

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 01-023

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IN THE MATTER OF  
JOSEPH BOREK\*  
AN ATTORNEY AT LAW

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

Decided: October 26, 2001

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

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

The three-count complaint alleged that respondent grossly neglected two matters and failed to cooperate with ethics authorities in the investigation of the matters.

On October 19, 2000, the DEC mailed a copy of the complaint by regular and certified mail to respondent’s last known office address, 109 Wanaque Avenue, Pompton

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\*Parts of the record also refer to respondent as Joseph M. Borek. In addition, the annual attorney registration form lists respondent as Joseph M. Borek, Jr.

Lakes, New Jersey 07442. The certified mail receipt was returned signed by respondent, indicating delivery on October 23, 2000. The regular mail was not returned. Respondent did not file an answer. On November 29, 2000, the DEC sent respondent a second letter, informing him that, if he did not reply within five days, the matter would be certified to us for the imposition of sanctions and the allegations of the complaint would be deemed admitted. Again, the certified mail receipt was returned signed by respondent and the regular mail was not returned. Respondent has not filed an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1987. Another default matter is scheduled before us in November 2001 and alleges gross neglect, lack of diligence and failure to communicate with the client. In the Matter of Joseph M. Borek, Docket No. DRB 01-355.

### **Count One - The Vreeland Foreclosure Action**

The first count of the complaint alleged that respondent violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 3.2 (failure to expedite litigation) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent represented the Vreeland estate from 1996 to late 1999. According to the complaint, respondent failed to file a foreclosure action on behalf of the estate and made

several misrepresentations about the status of the foreclosure action to the executor, the estate's attorney and the estate's accountant. On more than one occasion, respondent falsely advised each party that the foreclosure was completed. He also misled each party that a sheriff's sale had been scheduled.

According to the complaint, respondent failed to reply to numerous inquiries from the estate's attorney about the foreclosure action and to provide the necessary information to file the estate's tax returns.

### **Count Two - The Comtel Debit Technologies Matter**

The second count charged respondent with violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 3.2, RPC 3.4(d) (failure to make reasonable efforts to comply with discovery requests), RPC 4.1 (false statement of material fact to a third person) and RPC 8.4(c).

Respondent was retained by Comtel Debit Technologies, LLC ("Comtel") in June of 1997 to represent Comtel's interests in a collection matter against Total Network Telecommunications ("TNT"). Respondent filed a complaint against TNT in July 1997. In December 1997, TNT filed an answer and counterclaim against Comtel. The formal ethics complaint alleges that respondent failed to comply with TNT's motions for discovery. Also, at various times throughout the course of the litigation, respondent misrepresented to

opposing counsel that Comtel was “difficult and uncooperative” and that this was the reason for Comtel’s failure to comply with TNT’s discovery requests. Moreover, respondent did not advise Comtel that these discovery demands were being made. Ultimately, TNT filed a motion to dismiss Comtel’s complaint and to suppress Comtel’s answer to TNT’s counterclaim. Respondent did not oppose the motion or even inform Comtel that it had been filed.

In August 1999, the court dismissed the complaint and suppressed Comtel’s answer to the counterclaim. On January 26, 2000, TNT obtained a judgment against Comtel in the amount of \$1,730,323.30. Respondent never advised Comtel of either of these events. In April 2000, respondent denied to Comtel’s general counsel that the judgment had been entered. In addition, respondent failed to reply to Comtel’s general counsel’s requests for copies of all correspondence.

The complaint also stated that respondent had failed to serve TNT with all post-judgment discovery. Ultimately, a levy was executed on Comtel’s business accounts and contempt proceedings were initiated against it for failure to comply with post-judgment discovery. Finally, on April 13, 2000, Comtel retained new counsel. The record is silent about the outcome of the case.

### **Count Three - Failure to Cooperate with Ethics Authorities**

The third count of the complaint charges respondent with violations of RPC 8.1

(failure to cooperate with disciplinary authorities), in that he failed to return the DEC investigator's numerous telephone messages and reply to letters requesting information about the grievances.

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Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges 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).

In the Vreeland matter, respondent failed to institute a foreclosure action in the four years that he represented the Vreeland estate, in violation of RPC 1.1(a) and RPC 1.3. He also failed to keep the estate's attorney adequately and accurately informed about the status of the foreclosure action, in violation of RPC 1.4(a). Moreover, respondent's misrepresentations to the executor, the estate's attorney and the estate's accountant violated RPC 8.4(c). We dismissed, however, the charge of a violation of RPC 3.2 as inapplicable. There was no litigation to expedite. Similarly, we dismissed the charge of a violation of RPC 1.1(b) because, generally, neglect in at least three matters is required for a finding of a pattern of neglect.

In the Comtel matter, respondent's repeated failure to prosecute Comtel's claims and

defend against TNT's counterclaim violated RPC 1.1(a) and RPC 1.3. Also, his failure to respond to TNT's numerous discovery demands violated RPC 3.4(d). Moreover, his misrepresentations to opposing counsel regarding the reasons for Comtel's failure to comply with discovery requests and failure to advise Comtel of the discovery demands, the motions for dismissal, the dismissal of the complaint without prejudice and the entry of a judgment of default violated RPC 1.4(a), RPC 4.1 and RPC 8.4(c).

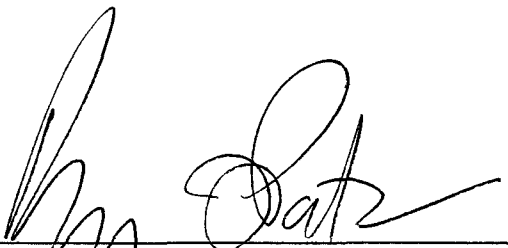
Lastly, respondent's failure to cooperate with disciplinary authorities violated RPC 8.1(b).

A short-term suspension usually results in default matters similar to the case before us. See, e.g., In re Venenchak, 156 N.J. 548 (1999) (default; three-month suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to expedite litigation, failure to cooperate, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice); In re Clemmons, 165 N.J. 568 (2000) (default; six-month suspension imposed where the attorney grossly neglected clients' matters, failed to provide a client with a written fee agreement, engaged in record-keeping violations and misrepresented matters to disciplinary authorities and to her clients; the attorney was ineligible to practice law at the time for failure to pay the Supreme Court's Fund for Client Protection); and In re Malfara, 165 N.J. 578 (2000) (default; six-month suspension imposed where the attorney grossly neglected three separate client matters, failed to communicate with the clients in those matters, failed to utilize

written retainer agreements and failed to cooperate with disciplinary authorities in the investigation and prosecution of the matters; prior reprimand for gross neglect, failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice). Here, respondent committed numerous serious violations and failed to cooperate with disciplinary authorities by not replying to the DEC's requests for information about the grievance and not filing an answer to the complaint. Moreover, his actions in Comtel caused grievous consequences to his client, including a \$1.7 million default judgment and a levy in that amount on Comtel's business accounts. Accordingly, we unanimously determined to impose a six-month suspension for respondent's misconduct. One member did not participate.

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

Dated: 10/26/09

  
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Joseph Borek**  
**Docket No. DRB 01-023**

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**Decided:**                    October 26, 2001

**Disposition:**            six-month suspension

Members	Disbar	six-month 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*                    1/8/02  
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Robyn M. Hill  
Chief Counsel