

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-176

IN THE MATTER OF :
KENNETH M. LEFF :
AN ATTORNEY AT LAW :
:

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

Decided: September 3, 2002

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

Pursuant to R.1:20-4(f), the District XIII 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.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times he maintained an office in Woodbridge, New Jersey. According to the New Jersey Lawyers’ Fund for Client Protection (“The Fund”), respondent has been ineligible to practice law since September 24, 2001. Respondent’s last known address is in Pearl River, New York. Respondent has no history of discipline.

On March 14, 2002 the DEC mailed a copy of the complaint by regular and certified mail to respondent's last known address in Pearl River, New York. This address appears in the records of the New Jersey Lawyers' Fund for Client Protection. The return receipt card indicates delivery on March 19, 2002 and bears the signature of an individual other than respondent. The certification is silent about the regular mail. Respondent did not file an answer.

* * *

The three-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate with client) and RPC 8.1(b) (failure to comply with reasonable requests for information from a disciplinary authority).

Count one charged that Keith Collymore, the grievant, retained respondent to represent him in connection with the purchase of property in Irving, New Jersey. The closing occurred in April 2000. Prior to the closing, the sellers had requested a use and occupancy agreement so that they and their tenants could remain in the premises for a period of time after the closing. Respondent negotiated the terms of the agreement on behalf of his client.

According to the complaint, neither the sellers nor the tenants vacated the premises in accordance with the terms of the agreement and then, upon finally vacating it, caused damage to and/or stole from the premises items that belonged to Collymore. The complaint charged respondent with gross neglect, based on (1) his failure to provide for

an escrow in the use and occupancy agreement, in the event that the sellers and/or tenants failed or refused to vacate or cause damage to the property; (2) his failure to ensure that a certificate of occupancy was issued prior to the closing; and (3) his failure to provide safeguards to ensure that the sellers make certain repairs required by the municipality for the issuance of a certificate of occupancy.

Count two charged respondent with a violation of RPC 1.4 for his failure to return Collymore's repeated telephone calls.

Finally, count three charged respondent with a violation of RPC 8.1(b) for his failure to reply to the DEC investigator's repeated requests for a reply to the grievance. The Office of Attorney Ethics ("OAE") requested that we amend the complaint to include an additional charge of a violation of RPC 8.1(b) for respondent's failure to cooperate with the ethics investigation and to answer the complaint.

* * *

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

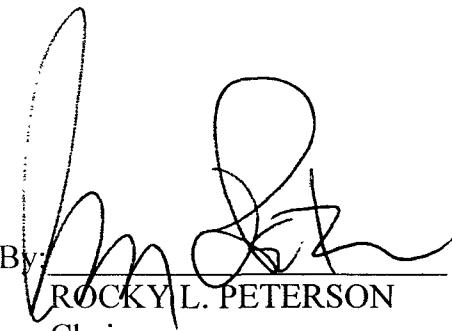
The allegations of the complaint support a finding that respondent failed to communicate with his client and failed to cooperate with disciplinary authorities, in violation of RPC 1.4(a) and RPC 8.1(b), respectively.

As to the charge of gross neglect, we were unable to find that the facts recited in the complaint sustain a finding of unethical conduct. Rather, if proven, they might form the basis for a finding of legal malpractice. We, therefore, dismissed the charge of a violation of RPC 1.1(a).

Generally, in default matters dealing with failure to communicate with the client and failure to cooperate with the ethics investigations, reprimands have been imposed. See, e.g., In re Lampidis, 153 N.J. 367 (1998) (reprimand for gross neglect, failure to communicate with client and failure to cooperate with disciplinary authorities) and In re Gruber, 152 N.J. 451 (1998) (reprimand for gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authorities).

Because of the default nature of this matter and the violations involved, we unanimously determined that a reprimand is the appropriate discipline for respondent's ethics infractions. One member 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**

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Docket No. DRB 02-176

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Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Peterson			X				
Maudsley			X				
Boylan			X				
Brody			X				
Lolla			X				
O'Shaughnessy			X				
Pashman							X
Schwartz			X				
Wissinger			X				
Total:			8				1

Robyn M. Hill 9/6/02
Robyn M. Hill
Chief Counsel