

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 97-361

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IN THE MATTER OF  
NORMAN J. CHIDIAC  
AN ATTORNEY AT LAW

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

Decided: August 18, 1998

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

Pursuant to R.1:20-4(f), the District XI Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline following respondent's failure to file an answer to the formal ethics complaint. On June 13, 1997 a complaint was served on respondent by regular and certified mail at his last known office address listed in the New Jersey Lawyers' Diary and Manual. The regular mail was not returned. The certified mail receipt was returned indicating delivery on June 14, 1997. The signature of the agent accepting delivery was illegible. Respondent did not file an answer to the complaint. On June 25, 1997 a second letter was sent by regular and certified mail informing

respondent that unless he filed an answer to the complaint within five days the allegations of the complaint would be deemed admitted. The regular mail, the certified mail receipt and the certified mail envelope were not returned. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1970. At the relevant times he maintained a law office in Clifton, New Jersey. In July 1990, respondent was privately reprimanded for unethical conduct, including his failure to record the mortgage and deed in a real estate transaction for a three-year period after a closing. In the Matter of Norman J. Chidiac, DRB 90-132 (1990). In 1990 respondent also received a three-year suspension, retroactive to the date of his temporary suspension on December 14, 1987, for misconduct in an estate matter, which included gross negligence, misrepresentations about the status of the matter, and creation of a fake New Jersey Inheritance Tax waiver to conceal his misconduct. In re Chidiac, 120 N.J. 32 (1990); In re Chidiac, 109 N.J. 84 (1987), corrected at 109 N.J. 630 (1987). He was reinstated on March 19, 1991.

The complaint charged respondent with violations of RPC 1.15 (safekeeping property), RPC 3.3(a)(5) (failure to disclose to the tribunal a material fact with knowledge that the tribunal may be misled) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The complaint also charged that respondent's conduct combined with other acts of neglect alleged in the complaint demonstrated a pattern of neglect in violation of RPC 1.1(b).

The complaint alleges that respondent represented the Zamoras in May 1995 in a real estate transaction, where the Zamoras agreed to purchase property from the Quinteros, who were represented by Edward G. Engelhart. Pursuant to the contract, Engelhart held in escrow a \$4,000 deposit from the Zamoras. Because the closing date could not be set in a timely fashion, the parties entered into a "use and occupancy" agreement, requiring the Zamoras to pay a monthly rental of \$1,000. The Zamoras took possession of the first floor apartment on July 1, 1995. There was also a second and third floor in the building; the second floor was occupied by another tenant.

Respondent and Engelhart provided conflicting statements to the DEC regarding subsequent events. For reasons that are less than clear, the Zamoras began making their rent payments to respondent, and began collecting and forwarding to respondent rent from the second floor tenant, all to be held in trust. Respondent placed the rents, which ultimately totaled \$8,180, into his attorney trust account.

At some point it became apparent that the parties would not complete the real estate transaction. In a letter of unspecified date, Engelhart demanded the return of all funds held by respondent. When respondent failed to comply, Engelhart filed a complaint in the Superior Court on February 14, 1996 to compel respondent to turn over the funds and to demand payment for damages resulting from the alleged breach of the real estate contract.

Although it is not clear if respondent replied to the complaint, on March 19, 1996 the court ordered the Zamoras (1) to deposit \$9,500 with the Clerk of the Court, (2) to file a brief

on various issues by April 3, 1996 and (3) to appear on April 15, 1996. Because the Zamoras and respondent failed to comply with the court order, a default was entered on April 15, 1996 and a proof hearing was scheduled for July 30, 1996. On July 31, 1996 respondent filed a motion to vacate the default judgment. This motion was later denied on September 18, 1996.

Meanwhile, on August 12, 1996 the court determined that the Quinteros were entitled to \$10,500 and that Engelhart could release the Zamoras' \$4,000 deposit to the Quinteros in partial satisfaction of the judgment. The court also ordered respondent to turn over to Engelhart, within ten days, all money held in his attorney trust account representing rent from or collected by the Zamoras or any other tenant at the premises, with any accrued interest. Respondent received this order on August 20, 1996.

In violation of the court order, respondent disbursed the funds to the Zamoras so they could buy a different home. The complaint alleges that "the deed," presumably for the new property, was dated August 26, 1996. Despite having already released the trust funds, he filed a motion for reconsideration on November 4, 1996. On December 24, 1996 the judge vacated the order of August 12, 1996 conditioned upon: (1) payment of \$6,500 to the Clerk of the Superior Court to await the outcome of the trial and (2) payment of \$650 to Engelhart's firm for legal fees "in regard to the above motion." Respondent failed to make either payment.

In what appears to be respondent's January 9, 1997 reply to the initial grievance, respondent denied misconduct, claiming that Engelhart had done everything possible to avoid

trying the case on its merits. Respondent wrote:

I am saddened that [Engelhart] has chosen to cast aspersions on my character as yet another tactic to deflect attention from the basic facts that his client's [sic] acted in bad faith in not paying the mortgage on the property they were to sell to my client, eventually losing the property in foreclosure; his clients breached their contract with my clients; and his clients never returned the deposit which my clients gave them in good faith and in the honest hope of buying a home.

Respondent also explained that the July 30, 1996 hearing which resulted in the August 12, 1996 order, was ex parte. He asserted that, although Engelhart's claims were uncontroverted, they were not necessarily true. To support this contention, he pointed to the December 1996 order granting his motion for reconsideration and vacating the August 12, 1996 judgment. In sum, respondent blamed the Quinteros for the problems that arose in the underlying transaction.

Respondent further wrote in his reply to the grievance that he was a sole practitioner with only part-time help, that he had suffered from health problems in recent years and that his office was closed for some time while he was ill. Although respondent admitted not promptly replying to every paper filed by Engelhart, he contended that such behavior did not make him an unethical attorney. Because of the conflicting versions of events, it is unclear what actually transpired. Nevertheless, because respondent did not file an answer to the complaint, the facts as alleged are deemed admitted.

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Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct. While respondent suggests, in his letter which appears to be a reply to the initial grievance, that he may have been prevented by ill health from filing an answer, he failed to provide evidence of this illness. Respondent did not comply with the court's order requiring him to deposit funds with the clerk of the court. He improperly released the trust funds to his clients. Moreover, respondent's failure to reply to motions resulted in the entry of a default judgment against his clients. Respondent also failed to inform the court that he had already disbursed funds to his client prior to filing his motion for reconsideration. Respondent's conduct thus violated RPC 3.3(a)(5), and RPC 8.4(c). In addition, respondent's conduct also violated RPC 1.1(a) (gross neglect) and RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal). Although respondent was not specifically charged with a violation of RPC 1.1(a) and RPC 3.4(c), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violations of the RPC's. Thus, the Board deemed the complaint amended to conform to the proofs. See In re Logan, 70 N.J. 222, 232 (1976). The Board dismissed the charge of a violation of RPC 1.1(b) because only one instance of gross neglect was found.

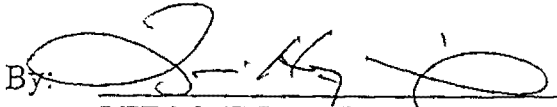
In other matters involving misrepresentations to a court, short-term suspensions have been imposed. See In re Mark, 132 N.J. 268 (1993) (three-month suspension for oral

misrepresentations to the trial court; the Board and Court found that respondent acted without intent to deceive); In re Kernan, 118 N.J. 366 (1990) (three-month suspension where the attorney lied in a certification to the court and fraudulently conveyed property to his mother to avoid child support obligations; prior reprimand for conflict of interest). Here, respondent's disciplinary history includes a private reprimand and a three-year suspension. The level of discipline is also aggravated by respondent's default in this matter.

Accordingly, the Board unanimously determined to suspend respondent for six months. Three members did not participate.

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

Dated: 8/18/88

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Norman J. Chidiac  
Docket No. DRB 97-361

Decided: August 18, 1998

Disposition: Six-Month Suspension

Members	Disbar	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Zazzali							x
Brody		x					
Cole		x					
Lolla		x					
Maudsley							x
Peterson							x
Schwartz		x					
Thompson		x					
Total:		6					3

*Robyn M. Hill* 8/27/98  
Robyn M. Hill  
Chief Counsel