

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 99-021

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IN THE MATTER OF :  
: :  
ARTHUR T. VAN WART :  
: :  
AN ATTORNEY AT LAW :  
:

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

Decided: July 7, 1999

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

Pursuant to R 1:20-4(f), the District I 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 July 2, 1998, the DEC served a copy of the complaint on respondent by certified and regular mail sent to his last known address in Vineyard Haven, Massachusetts. Both the certified and the regular mail were returned. A second letter, sent to the same address by regular and certified mail, was also returned.

On November 12, 1998, service of the complaint was made by publication in *The*

*Martha's Vineyard Times* (Massachusetts) and *Today's Sunbeam* (Salem County, New Jersey).

On December 2, 1998, the DEC secretary became aware of respondent's current address and subsequently caused the Duke County Sheriff's Department (Massachusetts) to personally serve respondent with a copy of the complaint on December 15, 1998. Respondent did not file an answer.

Respondent was admitted to the New Jersey bar in 1972. He has no prior ethics history.

According to the complaint, sometime prior to June 26, 1995, respondent was retained by the estate of Thelma Brown, who had died intestate. The beneficiaries of the estate were to be the decedent's sisters. The decedent owned a condominium that the estate agreed to convey to Leon Colter upon his payment of several of the decedent's obligations and his agreement to allow the removal of the decedent's personal property from the unit.

On June 26, 1995, respondent sent a letter to Colter advising him that he had in his possession a fully executed deed transferring the condominium to Colter. Colter paid the agreed upon sums and, on July 11, 1995, signed and notarized an agreement to allow the removal of the decedent's personal property from the condominium. Colter then sent the notarized agreement to respondent using the self-addressed stamped envelope that respondent had provided. On September 18, 1995, respondent sent Colter a letter requesting another agreement to allow the removal of decedent's personal property. Colter replied that he had done everything required of him under his agreement with the estate. Nonetheless, respondent failed to turn over the deed to Colter, as provided by the agreement.

Additionally, the complaint alleged that respondent represented the estate in 1995 while on the Supreme Court's ineligible list for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("the Fund").

On December 22, 1997, the DEC investigator contacted respondent regarding the Colter matter. Respondent claimed that the administratrix was "sitting on the deed" and refused to give the investigator his current address or telephone number.

The complaint charged respondent with violations of RPC 1.15(b) (failure to deliver property to which a third party is entitled), RPC 5.5(a) (practicing law while ineligible) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

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Service in this matter was properly made, as respondent was personally served with a copy of the complaint on December 15, 1998. Therefore, pursuant to R. 1:20-(4), the allegations of the complaint are deemed admitted. Following a de novo review of the record, the Board found that the facts contained in the complaint support a finding of unethical conduct.

Respondent's failure to give Colter the title to the condominium constituted a failure to deliver property to which a third party was entitled, in violation of RPC 1.15(b). In addition, respondent's representation of the estate of Thelma Brown in 1995, at a time when he was ineligible to practice law for failure to pay the Fund's annual assessment, violated RPC 5.5(a).

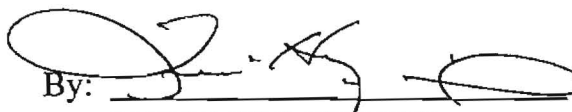
Finally, respondent's failure to comply with the investigator's request for his current address or telephone number and his failure to file an answer to the formal ethics complaint constituted a failure to cooperate with the disciplinary authorities, in violation of RPC 8.1(b).

Generally, a reprimand is sufficient discipline for this type of misconduct. See, e.g., In re Alston, 154 N.J. 83 (1998) (reprimand for practicing law while ineligible and failure to cooperate with disciplinary authorities) and In re Namias, 157 N.J. 15 (1999) (reprimand for practicing law while ineligible, lack of diligence and failure to communicate). However, because this matter proceeded as a default, a three-month suspension is appropriate. See, e.g., In re Dudas, 156 N.J. 540 (1999) (three-month suspension in default matter for lack of diligence, failure to safeguard property, practicing law while ineligible and failure to cooperate with disciplinary authorities).

The Board unanimously determined to suspend respondent for three months. One member recused herself.

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

Dated: 2/2/99

By:   
LEE M. HYMERLING  
Chair  
Disciplinary review Board