

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-268

IN THE MATTER OF
ROBERT J. HANDFUSS
AN ATTORNEY AT LAW

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

Decided: January 22, 2001

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

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

On June 6, 2000 the DEC forwarded a copy of the complaint to respondent's office address by certified mail. The certified mail receipt was returned, signed by Virginia Tobin.

When respondent did not file an answer, on July 12, 2000, the DEC forwarded a second letter to respondent's office address, advising him that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted, pursuant to R. 1:20-6(c)(1) and R. 1:20-4(f). The certified mail receipt of the second letter was returned, with an illegible signature.

Respondent did not file an answer to the formal ethics complaint. The record was then certified directly to the Board for the imposition of discipline, pursuant to R. 1:20-4(f).

* * *

Respondent was admitted to the New Jersey bar in 1984. He maintains a law office in Matawan, New Jersey.

On November 21, 2000, in another default matter, respondent received a reprimand for violations of RPC 1.1 (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4 (failure to communicate with the client).

The formal ethics complaint alleged four counts of unethical conduct. The first count charged respondent with violations of RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence). The complaint alleged that, in or about July 1997, Eleanor Savarese and Madeline Valente retained respondent to represent them as legal counsel and settlement agent in the purchase of real estate located in Aberdeen, New Jersey. Although the closing

occurred on August 19, 1999, as of November 30, 1999, the date of the grievance, respondent had failed to record the deed. He also failed to provide his clients with a complete package of closing documents at or soon after the closing.

Respondent failed to make timely payments out of the closing proceeds. Specifically, he failed to timely pay the home warranty insurance premium, causing a substantial financial loss to his client when claims under the warranty were denied. The investigative report and the attached settlement statement indicated that respondent collected \$461.10 for the home warranty at the closing.

In her grievance, Savarese indicated that this warranty was an essential selling feature of the house. Because respondent had failed to pay the premium and the warranty coverage had been denied, Savarese incurred over \$2,500 in expenses. Respondent apparently paid the premium on September 25, 1999, more than five weeks after the closing. As a result, the insurance company required Savarese to compromise her claims.

Respondent also failed to timely pay the real estate tax and sewer charges, which resulted in interest or penalty charges. The grievance specifies that respondent paid the real estate tax on November 5, 1999, four days after its due date.

The second count of the complaint charged respondent with a violation of RPC 1.4(a). The complaint alleged that, when the client questioned respondent about the filing of the deed, he misrepresented that it had been recorded. Respondent also misrepresented that the premium of the home warranty had been paid.

The third count of the complaint charged respondent with a violation of RPC 1.4(a) (failure to communicate with the client), RPC 1.15 (b) (failure to promptly deliver to the client property the client is entitled to receive) and RPC 1.16 (d) (failure to surrender client papers upon termination of representation). The complaint alleged that, despite repeated requests from the client, respondent failed and refused to provide a complete copy of the file and an accounting of the escrow account relating to the real estate purchase. Respondent failed to reply to client's inquiries and failed to keep the client reasonably informed about the status of her matter.

Finally, the fourth count alleged that respondent failed to cooperate with disciplinary authorities, in violation of RPC 8.1 (b).

* * *

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

Respondent's failure to record the deed for more than three months and to make timely payments of the insurance premium, sewer charges and real estate tax, which resulted in financial injury to the client, amounted to gross neglect and lack of diligence, in violation

of RPC 1.1 (a) and RPC 1.3, respectively.

Respondent also violated RPC 1.15(b) and RPC 1.16(d) by failing to provide a complete copy of the file and an accounting of the escrow, which the client was entitled to receive.

Respondent violated RPC 1.4 (a) by failing to reply to his client's inquiries and to keep the client reasonably informed about the matter. In addition, by misrepresenting to the client that the deed had been filed and that the home warranty premium had been paid, respondent violated RPC 8.4(c). Although the complaint charged that this conduct violated RPC 1.4(a), it more properly constituted a violation of RPC 8.4(c).

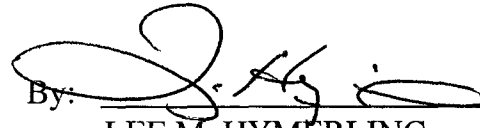
Finally, respondent's failure to cooperate with disciplinary authorities was a violation of RPC 8.1 (b).

Conduct of this nature ordinarily requires a three-month suspension, where respondent has also defaulted. See, e.g., In re Hoffmann, 163 N.J. 4 (2000) (three-month suspension in a default matter for violations of RPC 1.1, RPC 1.3, RPC 1.4 and RPC 1.16 (d) in two matters) and In re Daly, 156 N.J. 541 (1999) (three-month suspension in a default matter for violations of RPC 1.1 (a), RPC 1.3, RPC 1.4 (a), RPC 1.15 (b) and RPC 8.4 (c)).

Because of the default posture of this matter and respondent's prior ethics history, we unanimously determined to impose a three-month suspension. In addition, the Office of Attorney Ethics should conduct an audit of respondent's attorney records. One member did not participate.

We further directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/22/81

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

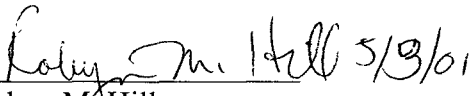
**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Robert J. Handfuss
Docket No. DRB 00-268**

Decided: January 22, 2001

Disposition: Three-month suspension

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


Robyn M. Hill
Chief Counsel