

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-245

IN THE MATTER OF :
: SHIRLEY WATERS-CATO :
: AN ATTORNEY AT LAW :
:

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

Decided: January 28, 1999

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics ("OAE") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's

failure to file an answer to the formal ethics complaint. On March 27, 1998 the DEC served respondent with the complaint by regular and certified mail sent to her last known home address, 165 Oakland Road, Maplewood, New Jersey 07040. Although the certified mail was returned stamped "unclaimed," the regular mail was not returned. Respondent did not file an answer.

On April 24, 1998 the DEC sent respondent a second letter by regular and certified mail informing her that, if she did not reply within five days, the matter would be certified directly to the Board for the imposition of sanctions. Again, the certified mail was returned marked "unclaimed," but the regular mail was not returned. Additionally, notice of the Disciplinary Review Board review was published in New Jersey Lawyer and New Jersey Law Journal on August 31, 1998. Respondent has not replied to any communications regarding this matter.

Respondent was admitted to the New Jersey bar in 1988. She has been suspended from the practice of law since 1995. Her last known home address listed above was for 1994. Respondent's disciplinary history began in 1991 when she was privately reprimanded for ethics violations in three real estate matters. In the Matter of Shirley Waters-Cato, DRB-91-299 (1991). In April 1995, respondent was suspended for three months for her failure to comply both with attorney recordkeeping requirements and directives from the OAE. In re Waters-Cato, 139 N.J. 498 (1995). Later that year, respondent received an additional one-year suspension for misconduct that included gross neglect, pattern of neglect,

misrepresentations and failure to disclose material facts, failure to respond to disciplinary authorities and conduct prejudicial to the administration of justice. In re Waters-Cato, 142 N.J. 472 (1995). In October 1997, respondent was suspended for three years following findings of pattern of neglect, lack of diligence, failure to communicate, failure to return a client file and failure to cooperate with the ethics authorities. In re Waters-Cato, 151 N.J. 492 (1997). Respondent remains suspended to date.

The complaint alleges that in June 1994 respondent requested Advantage Title Agency, Inc. ("Advantage") to conduct title searches and prepare title commitments and policies on a pending real estate matter. On June 27, 1994 respondent closed the transaction. However, respondent failed to record the mortgage document in the county clerk's office. Additionally, respondent did not cancel one of the two mortgages listed in the title commitment and failed to pay Advantage for its services. For approximately three years, Advantage attempted to contact respondent by telephone calls and written communications. Respondent failed to reply to any communication from Advantage. Ultimately, Advantage obtained a new copy of the mortgage from the lender and properly recorded it.

After Advantage filed a grievance against respondent, a DEC investigator attempted to contact respondent. The DEC investigator's report states that the "ordinary mail sent to her was not returned." Apparently, the investigator attempted service by both regular and certified mail and the certified mail was returned unclaimed. The report also details the investigator's difficulties in attempting to contact respondent by telephone. Respondent

failed to reply to the investigator's regular mail, which was not returned.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made in this matter. Following a de novo review of the record, the Board found 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).

The record supports a finding that respondent violated RPC 1.3 and RPC 1.1(a). Respondent took no action to cancel one of the two mortgages listed in the title commitment. As a result, the client's interests were placed in jeopardy. Moreover, it was only through Advantage's efforts that the mortgage was finally recorded, more than three years after the closing.

The remaining two violations are also substantiated by the record. Although the DEC investigator reported that Advantage has not provided documentation that it attempted to contact respondent over the three years, pursuant to R. 1:20-4(f)(1) the allegation in the unanswered complaint is deemed admitted. RPC 1.4(a) states that "[a] lawyer shall keep a

client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” Although Advantage was not respondent’s client, its request for information was reasonable, as it was protecting the client’s interest. Respondent, thus, violated RPC 1.4(a). Lastly, respondent’s failure to reply to the DEC investigator’s requests for information about the grievance and failure to answer the formal ethics complaint violated RPC 8.1(b). An attorney has an obligation to cooperate fully with disciplinary authorities. In re Smith, 101 N.J. 568, 572 (1986); In re Gavel, 22 N.J. 248, 263 (1956).

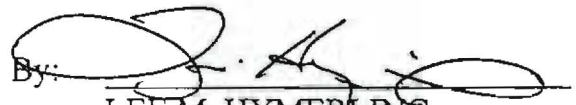
Ordinarily, cases involving mixed combinations of violations such as these would require either admonition or reprimand. See In the Matter of George S. Crisafulli, DRB-96-040 (admonition for gross neglect, lack of diligence, failure to communicate and failure to cooperate with disciplinary authorities); In the Matter of Charles Deubel, III, DRB-95-051 (admonition for failure to record the deed in a mortgage transaction for fifteen months); In re Lampidis, 153 N.J. 367 (1998) (reprimand for gross neglect, lack of diligence, failure to communicate and failure to cooperate with disciplinary authorities); In re Halpern, 117 N.J. 672 (1989) (reprimand for failure to pay off a mortgage for thirteen months and failure to maintain proper records).

Respondent’s extensive disciplinary history demonstrates that she is incorrigible. Additionally, she has steadfastly refused to conform to the ethical standards of the profession. To compound matters, she ignored attempts to obtain information about the

grievance and failed to file an answer to the complaint, causing this matter to proceed on a default basis. Accordingly, the Board determined to suspend respondent for three months, the suspension to run consecutively to the three-year suspension respondent is currently serving. One member would have disbarred respondent. The Board also determined that the Order of the Supreme Court requiring that, upon reinstatement to the practice of law, respondent practice under a proctor for two years, In re Waters-Cato, 151 N.J. 492 (1997), should be expanded to an indefinite period until further Order of the Court.

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

Dated: 1/28/99

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board