SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-088
District Docket Nos. XIV-01-382E,
XIV-02-070E, XIV-02-113E, and
XIV-02-164E

IN THE MATTER OF	:
KENNETH M. LEFF	:
AN ATTORNEY AT LAW	:

[redacted]

Argued: May 20, 2004

Decided: July 7, 2004

Brian D. Gillet appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler 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 on a disciplinary stipulation, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-15(f).

Respondent was admitted to the New Jersey bar in 1981. On November 13, 2002, he received a reprimand in a default matter for failure to communicate with the client in a real estate transaction

and failure to cooperate with ethics authorities in the investigation of the matter. In re Leff, 174 N.J. 508 (2002).

The Honorable Robert A. DeLonghi, A.J.S.C., referred this matter to the OAE. It arose out of a civil action titled Doroshenko v. Clifford Johnson. That referral prompted an OAE investigation, which eventually resulted in a disciplinary stipulation regarding the four separate real estate transactions described below.

I. The Doroshenko to Johnson Matter

On June 16, 1999, respondent represented the buyer, Clifford Johnson, in the purchase of real estate located at 17 Lenox Avenue, Irvington. As a condition at closing, respondent was to hold $2,000 in escrow, pursuant to a Use and Occupancy Agreement, until Doroshenko's departure from the premises, at which time respondent was to release the escrowed funds. Respondent failed to release the funds after Doroshenko vacated the premises.

During the investigation of this matter, respondent stated that:

> Following Seller's leaving the premises, my client complained of the condition in which the Seller left the property and sent me a written objection to the release of the escrow. After some time had passed and the parties were unable to resolve their dispute with respect to the disbursement of the escrow, Seller eventually filed suit for a

> court determination. As escrow agent, I was named as a party.
>
> Due to my inability to overcome severe anxiety problems I found myself unable to address this lawsuit naming me as a defendant. I received faxes, telephone messages, and letters from the attorney for the Seller, but was unable to open the correspondence, read the faxes, or return the messages. The suit eventually resulted in a judgment requiring the payment of the escrow to the Seller, and an order in aid of litigant's rights requiring me to pay Seller's attorney $500.00 as attorney fees.
>
> [Exhibit 20.]

In December 2002, respondent returned the $2,000 and paid the $500 attorney's fee.

II. **The Campbell and Petti Matters**

On September 20, 2001, Thomas Campbell, of Campbell and Petti Investment Co., filed an ethics grievance alleging that respondent failed to pay the final water bills, while acting as settlement agent in two real estate transactions, in which his clients purchased Campbell and Petti property.

A. Campbell and Petti to Hughes-Devarel

The first transaction involved the October 27, 2000 sale of property located at 38-40 Longfellow Avenue, Newark, to Denise Hughes and Bertram Devarel.

At closing, respondent placed $1,500 in escrow to secure payment of the seller's final water bill.

Over two years later, respondent determined the correct amount of the final water bill ($81.38) and, by letter dated December 17, 2002, returned to sellers $1,763.66, including the $1,500, which had been set aside for the final water bill. Respondent also paid a $3 late fee to the City of Newark.

B. Campbell and Petti to Alexander

The second transaction involved the September 29, 2000 sale of 31-33 Palm Street, Newark, to Grace Alexander.

In addition to Campbell and Petti's water bill grievance, Alexander filed a separate grievance, claiming that respondent improperly withheld $1,500 in escrow for the payment of third and fourth quarter taxes for 2000. According to Alexander, respondent neither paid the taxes nor returned the escrowed funds. Respondent stated in his reply to the OAE that

> [p]roperty taxes are to be paid on a quarterly basis, and at the time of closing, the

> mortgage company required that taxes be collected through the 4th quarter of 2000. The City of Newark, however, was late in completing its budget and assessing taxes, and third and fourth quarter taxes had not yet been calculated at the time of closing. An estimated amount expected to be sufficient to pay these taxes was therefore set aside in escrow at the time of closing to be disbursed to the City, with any balance to be returned to Ms. Alexander after payment to the City.
>
> [Exhibit 17A.]

Immediately following the closing, respondent contacted the taxing authorities, but was unable to establish the amount due. Thereafter, he failed to take action, and admittedly neglected the case. Respondent also admitted failing to return Alexander's telephone calls regarding the status of the matter.

Eighteen months later, in March 2002, respondent finally addressed the tax and penalty issues. He returned the escrowed funds; paid penalties from his own funds; paid an amount to the seller which had been escrowed for the final water bill; and paid the remaining balance to Alexander. The funds were disbursed as follows:

Check No.	Date	Payee	Amount	Memo	Exhibits
2789	3/31/02	Campbell & Petti Investment Co., LLC	$ 100.00	Return of Escrow-Alexander	17C
2792	3/31/02	Grace Alexander	$ 251.65	Release of Escrow	17C
2793	3/31/02	Tax Collector, Newark	$1,248.35	3rd & 4th Quarter 2000	17C
3081	3/31/02	Tax Collector, Newark	$ 301.52	4198-58	17D

[Stipulation at 6.]

All of the checks were drawn on respondent's trust account, with exception of check no. 3081, which was drawn on respondent's business account, and represented his payment of penalties from his own personal funds.

Respondent advised Alexander of his disbursements on March 31, 2002. In December 2002, he disbursed the remaining funds.

III. **The McKenzie Matter**

On October 3, 2000, respondent represented Karen and Royston McKenzie in their purchase of a house in Irvington.

At the closing, respondent placed $1,025.01 in his trust account for third and fourth quarter 2000 property taxes. Thereafter, he learned that the first mortgagee had already paid those taxes.

Respondent took no further action for over two years. Thereafter, on December 16, 2002, he returned the McKenzies' $1,200, as well as $250 that had been held pending the resolution of an outstanding judgment.

IV. The Recordkeeping Violations

Respondent is also licensed to practice law in New York. In April 2002, the State of New York Grievance Committee for the Ninth District ("Grievance Committee") conducted a confidential investigation of respondent's New York practice. On April 2, 2002, respondent and the Grievance Committee executed a "Limited Waiver of Confidentiality and Consent to Share Information," and a later "Limited Waiver," in order to share information with the OAE.

Pending the conclusion of the New York proceedings, the OAE adjourned its New Jersey proceedings, including a previously-planned demand audit of respondent's attorney trust and business accounts.

The OAE conducted the adjourned audit on March 24, 2003. Respondent presented a copy of his December 18, 2002 response to the Grievance Committee, and the OAE used that document in its investigation. In his response, respondent stated that, as of March 28, 2002, his trust account contained funds on account of twenty-three open client matters.

Respondent also furnished the OAE with three-way reconciliations of his trust account for the time period in question. The reconciliations showed that, from March 2002 to December 2002, respondent had resolved eleven of the twenty-three

outstanding funds matters. Moreover, by August 2003, respondent had resolved virtually all of the discrepancies in his trust account, leaving only $.88 in unidentified funds on hand. Nevertheless, the reconciliations showed serious deficiencies in respondent's recordkeeping:

> A. Client ledger descriptions were not sufficiently detailed. R. 1:21-6 (c)(1)(B);
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> B. Separate trust account client ledger cards were not maintained for bank charges. R. 1:21-6(d);
>
> C. Respondent failed to perform three-way trust account reconciliations. R.1:21-6(c)(1)(H);
>
> D. Respondent failed to resolve inactive client trust account balances in a timely fashion. R. 1:21-6(d).
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> [Stipulation at 11.]

The OAE was satisfied that respondent had properly disbursed the funds and had not misappropriated escrow funds.

In all, respondent admitted that he lacked diligence (RPC 1.3) and failed to promptly deliver funds to clients or third persons (RPC 1.15(b)) in Alexander, McKenzie, Johnson, and Hughes-Devarel. Respondent also admitted that he exhibited a pattern of neglect, in violation of RPC 1.1(b). Lastly, respondent admitted that he had failed to properly maintain his trust and business account records, in violation of R. 1:21-6 and RPC 1.15(d).

Respondent offered mitigation for his misconduct. In May 2002, respondent sought psychiatric care, as evidenced by a May 16, 2002 report from a psychiatrist, Aristide H. Esser, M.D., which detailed the following conditions, for which respondent was treated: 1) Dysthymic Disorder Atypical; 2) Obsessive-Compulsive Disorder; and 3) Attention Deficit Hyperactivity Disorder. Respondent was placed on a regimen of anti-depressants and mood-stabilizers.

In December 2002, respondent placed himself under the care of another psychiatrist, Scott Lawrence, M.D. As of March 20, 2003, respondent was undergoing weekly psychotherapy sessions, augmented by Paxil and Wellbutrin. According to Dr. Lawrence, respondent's problems in his law practice were largely attributable to "chronic depression with anxiety." He opined that respondent was "compliant with treatment and is showing significant improvement."

The OAE recommended the imposition of a three-month suspension, citing respondent's 2002 reprimand for failure to communicate with the client in a real estate transaction and failure to cooperate with ethics authorities in the investigation of the matter. The OAE presented case law in support of its position, citing In re Gilbert, 159 N.J. 505 (1999) (three-month suspension for attorney who failed to promptly return $6,400 in escrow funds, deposited with him by a third party under a written

escrow agreement; the attorney also improperly asserted a lien on the entire amount of the escrow funds in order to collect fees owed him by the client; prior reprimand for negligent misappropriation of $10,303 in client funds, recordkeeping violations, commingling, and failure to properly supervise his firm's employees); In re Payton 168 N.J. 109 (2001) (three-month suspension for attorney who failed to timely file inheritance tax returns or to appeal a Division of Taxation's assessment, significantly delaying the administration of his client's estate; the attorney's inaction resulted in a loss of $2,000 in interest penalties to the estate; the attorney also failed to set the basis or rate of his fee in writing and failed to communicate with his clients after their repeated attempts to contact him; prior 1997 admonition for gross neglect, lack of diligence, and failure to communicate with a client; 2001 reprimand for lack of diligence, failure to communicate with a client, failure to set the basis or rate of a fee in writing, failure to expedite litigation, and failure to cooperate with disciplinary authorities); In re Hintze, 171 N.J. 184 (2002) (three-month suspension in a default matter for attorney who, in two matters, grossly neglected the cases, failed to act with diligence, failed to communicate with the clients and, in one of those matters, failed to return to the client $900 held in

escrow in connection with the sale of the client's business; prior 2000 reprimand for gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities); and In re Handfuss, 169 N.J., 591 (2001) (three-month suspension in a default matter for attorney who grossly neglected a real estate closing by failing to record the deed for more than three months and failed to make timely payments of the insurance premium, sewer charges and real estate tax, resulting in financial injury to the client; the attorney also misrepresented to the client that the deed had been filed, and that the premium for the home warranty had been paid; prior reprimand for filing a complaint on behalf of a client in connection with a motor vehicle accident and then taking no further action in the matter, resulting in dismissal of the complaint, and failing to communicate with the client).

Following a de novo review of the record, we conclude that the stipulated facts provide sufficient support for findings of violations of RPC 1.1(b), RPC 1.3, RPC 1.15(b), and RPC 1.15(d). Although the stipulation referred only to RPC 1.1(b), and did not label respondent's neglect as gross neglect, nor include RPC 1.1(a) in the individual matters, we find that gross neglect is implicit in the facts. Respondent neglected to wrap up four real estate

transactions, which caused delays in the delivery of escrow funds. As much as two years elapsed without action by respondent to complete the disbursement of escrow funds in the Alexander, McKenzie, Johnson, and Hughes-Devarel matters. We have found in the past that such delays constitute gross neglect. Moreover, respondent stipulated that his misconduct amounted to a pattern of neglect, for which we have long required the presence of three or more instances of gross neglect. For these reasons, we find that respondent's gross neglect in these matters amounted to a pattern of neglect, in violation of RPC 1.1(b).

Generally, in cases involving gross neglect, lack of diligence, failure to communicate with a client, failure to deliver funds, and recordkeeping violations, reprimands are imposed. See, e.g., In re Cheek, 162 N.J. 98 (1999) (reprimand for gross neglect, failure to communicate and recordkeeping violations; attorney failed to have guardians appointed pursuant to a client's will, failed to keep executrixes and beneficiaries informed about the status of the client's estate, failed to timely file inheritance tax returns, and was guilty of numerous recordkeeping deficiencies); In re Breig, 157 N.J. 630 (1999) (reprimand for failure to promptly deliver funds to client and recordkeeping violations); and In re Goldston,

140 N.J. 272 (1995) (reprimand for lack of diligence, failure to safeguard client funds, and recordkeeping violations).

In a matter closely resembling the instant case, also presented by the OAE as a disciplinary stipulation, the attorney received a reprimand. In In re Jodha, 174 N.J. 407 (2002), the attorney acknowledged violating RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 1.15(b) and (d), when representing the buyers at a real estate closing. Thereafter, the attorney failed to promptly fulfill the post-closing requirements. He did not record the deed, pay the title insurance premium, pay the real estate taxes, or return escrow funds to his clients until nine to twenty months after the closing. He also delayed sending original documents to his clients. In addition, the attorney failed to correct accounting deficiencies noted during an earlier random audit, and was guilty of additional recordkeeping violations identified during the subsequent audit.

Here, in aggravation, respondent neglected four matters and has a prior reprimand for lack of diligence and failure to cooperate with disciplinary authorities in a real estate matter. In mitigation, respondent furnished evidence that he suffered from depression during the time in question, for which he sought treatment. We determine that, under the circumstances, a reprimand sufficiently addresses respondent's misconduct. We also require respondent to submit, within

ninety days from the date of this decision, proof of fitness to practice law, as attested by a mental health practitioner approved by the OAE. One member did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel