SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-459

IN THE MATTER OF

KENNETH H. GINSBERG

AN ATTORNEY AT LAW

Decision

Argued: March 14, 2002

Decided: May 20, 2002

William C. Sandelands appeared on behalf of the District X Ethics Committee.

Thaddeus J. Hubert, III appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District X Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in1974. He has no prior discipline.

The one-count complaint alleged that respondent backdated estate-planning documents, in violation of RPC 4.1(a)(1) (making false statements of material fact or law to a third person), RPC 8.4 (a) (attempt to violate the Rules of Professional Conduct or

induce another to do so) and RPC 8.4(c) (misrepresentation). In his answer to the complaint, respondent admitted all of the facts and allegations contained in the complaint and asked for leniency for his misconduct.

In the mid-1980s, while shopping for a new car, respondent met the owner of a network of automobile dealerships, Joseph Callaremi, Sr., with whom respondent developed a friendly relationship. Callaremi retained respondent to represent him and his dealerships in a variety of legal matters.

In or about early 1988, Callaremi and his wife, Rae, retained respondent to prepare their estate plans. The plans included their wills, two Grantor Retained Investment Trusts ("GRITS") and a Cross Purchase of Stock Agreement. The GRITS were supposed to transfer Callaremi's stock in the dealerships to his family upon his death, thereby reducing the estate's tax liabilities. The stock agreement was designed to prevent the transfer of Callaremi's dealership stock to anyone other than the specified family members.

In or about May or June 1988, respondent, admittedly not an estate planning expert, sought the assistance of another attorney, who specialized in that field. Over the next few months, respondent relayed information from the Callaremis to the attorney, who then prepared the estate-planning documents for respondent's review. At some point, the attorney warned respondent that newly proposed legislation threatened the future use of GRITS and stock agreements executed after June 1988. Respondent believed that the other attorney first informed him of this constraint just after June 1988 and the preparation of the documents.

Respondent testified that, after he found out about the proposed legislation, he spoke to Callaremi about the legislation's possible interference with the use of the estate planning documents as a tax sheltering device. According to respondent, Callaremi suggested that they backdate the documents to June 1988. Respondent agreed.

In or about December 1988, respondent took the completed documents to Callaremi's dealership. There, in the showroom, Callaremi, his wife and their three sons, Anthony, Joseph, Jr. and Michael, executed the documents, backdating them to June 1, 1988.[1] According to respondent, all of the family members were aware that the documents were being backdated and did not object to the plan.

Respondent, the only witness at the DEC hearing, cited the several reasons why he allowed the Callaremis to backdate the documents: (1) to avoid the effects of the proposed legislation;[2] (2) Callaremi had already incurred legal fees for the estate plan and did not want the estate plan efforts to go to waste; and (3) at the signing, Callaremi was gaunt and appeared to be very ill; he implored respondent to set the estate plan in motion, causing respondent to sense an urgency in that request.

In October 1989 Callaremi died of cancer. Callaremi's dealership stock passed to Rae. His three sons took over the operation of the dealerships. Respondent testified that, not long thereafter, the sons began to quarrel over the operation of the family business. A polarization

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[1]Each of the three sons held a nominal share of dealership stock.

[2]Apparently, the legislation was never passed. As it turned out, there was no benefit to backdating the documents.

developed: Anthony and Joseph on one side, Michael and Rae on the other. According to respondent, the business suffered to such an extent that Rae determined to oust Anthony and Joseph from the business. Respondent declined participation in that matter, advising Rae to retain another attorney for that purpose.

In April 1992, Anthony and Joseph filed a lawsuit against Rae, Michael, respondent and others for their removal from the family dealerships. Respondent testified that, during the litigation that ensued, Anthony and Joseph told respondent that they would bring ethics charges against him for his part in backdating the estate planning documents, unless he provided trial testimony favorable to their position. Specifically, respondent alleged, they wanted him to testify that Callaremi intended to turn the control of the dealerships over to them upon his death. Respondent believed, however, that Callaremi had intended Rae to take control of the dealerships after his death. Respondent viewed the sons' request for favorable testimony as a blackmail attempt, which he revealed to the court at trial. Respondent "came clean" of his own volition, admitting to the trial judge that he had engaged in wrongdoing by backdating the estate-planning documents for the Callaremis.

Respondent acknowledged at the DEC hearing that backdating the documents was a serious mistake that snowballed into a series of "dark" and difficult issues that ultimately led him to leave the practice of law, change professions and move to Florida.

Finally, respondent was both forthright and contrite during the DEC proceedings. He argued, in mitigation, that his conduct was aberrational, since he has had no other brushes

with the disciplinary system in over twenty-five years at the bar. According to respondent, he was not motivated by self-gain, but by the desire to help a sick friend. Finally, respondent argued, he is no longer engaged in the practice of law.

* * *

Because there were no disputed issues, the DEC focused on the mitigating circumstances surrounding respondent's actions. In the process, the DEC inadvertently did not list the violations it found. Nevertheless, it recommended the imposition of a reprimand, based on respondent's forthrightness in coming forward, his contrition, lack of prior discipline and the passage of time since the misconduct occurred (thirteen years).

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

As admitted by respondent, backdating the estate planning documents for Callaremi was a misrepresentation, in violation of RPC 8.4(c). The false date of June 1, 1988 was affixed to those documents in December 1988. Its purpose was to allow the Callaremis to take advantage of tax provisions that might not have been available to them because of the proposed legislation. In addition, respondent violated RPC 8.4(a) by knowingly assisting Callaremi to violate the Rules of Professional Conduct.

We did not find, however, that respondent violated RPC 4.1(a)(1). That rule is inapplicable here. It covers situations where, in representing a client, the attorney makes a

false statement of material fact to a third person. There is no evidence that respondent exhibited additional misconduct, beyond backdating the estate planning documents. Therefore, we dismissed the allegation of a violation of RPC 4.1(a)(1).

In mitigation, we considered that respondent was forthright and contrite in his admissions of wrongdoing, first in the underlying litigation and then in the ethics proceeding. Moreover, respondent was not motivated by self-gain and no damage resulted from the backdating. Furthermore, this is respondent's only brush with ethics authorities in more than twenty-five years at the bar. Finally, thirteen years have elapsed since respondent's misconduct, without any further incident. On the other hand, we are mindful that respondent benefitted from fortuitous circumstances. Had the legislation been passed, his conduct would have constituted tax fraud.

This case is similar to several fraud cases that resulted in reprimands. See, e.g., In re Hankin, 146 N.J. 525 (1996) (reprimand imposed on attorney who, prior to his admission to the New Jersey bar and while acting as a businessman, issued a falsified receipt to a purchaser of a boat, suspecting that the purchaser would use that receipt to evade the payment of sales tax); In re Kantor, 165 N.J. 572 (2000) (reprimand imposed on attorney who misrepresented to a municipal court judge that the attorney's automobile was insured at the time that an accident occurred, when, in fact, it was not); and In re Paterno, 164 N.J. 364 (2000) (reprimand imposed for attorney who engaged in fraudulent conduct by preparing a deed transferring title to property owned by his client to a "dummy" New York corporation

that the client also owned, in an attempt to improperly avoid the execution of a judgment against the client). After balancing the mitigating and aggravating circumstances present in this case, seven members unanimously determined to impose a reprimand. Two members did not participate.

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

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kenneth H. Ginsberg
Docket No. DRB 01-459

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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:			7				2

Robyn M. Hill 5/29/02
Robyn M. Hill
Chief Counsel