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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-027

IN THE MATTER OF :
:
BARRY W. HOROWITZ :
:
AN ATTORNEY AT LAW :
:

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

Decided: May 4, 2004

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

Pursuant to R.1:20-4(f), the District VIII 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 November 20, 2003, the DEC secretary sent a copy of the
complaint to respondent by certified and regular mail, at 197
Route 18, Suite 102, East Brunswick, New Jersey 08816, and 350
Fifth Avenue, Suite 7220, New York, New York 10118. Both
certified mail receipts were signed, indicating delivery in

November 2003. The certification is silent about the regular mail. Respondent did not file an answer.

Respondent was admitted to the New Jersey bar in 1986. He has no disciplinary history. He formerly maintained an office in East Brunswick, Middlesex County. Currently, respondent maintains an office in New York, New York. The report from the New Jersey Lawyers' Fund for Client Protection ("CPF") indicates that he has been ineligible to practice law since September 2001, for failure to pay the annual assessment to the CPF.

Count One

In December 2000, Clarence Turner retained respondent to represent him in connection with a civil rights/ employment matter. Respondent filed a complaint on December 21, 2000, in Turners' behalf. In November 2001, respondent forwarded interrogatory answers to defense counsel. Subsequently, on March 15, 2002, respondent sent signed copies of the interrogatory answers to defense counsel. In addition, several letters were exchanged between respondent and defense counsel with regard to scheduling Turner's deposition, which was taken on February 28, 2002, and March 25, 2002. Respondent represented Turner at those proceedings. Thereafter, on April

24, 2002, respondent conducted a deposition of a witness in furtherance of his representation of Turner.

In May 2002, the defendants filed a motion for summary judgment. On May 29, 2002, respondent wrote to the court to request additional time to conduct discovery, and to respond to the motion. Although the time to file the opposition was extended, respondent failed to do so, and the motion was granted on July 29, 2002.

The complaint charged respondent with a violation of RPC 1.3 (lack of diligence).

Count Two

Throughout the litigation, Turner made numerous attempts to contact respondent to obtain information and to discuss his case. Respondent did not reply. In addition, Turner was not aware that his case had been dismissed until he read about the dismissal in a newspaper, sometime later. After Turner learned his case had been dismissed, he again tried to contact respondent, whereupon he learned that respondent had closed his New Jersey law office.

The complaint charged respondent with violating RPC 1.4(a)(failure to communicate with client).

Count Three

On May 13, 2003, the DEC investigator sent a letter to respondent by certified mail to his New Jersey law office address, enclosing Turner's grievance, and requesting a reply. The certified mail receipt was returned indicating delivery to respondent's agent. Respondent did not reply to the investigator's request.

On June 10, 2003, the investigator sent a letter by regular mail to respondent at his New York office. The letter was not returned to the DEC. On June 11, 2003, the investigator requested that another individual go to respondent's New Jersey office address to investigate. The location was a multi-story office building. Respondent's name was listed in the building directory under Suite 102. A secretary in that suite, however, advised that respondent no longer worked there. The secretary had a New York office address, telephone number, and e-mail address for respondent.

On June 25, 2003, the investigator attempted to contact respondent at the New York phone number, to no avail. As a result, on that date, the investigator sent a letter to respondent, via certified and regular mail to his New York office address. The certified mail receipt was returned

indicating delivery. The regular mail was not returned. Respondent did not reply to any of the investigator's letters.

The complaint charged respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).¹

Count Four

Respondent has been on the Supreme Court's list of attorneys ineligible to practice law for failure to pay the annual assessment to the CPF since September 24, 2001. As noted above, respondent continued to represent Turner after he became ineligible to practice.

The complaint charged respondent with a violation of RPC 5.5(a) (practicing law while ineligible).

Service of process was properly made. Certified mail receipts were returned, indicating delivery of the complaint to respondent. 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 its letter transmitting this matter to the Board, the Office of Attorney Ethics, on behalf of the DEC, asked that the Board amend the complaint to charge respondent with a violation of RPC 8.1(b), based on his failure to file an answer.

Although respondent initially pursued Turner's matter in his behalf, he inexplicably allowed the matter to be dismissed on summary judgment. Thereafter, he failed to notify his client of the dismissal and, in fact, closed his office without notifying Turner, who was unable to communicate with him. In addition, respondent failed to reply to the DEC investigator's requests for information, and practiced law while ineligible.

In the past, a combination of violations similar to respondent's has resulted in a brief term of suspension. See In re Van Wart, 162 N.J. 102 (1999) (three-month suspension in a default matter for practicing law while ineligible, failure to deliver property to a third party, and failure to cooperate with disciplinary authorities); In re Carlson, 151 N.J. 495 (1997) (three-month suspension in a default matter where the attorney's lack of diligence and failure to keep his client informed amounted to the abandonment of the client); and In re Jennings, 147 N.J. 276 (1997) (three-month suspension where attorney abandoned one client and failed to cooperate with disciplinary authorities).

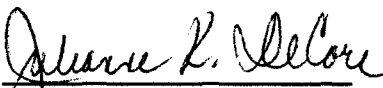
Respondent's misconduct combined all the worst of the above matters. His lack of diligence allowed the unopposed dismissal of his client's case. He then failed to advise his client of the dismissal. In addition, he practiced law while ineligible,

and failed to cooperate with disciplinary authorities. As seen from the above cases, two of which were defaults, this type of misconduct warrants a three-month suspension. There is nothing about the facts of this case to suggest that we should depart from that quantum of discipline here. Accordingly, we determine to impose a three-month suspension.

Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

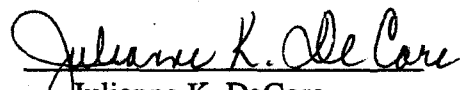
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Barry W. Horowitz
Docket No. DRB 04-027

Decided: May 4, 2004

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>		X					
<i>Holmes</i>							X
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		7					2


 Julianne K. DeCore
 Chief Counsel