SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-233

IN THE MATTER OF

JAMES C. DE ZAO

AN ATTORNEY AT LAW

Decision

Argued: October 19, 2000

Decided: March 26, 2001

Lewis M. Markowitz appeared on behalf of the District X Ethics Committee ("DEC").

Albert B. Jeffers 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). The two complaints allege that respondent grossly neglected several client matters and failed to supervise a junior attorney and his legal staff.

Respondent was admitted to the New Jersey bar in 1985. He maintains an office for the practice of law in Parsippany, Morris County. He has no history of unethical conduct.

The Hoffman Matter - District Docket No. X-97-087E

On or about December 23, 1992, while on a trip for her employer, Monica Hoffman slipped and fell outside the Florham Park, New Jersey Post Office. Shortly thereafter, in January 1993, she retained respondent to file a slip-and-fall action against various defendants, including the United States, and also file a workers' compensation claim. Hoffmann and respondent entered into an undated retainer agreement for the representation.

On January 27, 1993 respondent forwarded to the "Florham Park Post Office" an initial notice of claim for damages, with a copy to the Florham Park Municipal Court. Respondent prepared, but never filed, a complaint against the Florham Park Post Office, which was the wrong defendant. Thereafter, respondent failed to comply with provisions of the Federal Tort Claims Act by not filing an appropriate tort claims notice. On December 20, 1994 respondent filed a complaint in federal court against the "United States Post Office."

On June 9, 1995 the United States Attorney's Office, on behalf of the United States, filed a motion to dismiss Hoffman's complaint for lack of jurisdiction and insufficiency of service of process. Recognizing that the "United States," not the "United States Post Office," was the correct defendant, respondent's then-associate, Michael Mori, wrote a letter to the court on July 11, 1995, stating that Hoffman would not oppose the United States' motion.

On August 3, 1995 the court dismissed the complaint with prejudice. Seemingly, respondent was either unaware of or disagreed with Mori's position, because, later,

respondent filed a motion asking the court to reconsider the order of dismissal. The motion was denied on April 3, 1996.

Hoffman testified that she was "kept in the dark" about her case because respondent never furnished her with copies of the pleadings. Moreover, she testified that neither respondent nor anyone from his office ever advised her of the United States' motion to dismiss the complaint or of any of the subsequent events in the case, including its dismissal and the unsuccessful motion for reconsideration.

For his own part, respondent did not contest the circumstances of the dismissal. He testified that Mori had prepared the complaint and was primarily responsible for the handling of the file. According to respondent, it was Mori, not he, who mishandled the matter. However, respondent admitted that, as the attorney of record, he had the ultimate responsibility for the case.

With regard to communications with his client during the case, respondent testified that in late August 1995 he instructed his paralegal, Alyssa Arcara[1], to set up an appointment with Hoffman to inform her of the dismissal of the case. Respondent specifically recalled telling Hoffman at that meeting that the United States had succeeded in having the case dismissed, but that he had filed a motion for reconsideration and was hopeful that she would

[1]Arcara testified that she recalled setting up that meeting for respondent. She also recalled that respondent intended to update Hoffman on the status of her case, but did not know any of the details.

ultimately prevail on the merits of her case. Hoffman had no recollection of that meeting, however.

When asked what documents might confirm that he had met with Hoffman to discuss the matter or that he had kept her informed about the case, respondent replied that it was not his custom to send documents to clients. According to respondent, "I find for the most part that clients don't understand the document itself, so rather than make them worry about something we don't send it to them." Respondent had nothing in writing to corroborate his version of the events.

The complaint alleged violations of RPC 1.1(a) (gross neglect) and (b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and (b) (failure to explain matter to extent necessary to permit the client to make informed decisions about the representation) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Thompson Matter - District Docket No. X-98-035E

On December 8, 1997, Mildred and Theophilus Thompson signed a contract of sale to purchase a house. They gave their real estate agent a $1,000 deposit and retained respondent to represent them in the transaction.

On December 9, 1997 the Thompsons told respondent that they no longer wanted to purchase the house. The record contains highly conflicting testimony about the timing of that

communication. According to Mrs. Thompson, at about 1:30 p.m. that day, she told respondent that they did not want the house, several hours before respondent sent a letter to the sellers' attorney, Bernard Berkowitz, with several changes to the contract. On the other hand, respondent claimed that Mr. Thompson had told him about their change of heart sometime after the letter. The timing of the events is significant because the letter also requested Berkowitz to approve the contract changes and return the letter to respondent. Berkowitz complied and returned the letter on December 9, 1997, thereby firming up the transaction and closing the attorney review period. According to the terms of the contract, the Thompsons could only be released from the transaction for cause and stood to lose their $1,000 deposit if they breached the contract.

According to respondent, Mr. Thompson reiterated their decision not to purchase the house in a December 10, 1997 telephone conversation. Respondent immediately wrote to the seller's attorney to attempt to cancel the contract of sale. Respondent testified that Mr. Thompson had given him specific "marching orders," that is, that respondent was to obtain a release from the contract, even if it meant losing the $1,000 deposit. Mr. Thompson denied making that statement to respondent.

Thereafter, respondent and Berkowitz negotiated the Thompsons' release from the contract by sharing the deposit equally between the Thompsons and the sellers.

The complaint alleged violations of RPC 1.1(a) (gross neglect) [mistakenly cited as RPC 1.2], RPC 1.5 (failure to utilize retainer agreement) and RPC 1.4(a) (failure to

communicate with client) and (b) (failure to advise client to the extent reasonably necessary for client to make informed decisions about the representation). Although the complaint alleged that respondent failed to prepare a retainer agreement in this matter, that charge was dismissed when the agreement was found.

The Mercuri Matter - District Docket No. X-98-036E

In or about June 1997 respondent represented Erika Hanke in the purchase of real estate from Peter and Maureen Mercuri. Two days before the closing, the Mercuris' attorney, George L. Romanacce, contacted respondent regarding unpaid real estate taxes on the property. In order to facilitate the closing of title, respondent agreed to hold $300 in escrow for unpaid taxes.

The closing took place on August 21, 1997. For the next several months, both Romanacce and Hanke attempted to obtain from respondent information about the status of the unpaid taxes. In fact, during the months of October and November 1997, Romanacce wrote three letters and left four telephone messages for respondent, all of which went unanswered. The third letter, dated November 10, 1997, stated as follows:

> We have been advised by our clients that they will proceed with whatever remedies are available to them in order to obtain the balance of their money which was held in escrow by you.

Respondent denied ever seeing those letters, although he could not deny that they had been received by his office. Respondent had no explanation for his staff's failure to bring those letters to his attention.

With respect to the issue of the escrowed funds, respondent claimed that it was Romanacce's obligation to contact the taxing authorities and to provide respondent with the pay-off figure. Respondent produced an expert, Lee Roth, who testified that respondent was correct in that regard.

In his defense, respondent testified that his office staff did not alert him to any problems in the case. Therefore, according to respondent, it was not until after the filing of the ethics grievance that he found out about the unpaid taxes. On January 28, 1998, respondent contacted the Jersey City Tax Collector for information about the property. Finally, in early February 1998, almost six months after the closing, respondent paid the taxes and remitted the escrow balance to the sellers.

The complaint alleged that respondent violated RPC 1.1 (a) (gross neglect) [mistakenly cited as subsection (b)], RPC 1.3 (lack of diligence), RPC 5.3(b) (failure to supervise a paralegal) and RPC 8.4 (c) (conduct involving dishonesty, fraud, deceit or misrepresentation). It is unclear what portion of this rule respondent is alleged to have violated; dishonesty, fraud, deceit or misrepresentation.

The Csaszar Matter - District Docket No. X-99-011E

In or about August 1993 Karoly and Janette Csaszar retained respondent to represent them in the purchase of a house from the Panoses. Respondent's title search on the property revealed four separate mortgages. Two of the mortgages were from the Panoses to the prior owners, the Wolfs. Another mortgage was from the Panoses to Midlantic Bank. The fourth mortgage was from Jeffrey Wolf, the prior owner, to Lewis Weber and was recorded in 1979, some eight years before the Panoses bought the property.

The Csaszar closing was held on November 2, 1993, at which time the two active mortgages were paid: the Wolf mortgage and the Midlantic Bank mortgage. At the closing, Mr. Panos signed an affidavit stating the following:

> Alexander M. Panos has not made any payments on the mortgage between Jeffrey G. Wolf and Lewis C. Weber since taking title on February 25, 1987, and no demands for payments have been made.

Mr. Panos also signed a "personal undertaking" prepared for the Chicago Title Insurance Company, indicating that he would assume responsibility for the payment of the mortgage if it ever became necessary. Based on these facts, the title company issued a title policy in favor of the Csaszars and, in fact, insured "over" the Wolf to Weber mortgage. That meant that, if required, the title company would be responsible for the satisfaction of the mortgage. Although respondent testified that he explained the closing documents to the Csaszars in detail, there is no other evidence in the record that respondent fully explained to them the crucial role that the above two documents played in the conveyance. In fact, the

Csaszars testified that they were unaware that the Wolf to Weber mortgage had not been discharged at their closing of title.

Approximately five years later, the Csaszars attempted to refinance their mortgage loan. The prospective lender, New Jersey Lender Corporation, refused to go forward with the refinancing, citing irregularities uncovered in their title search, namely that, in addition to the Csaszars' first and second mortgages, two additional mortgages remained of record: from the Panoses to Midlantic, which, in fact, had been paid off but not cancelled of record, and from Wolf to Weber, which apparently remained outstanding.

The Csaszars testified that they immediately contacted respondent and learned for the first time that the Wolf to Weber mortgage had not been satisfied and canceled of record when they took title to the property. Respondent advised them that this was an expedient, yet appropriate, way to convey title, that New Jersey Lender Corporation should have been aware of that fact and that, therefore, it should have approved the Csaszars' refinancing.

Respondent further testified that he offered to explain the situation to either the Csaszars' new attorney, or to the New Jersey Lender Corporation's attorney and that, in the alternative, he would represent the Csaszars in the refinancing for a modest fee ($295).

Thereafter, the Csaszars called respondent several more times to attempt to resolve the problem with the mortgages. In fact, respondent recalled four separate telephone conversations with them about the refinancing. Respondent testified as follows:

> I recall a fourth and that was the final conversation and I think it was a call of frustration on both our parts. Mrs. Csaszar had called me again and said the

> same thing, they won't refinance me, and I said Mrs. Csaszar, I don't know what else I can tell you. I said there is absolutely no reason why you can't refi [sic].

Respondent never demanded that the title insurance company satisfy that mortgage, as it had agreed to do if necessary, and never made an offer to obtain the discharge of the Midlantic mortgage, a simple ministerial act. Ultimately, the Csaszars retained another attorney, who was able to accomplish the cancellation of both mortgages within several weeks.

Respondent offered the expert testimony of Lawrence Fineberg, New Jersey State Counsel to Chicago Title Company, who agreed with respondent that the Csaszars should have been able to receive refinancing because the title insurance that respondent procured for them produced an "insurable title", if not a "marketable" title. Fineberg also testified that it is extremely difficult to at times obtain the cooperation of banks in obtaining mortgage cancellations, especially when the bank is undergoing internal changes by means of a takeover or merger, as was the case with Midlantic at the time. Because, however, respondent never attempted to obtain a discharge of mortgage, Fineberg was forced to concede that cancelling a prior mortgage of record is always the best method of protecting a client and conveying title, as opposed to respondent's approach. Fineberg also testified that, although always preferable, it is not always possible to ensure that a client in the Csaszars' position will receive title free of prior mortgages. In the end, in Fineberg's opinion, respondent did what was required of him in representing the Csaszars at closing.

Fineberg acknowledged, however, that, as the Csaszars' closing attorney, respondent should have taken steps to remedy the situation, particularly when faced with repeated requests from the Csaszars.

The complaint alleged violations of RPC 1.1(a) [mistakenly cited as RPC 1.1(b)], RPC 1.3 (lack of diligence), RPC 1.4 (a) (failure to communicate with client) and (b) (failure to explain matter to the extent reasonably necessary to enable the client to make informed decisions about the representation) and RPC 8.4 (c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Again, it is unclear what part of the rule respondent is alleged to have violated; dishonesty, fraud, deceit or misrepresentation.

* * *

In Hoffman, the DEC found that respondent violated RPC 1.3 and RPC 1.4(a) and (b). The DEC did not find any evidence that respondent violated RPC 8.4 (c) in Hoffman — or in any of the other matters. In Thompson, the DEC dismissed all of the charges, believing that respondent represented his clients effectively in a tightly compressed time frame and under uncertain "marching orders" from the Thompsons. In Mercuri, the DEC found violations of RPC 1.3 and RPC 5.3 (b). In Csaszar, the DEC found violations of RPC 1.3 and RPC 1.4 (a) and (b).

Finally, the DEC found that respondent grossly neglected Hoffman, Mercuri and Csaszar, in violation of RPC 1.1(a), and that this conduct constituted a pattern of neglect, in violation of RPC 1.1(b).

The DEC recommended the imposition of a reprimand.

* * *

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

Unquestionably, respondent neglected the Hoffman matter, by failing to comply with the provision of the Federal Tort Claims Act, filing a complaint in federal court against the wrong defendant, failing to conduct appropriate legal research and not pursuing the claim responsibly. As the attorney of record, respondent had an obligation to properly prosecute the case to conclusion. Instead, respondent left it in the hands of his associate, whom he failed to supervise. Respondent, thus, violated RPC 1.1(a), RPC 1.3 and RPC 5.1(b) (failure to supervise attorney). With respect to this latter finding, although respondent was not specifically charged with a violation of RPC 5.1(b), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a

violation of RPC 5.1(b). Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

In addition, respondent failed to communicate with Hoffman, in violation of RPC 1.4 (a). Hoffman testified that she was not reasonably apprised of the progress of her matter. Respondent conceded that it was not his practice to send pertinent documents to his clients, leading to the logical conclusion that Hoffman was not informed of the events of her case. There is no clear and convincing evidence, however, that respondent did not explain the matter to Hoffman to allow her to make informed decisions about the representation. We, therefore, dismissed the charged violation of RPC 1.4(b).

In Thompson, the DEC was correct to dismiss the charges. There is a hint of impropriety in the record particularly with respect to what appeared, on its face, to be respondent's unilateral decision to divide the deposit between the sellers and the Thompsons. However, respondent's testimony that Mr. Thompson gave him the authority to do so was believable. Moreover, inconsistencies in the Thompsons' testimony about the timing of their decision preclude a finding, by clear and convincing evidence, of any misconduct on respondent's part.

In Mercuri, as in Hoffman, respondent allowed his staff complete control of the case. As respondent testified, he was unaware, until after the filing of the ethics grievance, that there was a problem with the tax escrow. Respondent also testified that he believed that the

sellers' attorney was responsible for ascertaining the status of the outstanding taxes, and produced an expert to support his position.

We find, however, that respondent's argument misses the mark. Notwithstanding whose obligation it was to determine the status of the unpaid taxes, after a reasonable time had passed without any resolution, respondent should have taken the initiative and done whatever was necessary to resolve the problem. If respondent had done so in October or November 1997, he would have found out immediately that the case needed his attention. Instead, it was not until after the threat of a lawsuit and the filing of an ethics grievance that respondent took action. Hence, respondent's failure to represent his client's interests responsibly and diligently violated RPC 1.1(a) and RPC 1.3.

We did not find, however, that respondent violated RPC 5.3(b). It was not staff's responsibility to ensure that the outstanding taxes be paid out of the escrow; it was respondent's. Accordingly, this is not a case where the attorney failed to supervise an employee's performance or ensure that the employee conformed to the ethics rules. Rather, respondent was personally responsible for following up on the tax matter, which he failed to do. As noted above, this conduct constituted lack of diligence and gross neglect.

With regard to Csaszar, we find that respondent grossly neglected the case. His argument to the contrary rang hollow. It was respondent's responsibility to ensure that all outstanding mortgages on the property were cancelled of record, including the Wolf to Weber mortgage. As to the latter, although respondent may have obtained insurable title for

the Csaszars, as evidenced by the Chicago Title's issuance of title insurance, the fact remains that he did not obtain good and marketable title, as shown by New Jersey Lender Corporation's refusal to refinance the Csaszars' mortgage because of problems with encumbrances on the property. When his clients pleaded with him to straighten out the problem, respondent blamed the lender, offered to handle the refinancing for a fee and, beyond that, did nothing to help his clients in resolving the situation. It was only through the good efforts of subsequent counsel that the mortgages were finally cancelled of record. Respondent's conduct in this matter violated RPC 1.1(a) and RPC 1.3.

Finally, with regard to the alleged violation of RPC 1.4, the Csaszars testified that they were unaware that respondent had not discharged the mortgages until they attempted to refinance the property five years after the closing. Respondent had no specific recollection in this regard. Presumably believing that the Csaszars' testimony was more credible than respondent's, the DEC found that respondent had not explained to them that the Wolf to Weber mortgage would remain as a lien and the consequences that flowed from that encumbrance. Since the DEC had the opportunity to observe the demeanor of the witnesses and to assess their credibility, we defer to the DEC's finding and conclude that respondent violated RPC 1.4(a) and (b).

Lastly, we find that respondent's gross neglect of three matters, Hoffman, Mercuri and Csaszar, amounted to a pattern of neglect, in violation of RPC 1.1(b). Like the DEC,

we found no evidence that respondent violated the provisions of RPC 8.4(c) in Hoffman, Mercuri or Csaszar. Therefore, we dismissed those charges.

Discipline ranging from an admonition to a reprimand is generally appropriate when an attorney is guilty of gross neglect, lack of diligence and failure to communicate in one or several matters. See, e.g.,In the Matter of Paul Paskey, DRB 98-244 (1998) (admonition imposed where the attorney exhibited gross neglect, lack of diligence and failure to communicate with the client by twice allowing a complaint to be dismissed and failing, over a four-year period, to apprise the client of the dismissals or to reply to the client's numerous requests for information); In the Matter of Ben W. Payton, DRB 97-247 (1998) (admonition imposed where the attorney exhibited gross neglect, lack of diligence and failure to communicate with the client. After filing a complaint four days after the expiration of the statute of limitations, the attorney allowed it to be dismissed for lack of prosecution. Moreover, the attorney never informed his client of the dismissal); In re Carmichael, 139 N.J. 390 (1995) (reprimand imposed where the attorney showed a lack of diligence and failure to communicate in two matters. The attorney had a prior private reprimand); In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed where the attorney showed gross neglect and lack of diligence in two matters and failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand imposed where the attorney showed gross neglect and a failure to communicate in two matters).

After consideration of the above precedent and the fact that respondent exhibited a pattern of neglect in these matters, a six-member majority concluded that respondent's conduct more appropriately should be met with a reprimand. We also required respondent to take twelve hours of legal education courses to include professional responsibility, office management and real estate matters. Moreover, we required respondent to practice under the supervision of a proctor, approved by the Office of Attorney Ethics, for a period of one year.

One member would have imposed a three-month suspension. One member recused, himself. One member did not participate.

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

Dated: 3/26/21

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James. C. DeZao
Docket No. DRB 00-233

Argued: October 19, 2000

Decided: March 26, 2001

Disposition: Reprimand

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan							X
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz		X					
Wissinger						X	
Total:		1	6			1	1

Robyn M. Hill 6/19/01
Robyn M. Hill
Chief Counsel