SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-151

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

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

Decided: August 21, 2002

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

This matter was before us on a certification of default filed by the District IX Ethics Committee.

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. Thereafter, on June 10, 2002, respondent filed a motion to vacate the default. Because the motion failed to adequately explain respondent's failure to answer the complaint and to provide a meritorious defense to the charges in the complaint, we unanimously determined to deny it.

Respondent was admitted to the New Jersey bar in 1984. During the relevant time, he maintained an office for the practice of law in Matawan, Monmouth County. In 2000, he was reprimanded for gross neglect, lack of diligence and failure to communicate with the client. In re Handfuss, 165 N.J. 569 (2000). That matter was before us as a default. More recently, respondent was suspended for three months for gross neglect, lack of diligence, failure to communicate with the client, failure to promptly deliver property to a client, failure to turn over a file and provide an accounting, failure to cooperate with disciplinary authorities and misrepresentation). In re Handfuss, 169 N.J. 591 (2001). In connection with that matter, the Court ordered that the OAE conduct an audit of respondent's attorney books and records. Respondent remains suspended at this time.

On February 1, 2002, the secretary of the District IX Ethics Committee ("DEC") served respondent with a copy of the complaint by certified mail sent to his office address. The certified mail return receipt card was returned, signed by "R. Handfuss." On or about April 5, 2002, the DEC secretary sent a second letter to respondent, advising him that, if he did not file an answer within five days, the charges against him would be deemed admitted and the record would be certified directly to us for the imposition of sanction. The letter also served to amend the complaint to charge respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities), by reason of his failure to file an answer. The return receipt card was signed by a V. Alexander. The record does not state if the letter was also sent by regular mail.

Respondent did not file an answer to the complaint.

On May 1, 2002, the Office of Attorney Ethics ("OAE") forwarded this matter to us for the imposition of discipline, pursuant to R.1:20-4(f)(1). The OAE sent a copy of its cover letter to respondent.

The complaint charged respondent with a violation of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.15(b) (failure to promptly deliver client or third-party property), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).[1]

Respondent was the settlement agent in a September 6, 2000 real estate transaction in which he and Cheryl (mistakenly cited as Cindy) Handfuss were the purchasers. Respondent closed the sale of the property and, pursuant to the HUD settlement statement, was to pay $339.65 to Covered Bridge Condominium Association, Inc. for specific charges. As of the date of the complaint, January 16, 2002, respondent had not turned over those funds.

By letter dated November 27, 2001, the DEC investigator requested that respondent provide a copy of his file in the underlying matter. Although the complaint stated that the letter was sent via certified mail, it did not state if respondent received the letter. Respondent did not comply with the investigator's request.

[1] It is not clear if the charge of a violation of RPC 8.4(c) was intended to allege knowing misappropriation.

* * *

Service of process was properly made in this matter. 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). There are, however, no facts recited in the complaint to support a finding of gross neglect, pattern of neglect, lack of diligence or conduct involving dishonesty, fraud, deceit or misrepresentation. We, therefore, dismissed the allegations of violations of RPC 1.1(a) and (b), RPC 1.3 and RPC 8.4(c).

As to respondent's failure to turn over third-party funds, the complaint stated that he acted as settlement agent in a real estate transaction. He was obligated to turn over funds totaling $339.65 and inexplicably failed to do so. Respondent, thus, violated RPC 1.15(b).

Generally, the failure to promptly turn over third-party funds results in the imposition of an admonition. See In the Matter of E. Steven Lustig, Docket No. DRB 02-053 (April 19, 2002) (admonition imposed where an attorney, while representing a party to a matrimonial action, failed to promptly turn over funds he had been holding in his trust account to satisfy an outstanding hospital bill; the attorney held the funds in his trust account for three and one-half years; he also practiced law while on the ineligible list and committed recordkeeping violations); In the Matter of Philip J. Moran, Docket No. DRB 01-411 (February 11, 2002) (admonition imposed where an attorney, while representing the buyers in a real estate transaction, failed to turn over funds due to both the sellers and the buyers; the attorney also demonstrated a lack of diligence by not timely paying

charges due after the closing and failing to return his clients' telephone calls); and In the Matter of Craig A. Altman, Docket No. DRB 99-133 (June 17, 1999) (admonition imposed where the attorney failed to pay a medical provider out of settlement proceeds, despite having sent a letter of protection to the provider and being aware that the bill was outstanding).

Were this respondent's first appearance before us, an admonition might suffice. Respondent, however, has been disciplined twice, both of those matters having come to us as defaults. This is obviously an attorney who does not learn from his mistakes and who continues to thumb his nose at the disciplinary system. We believe, thus, that discipline greater than an admonition is necessary. We unanimously determined to impose a reprimand. Three members did not participate.

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

Rocky L. Peterson
Chair
Disciplinary Review Board