiving Osman's grievance, to justify his failure to draft the divorce complaint. As to the July 11th letter, Osman would have received it on or about July 13th, the date that she returned the CIS to respondent. Surely, she would have communicated with respondent if she had received it, since she obviously wanted respondent to file the complaint. Furthermore, had she received the July 11th letter, she would not have stated, in her August 21st letter, that she had "left several messages on your answering machine inquiring if my husband or his attorney had contacted you." Nor would Osman have stated in her August 21st letter that she had not heard from respondent since June 12th.

As to the August 23rd letter, Osman testified, credibly, that respondent could not have received her August 21st letter on August 23rd because she had not mailed it until August 23rd and the certified mail receipt showed that it had been delivered on August 31st. Respondent's testimony that he had received the letter by regular mail on August 23rd was refuted by Osman's testimony that she had not sent it by regular mail. Furthermore, the presenter disputed respondent's testimony that he had told him, during the investigation, that he had received the letter by regular mail. Therefore, we concluded, by clear and convincing evidence, that respondent created the letters sometime after he received Osman's grievance.

The complaint charged that respondent's presentation of the fraudulent letters to

the presenter during the investigation violated RPC 3.3(a)(1) (false statement of material fact or law to a tribunal) and RPC 3.3(a)(4) (offering evidence the attorney knows to be false), as well as RPC 8.4(c). Respondent's misconduct is more properly encompassed, however, by RPC 8.1(a) (false statement of material fact in connection with a disciplinary matter), as well as RPC 8.4(c).

With respect to the Babino matter, the DEC obviously disbelieved respondent and Garjian's testimony that Babino did not terminate respondent's services on October 23, 2000. For several reasons, we agree with the DEC's assessment of the witnesses' credibility. First, respondent admitted that he did not file the motions until after he learned that Babino had filed a grievance. Furthermore, in his reply to the grievance, respondent stated that his services were terminated on October 23rd. It was not until respondent was charged with having filed the motions after he was discharged that he claimed that he had not been discharged. In addition, Babino's explanation that the \$500 check was a partial refund of the retainer was plausible, unlike respondent's explanation. There would be no reason for respondent to return one-half of the retainer to Babino, only to have that amount returned to him once he obtained a court date. Finally, the presenter denied that respondent had told him that he had a witness to the October 23rd meeting with Babino. We, therefore, found that respondent violated RPC 1.16(a)(3).

We also found clear and convincing evidence that respondent failed to return Babino's telephone calls and to reply to his requests for information. Babino testified that respondent never returned his calls and that he was able to speak with respondent on

some Fridays, when respondent personally answered the telephone. On those occasions, according to Babino, respondent merely gave excuses as to why he was not working on Babino's matter. It was also obvious from Babino's testimony that respondent never adequately explained the reasons for the purported requests for a DMV hearing. Indeed, as mentioned above, respondent's testimony as to his actions on behalf of Babino were contradictory.

In summary, respondent violated RPC 1.4(a), RPC 8.1(a) and RPC 8.4(c) in the Osman matter and RPC 1.4(a) and RPC 1.16(a)(3) in the Babino matter.


There remains the issue of the appropriate discipline. In In re Sunberg, 156 N.J. 396 (1998), the attorney was reprimanded for failing to consult with his client before permitting two matters to be dismissed, creating a phony arbitration award to mislead his partner and lying to the OAE concerning the arbitration award. There were numerous and compelling mitigating factors: the passage of ten years since the occurrence of the event, Sunberg's otherwise unblemished record, his professional achievements, his participation in a variety of bench/bar committees, his pro bono contributions, his lack of financial gain, the lack of harm to the client and his contrition and remorse.

The only mitigating factors in this case are respondent's relative youth and inexperience. An aggravating factor is respondent's untrue testimony at the ethics hearing. Of particular concern to us was respondent's predilection for resorting to dishonest conduct. The initial grievances apparently alleged that respondent neglected the cases of two clients and failed to communicate with them. That misconduct would

have resulted in, at most, an admonition. Instead of replying honestly to the grievances, respondent created two fraudulent letters in one of the matters. Such easy recourse to dishonesty warrants a suspension. See In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension where the attorney did not diligently pursue a matter, made misrepresentations to the client about the status of the matter and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter). See, also, In re D'Arienzo 157 N.J. 32 (1999) (attorney suspended for three months for multiple misrepresentations to a judge concerning his tardiness for court appearances or failure to appear); In re Mark, 132 N.J. 268 (1993) (attorney suspended for three months for misrepresenting to the court that his adversary had been supplied with an expert's report and then creating another report when the attorney could not find the original; in mitigation, the Court considered that the attorney was not aware that his statement was untrue and that he was under considerable stress from assuming the caseloads of three attorneys who had recently left the firm).

In light of the foregoing, we unanimously determined that respondent should be suspended for three months. Prior to reinstatement, he is to complete ten hours of professional responsibility courses. Two members did not participate.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

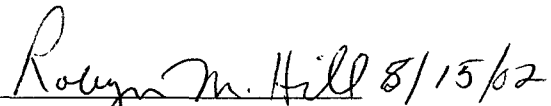
In the Matter of Meiron Bar-Nadav
Docket No. DRB 02-082

Argued: June 20, 2002

Decided: August 22, 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:		7					2


 Robyn M. Hill
 Chief Counsel