

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-076

IN THE MATTER OF :
STUART D. FELSEN :
AN ATTORNEY AT LAW :

Decision

Argued: June 21, 2001

Decided: November 19, 2001

Israel Dubin appeared on behalf of the Committee on Attorney Advertising.

Dominic J. Aprile 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 Committee on Attorney Advertising ("CAA"). The eight-count complaint charged respondent with violations of RPC 7.5(a) (improperly using a law firm name that does not include the full or last name of one or more of the lawyers in the firm or office or the names of a person or persons who have ceased to be associated with the firm through death or

retirement) (count one); RPC 7.5(d) (prohibiting lawyers from stating that they practice in a partnership where the attorneys do not share in the responsibility and liability for the firm's performance of legal services) (count two); RPC 7.1(a)(1) (making false or misleading communications about the lawyer or his services) (counts three, four, five and seven); RPC 7.1(a)(3) (making false or misleading communications by comparing the lawyer's service with other lawyers' services) (count six); and Attorney Advertising Guideline 1 (failing to include a bona fide street address of the law firm).

Respondent was admitted to the New Jersey bar in 1993. He maintains a law office in Randolph, New Jersey. He has no history of discipline.

* * *

Respondent admitted the allegations of the complaint through his answer and testimony at the CAA hearing. The facts are as follows:

In December 1999, respondent, a sole practitioner, arranged to have an advertisement published in the Passaic and Paterson editions of the Bell Atlantic Yellow Pages. The masthead of the two-page advertisement read "LAW ADVISORY GROUP." The advertisement further stated "Offices Throughout Passaic County As Well As New York & New Jersey;" and "Our Attorneys, With Over 60 Years Experience, Are EXPERTS In Their Field Of Practice." The second page of the advertisement included respondent's name as

well as the names of two other attorneys, Adam Toraya and Anthony Verni.¹ Directly above their names was the statement "A Team of Aggressive Litigators." The ad stated that the attorneys held memberships in the Passaic, Morris, Bergen, and Essex Bar Associations as well as the New Jersey State Bar Association, New York State Bar Association, American Trial Lawyers Association and National Organization of Social Security Claimants Representatives. It also stated "AN EXPERIENCED WINNING TEAM THAT GETS RESULTS!" The ad did not include an office address, but listed a toll free telephone number.

Respondent and the two other attorneys listed in the ad were not partners, shareholders or principals in, or otherwise associated with, a law firm. According to respondent, he became acquainted with Toraya and Verni through the Law Advisory Group ("LAG"). Respondent claimed that he believed that the LAG was comprised of attorneys with varying specialties, who met for luncheons in order to "network." According to respondent, the LAG charged its members a monthly fee for its services, which included scheduling luncheons and providing attorneys with office space in New York and apparently some counties in New Jersey, in addition to collecting mail for its members from the LAG offices and forwarding it to the lawyer members.

¹ The CAA complaint was also filed against these attorneys, but was dismissed at the CAA hearing when the CAA determined that the attorneys had no involvement in placing the ad.

Respondent claimed that he joined LAG because he wanted the ability to use offices in different counties in New Jersey and in New York and wanted to "network" with other attorneys in the hopes of having work referred to him. Respondent also believed that the LAG would provide advertising services.

Respondent testified that he first met Verni in September 1999 at a LAG luncheon. Verni was admitted to practice law in 1990 and had an office in West Orange, New Jersey. At the luncheon, they discussed the possibility of placing an advertisement in the Yellow Pages using the name "The Law Advisory Group." Calls generated by the ad would be forwarded to the participating attorney who had expertise in the relevant area of law. According to respondent, Verni expressed an interest in his idea. Respondent telephoned Toraya, sometime in November 1999, to explain that he wanted to "round up" a number of attorneys to join in a Yellow Page advertisement and to share the expense of placing such an ad. Toraya was admitted to practice law in 1996 and maintained an office in Newark, New Jersey.

At the CAA hearing, Toraya stated that initially he expressed an interest in being part of the ad because of the high cost of advertising. After his initial discussion with respondent, the two had no further contact until late January 2000, after respondent had contracted to place an ad in several directories.

According to respondent, he met with a Bell Atlantic representative in mid-December to create the ad. He had a deadline of only a few days to place the ad or risk having to wait

until the next year. Respondent claimed that the representative assisted him in creating the ad that ultimately appeared in the Passaic and Paterson directories. He authorized the representative to print the ad without consulting with or forwarding a copy of it to Toraya and Verni. Thereafter, he failed to contact Verni and Toraya to inform them that the ad was ready for publication. Respondent explained that he had anticipated creating a fund to pay for the ad by enlisting the interest of at least eight LAG member attorneys, including himself, Verni and Toraya.

The first month's installment for the ad was not due until after the directory was published. The cost to publish the advertisement was \$4,500 a month for each directory in which the ad appeared. At the time respondent authorized publication of the ad, he did not have an agreement with any attorney to participate in his idea.

In January 2000, respondent met with Toraya and another attorney. According to Toraya, when he learned that his name was going to appear in the ad, he told respondent that he never authorized him to use his name and that he wanted it removed from the ad. It was during that meeting, respondent claimed, he first learned that the language in the ad was improper. Respondent testified that he immediately tried to stop the publication of the ad, which he had authorized in telephone books for all of the "northern counties." Apparently he was able to stop the publication in some telephone books.

Respondent believed that the Yellow Pages advertisements would generate business "efficiently." He stated that he relied on the LAG's assurances that he could market his

services under the group's name. As noted earlier, with the assistance of a Bell Atlantic representative, he designed the advertisement in question. He claimed that the LAG had a website that listed all of its attorney members and their office locations, from which he derived the office locations for the ad. As to the number of years of experience advertised, he claimed that he "just added up the people from the Law Advisory." He stated that he probably could have listed 400 years of experience, but thought that the number of attorneys that he would "get would probably equal about 60 [years of experience]." Respondent admitted that it was an arbitrary number. The combined years of experience for respondent, Verni and Toraya, at that time, was under twenty years.

As to the statement that the lawyers were "experts in their field of practice," respondent admitted that he did not know if any of the attorneys named in the ad were certified by the New Jersey Supreme Court in any area. He claimed that he relied on the Bell Atlantic representative's expertise in drafting the language. Respondent also admitted that he did not know to which bar associations the other two attorneys belonged. Respondent was a member of the Essex and Morris County bar associations, the American Trial Lawyers Association and the National Organization of Social Security Claimants. He assumed that most attorneys were members of their county bar associations. Respondent argued that he did not intend to violate the Rules of Professional Conduct and that his lack of familiarity with them motivated his actions.

The CAA found that respondent's advertisement, marketing his law firm under the name of "Law Advisory Group," violated RPC 7.5(a) because the advertisement was not that of a commercial or cooperative advertising program, did not include a disclaimer that the group was not a lawyer referral service and failed to list the names and addresses of the participating lawyers. The CAA found that using the name "Law Advisory Group" was tantamount to the practice of law under a trade name, which is prohibited under ACPE Opinion 435, 104 N.J.L.J. 305 (1979).

Because respondent, Toraya and Verni had no affiliation or relationship with one another, other than their membership in the LAG, the CAA found that they were not partners, shareholders, principals or otherwise associated in a law firm. The CAA also found that the name "Law Advisory Group" and the slogan "A Team of Aggressive Litigators" violated RPC 7.5(d) and RPC 7.1(a)(1) because it implied that the three practiced in a partnership and that the use of the name "Law Advisory Group" violated RPC 7.5(a) because it did not include the full or last name of one or more of the lawyers in the firm.

The CAA also found that the statement that the LAG maintained offices throughout Passaic County, New York and New Jersey was false and misleading, because respondent's office was located in Randolph, Morris County; Toraya's office was located in Newark, Essex County; and Verni's office was located in West Orange, Essex County. None of the three maintained either an office in Passaic County or offices "throughout the state of New Jersey." The statement was, thus, a violation of RPC 7.1(a)(1). The CAA determined that

the statement that the attorneys had over sixty years of experience, when the three had a total of only eighteen years of experience, was also a violation of RPC 7.1(a)(1).

The CAA found that the statement that the Law Advisory Group members were experts in their field of practice was "inherently comparative" and in violation of RPC 7.1(a)(3). The CAA also determined that respondent had no way of knowing, if he were to enlist any other attorneys, whether they would be experts in their field. Moreover, since respondent did not receive commitments from any other attorneys, he could not know how many attorneys, if any, would join him or to which bar associations they might belong. The CAA, thus, found a violation of RPC 7.1(a)(1) for the false and misleading nature of this portion of the advertisement.

Finally, the CAA found that respondent's failure to include a bona fide street address for the office of any of the three attorneys was a violation of Attorney Advertising Guideline 1.

In recommending the imposition of a reprimand, the CAA relied on In re Caola, 117 N.J. 108 (1989) (reprimand for lawyer who sent a targeted direct-mail solicitation letter to a prospective client, misrepresenting his experience, in violation of RPC 7.1(a)(1)); In re Anis, 126 N.J. 448, cert. denied 504 U.S. 956 (1992) (reprimand where the attorney falsely implied that he was an experienced personal injury litigator who handled aircraft accident cases and incorrectly implied that most attorneys' fees would be a one-third contingent fee in such matters, despite the "graduated fee" provisions of R.1:21-7); and In re Garces, 163

N.J. 506 (2000) and In re Grabler, 163 N.J. 505 (2000) (companion cases; reprimands were imposed where the attorneys made false and misleading statements in an advertisement published in the Bell Atlantic Yellow Pages for the Plainfield and Elizabeth area; the advertisements were found to be improper because, among other things, they improperly utilized the official seals of the Board on Attorney Certification and included the designation "certified civil trial attorneys," and "certified criminal trial attorneys" when the attorneys were not so certified, all in violation of RPC 7.1(a)(2) and (3) and RPC 7.1(a)(1)).

* * *

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

The facts are not in dispute. Respondent contracted with the Bell Atlantic Yellow Pages to run an ad in several telephone books. The language contained in the ad was inappropriate. First, the only business name appearing in the ad was "Law Advisory Group," a violation of RPC 7.5(a) because it used a law firm name that did not include the full or last name of one or more of the lawyers in the firm. The name "Law Advisory Group" and the slogan "a team of aggressive litigators" implied that the attorneys were partners or associated in some way. That was not the case. Moreover, respondent was the

only individual participating in the ad. Thus, the publication of these statements violated RPC 7.5(d), which prohibits individuals from implying that they practice in a partnership, when they do not, and RPC 7.1(a)(1), because that implication was false and misleading. The ad also contained the following additional false and misleading statements, in violation of RPC 7.1(a)(1): the attorneys maintained offices throughout Passaic County as well as New York and New Jersey; they had over sixty years of experience; they were experts in their field; and they held memberships in all of the associations listed in the ad. Finally, the ad did not contain any office address, in violation of Attorney Advertising Guideline 1.

We have considered the cases cited by the CAA, as well as In re Sharp Jenkins, 157 N.J. 27 (1999) (reprimand where attorney violated RPC 7.1 by having a flyer published in several newspapers with a number of inaccurate statements tending to mislead individuals with regard to trust and estate practices). We have also considered that respondent attempted to discontinue the ads, once he learned of their impropriety, and his full cooperation with the CAA. Based on these factors, seven members determined to impose a severe reprimand, expressing the sentiment that respondent barely escaped a suspension. One member voted to suspend respondent for three months. One member did not participate.

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

By: _____



ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

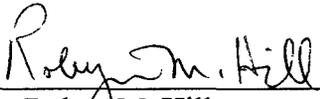
In the Matter of Stuart M. Felsen
Docket No. DRB 01-076

Argued: June 21, 2001

Decided: November 19, 2001

Disposition: Reprimand

<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>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>			X				
<i>Brody</i>		X					
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Wissinger</i>			X				
Total:		1	7				1


 Robyn M. Hill
 Chief Counsel

12/5/01