SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 88-287

IN THE MATTER OF :
HARRY DREIER, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 21, 1990

Decided: May 25, 1990

Gerald T. Glennon appeared on behalf of the District XII Ethics Committee.

Francis X. Hermes appeared on behalf of respondent, who was also present.

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

This matter is before the Board based upon a presentment filed by the District XII Ethics Committee.

Respondent was admitted to the New Jersey bar in 1976. He and his uncle maintain a law office located in Plainfield.

Early in 1980, respondent's friend, Theodore Aronson, had some discussions with him about the estate of Mr. Aronson's father. On behalf of the estate beneficiaries, including himself, his mother, and his sister, Mr. Aronson asked whether respondent would consent to being appointed substitute trustee of a testamentary trust established by Mr. Aronson's father. Respondent agreed. By order dated October 17, 1980, respondent was appointed substitute

trustee. According to respondent's testimony, his involvement was limited to acting as trustee; he was not the attorney for the estate. This assertion was corroborated by Elinor Aronson, Theodore's sister and the grievant herein (T43)[1].

The Aronson will provided for the creation of three separate trusts. Decedent's wife, Sylvia Aronson, was the beneficiary of a trust for life, while the two children, Theodore and Elinor, were each the beneficiaries of a ten-year trust with certain specific provisions.

According to respondent, he had numerous conversations with the beneficiaries about how they wished each trust corpus to be invested and how the income was to be distributed. Grievant elected to receive quarterly distributions of the trust income in addition to ten percent annual principal distributions.[2] The trust monies were invested in a Dreyfus money market account, with a good rate of interest.

From the inception of the creation of the trust, respondent kept grievant apprised of alternate investment opportunities and forwarded her regular income distributions, as well as year-end reports for tax purposes. Early in 1983, however, respondent

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[1] T denotes the transcript of the district ethics committee hearing on June 15, 1988.

[2] The manner in which the trusts were set up for decedent's widow and Theodore Aronson are irrelevant to these proceedings, inasmuch as there are no allegations that respondent improperly handled their interests.

ceased to communicate with grievant. According to respondent's testimony, at that time the investment underwent certain changes that did not require communication with grievant. He explained that, when the interest rate from the money market account began to decrease, he had lengthy discussions with grievant about changing the nature of the investment. Thereupon, he purchased municipal revenue bonds. On May 12, 1983, respondent wrote to grievant enclosing a copy of each bond and informing her that "I will see to it that the coupons are clipped at appropriate intervals and the funds forwarded to you" (Exhibit P-10 in evidence).

Notwithstanding this promise, for the next three years, respondent had no communication whatsoever with grievant and did not send her the bond coupons. Moreover, respondent did not furnish grievant with any information for income tax purposes, as a result of which she was audited by the Internal Revenue Service in 1983 and every year thereafter. Tax penalties were also assessed against grievant.

On September 3, 1985, grievant wrote the following letter to respondent:

> Please explain why you have not accepted my phone calls or at least had the courtesy to call back as your secretary assured me you would!
>
> . . .
>
> I was recently audited for my 1983 tax return because I was unaware of the Dreyfus income of $300 reported on my social security number. Having gotten no 1099 from you, I didn't report the income and this is why I had to go thru [sic] the horrible experience of a tax audit. (Can you explain this?)

. . .

Fourth -- As per your letter of May 12, 1983, coupons were to be "clipped at appropriate intervals and funds forward [sic] to you." I have received no such funds. Kindly send me the bonds so that I may do my own clipping.

Fifth -- My IRA of 1983 is also in your control. I would like to transfer it adding to my existing GNMA with Vanguard. Please send me the appropriate papers to do this.

Are there any other outstanding moneys [sic] or investments I have in your control?

If I don't hear from you before the end of Sept. I will have to find someone else who responds to my phone calls. I need to be able to talk to my lawyer. I can't understand why you are avoiding me. My mother too has called to speak to you, gotten [sic] the same neglect.

I expect to hear from you very soon.
[Exhibit P-11 in evidence.]

Respondent did not reply to the above letter. On October 7, 1985, grievant again wrote to respondent complaining that she still had not received the coupons or the bonds, as promised by respondent during a telephone conversation two weeks before (Exhibit P-12 in evidence). Once again, grievant's requests were ignored.

Grievant testified that she placed numerous telephone calls to respondent, all to no avail. She testified further that, in order to be able to talk to respondent, she had to give a fictitious name to his secretary. On one occasion, she called respondent at home at 3:00 a.m. to ensure that respondent would be available to address her concerns.

On November 21, 1985, a New York attorney, who was a friend

of grievant, wrote to respondent, inquiring about the status of her trust and the possibility of having the trust terminated before the expiration of the ten-year period (Exhibit P-13 in evidence). Respondent also failed to reply to that letter.

Finally, on June 26, 1986, after a New Jersey attorney acting on grievant's behalf wrote to respondent, respondent forwarded the bonds and advised the attorney that a check for the interest coupons would be forthcoming. Between the time respondent first promised to send the coupons to grievant, on May 12, 1983, and the time he forwarded her the bonds, more than three years had elapsed.

Furthermore, from the time of his appointment as substitute trustee in October 1980, until November 1986, respondent did not provide grievant with a full accounting. Grievant testified that she "... never knew what money was coming from where to what" (T26-16 to 22).

Respondent attempted to justify his lack of communication with grievant by explaining that, after he purchased the bonds, there was nothing to report to her. He had no recollection of avoiding her telephone calls and denied that she had to use an assumed name to reach him. He testified that, over a period of several weeks, grievant called him at home in the early hours of the morning. He also acknowledged that he did not forward the coupons to grievant for three years (T65), but explained that it was his understanding -- albeit erroneous -- that grievant did not desire to have the coupons clipped, that she wished him to retain the coupons until she sent instructions to the contrary (T59).

With regard to compensation for his services, respondent testified that, at the time he was appointed trustee, he received a fee. Thereafter, his fees were nominal because of his friendship with grievant's brother, Theodore Aronson. He received no compensation after 1982. In a February 12, 1987 letter to grievant's New Jersey attorney, respondent acknowledged the receipt of $1,263.37 in total fees.

At the conclusion of the ethics hearing, the panel found that respondent did not act with reasonable diligence in handling grievant's matter and had failed to respond to grievant's oral and written requests for information, in violation of R.P.C. 1.3 and 1.4[3].

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

As the record discloses, respondent did not act with due diligence in handling grievant's financial affairs. For a period in excess of three years, respondent failed to forward to grievant the bond coupons, as promised, and further failed to provide her

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[3] The Rules of Professional Conduct replaced the Disciplinary Rules on September 10, 1984. Respondent's unethical actions took place both before and after that date. Hence, the panel could have properly found that the Disciplinary Rules had also been violated.

with tax information, resulting in several audits by the Internal Revenue Service, and causing grievant undue anxiety and financial detriment. Furthermore, he failed to keep grievant apprised of her trust investments and to comply with her numerous requests for information. It matters not that respondent was acting as trustee only, and not as grievant's attorney. Conduct by an attorney which engenders disrespect for the law calls for disciplinary action even in the total absence of an attorney/client relationship. In re Carlsen, 17 N.J. 338 (1955), citing In re Howell, 10 N.J. 139 (1952). As trustee, respondent owed a fiduciary duty to grievant, which duty he inexcusably breached.

The Board did not find credible respondent's testimony that it was his impression that grievant wished him to retain the bond coupons. Respondent's letter to grievant on May 12, 1983, unequivocally stated that he would forward the coupons to grievant at the appropriate intervals. Moreover, by letter dated September 3, 1985 (Exhibit P-11 in evidence), grievant complained to respondent about his failure to remit the coupons to her and requested that he do so. Lastly, at the Board hearing, respondent's counsel conceded the impropriety of respondent's conduct, as found by the hearing panel (BT 10-24 to 25).[4]

The Board agrees with the panel's conclusion that there was no violation of R.P.C. 1.15(b) inasmuch as the trust corpus and

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[4] BT denotes the transcript of the Board hearing on February 21, 1990.

income did not constitute clients' or third persons' property held "in connection with a representation."

Discipline should reflect the seriousness of the ethics transgression as counterbalanced by any relevant mitigating factors. Respondent did not advance any circumstances that would mitigate his improper conduct. The Board's review of the record revealed none. In aggravation, the Board considered that, on September 7, 1983, respondent was publicly reprimanded for his lack of diligence in a matter, misrepresenting its status to his client on numerous occasions, and further attempting to deceive his client by supplying a false docket number.

This matter is similar to Matter of Stewart, ___ N.J. ___ (1990), where the attorney failed to communicate with his client in an estate matter, and acted with gross negligence by failing to pay the funeral bill and to file the New Jersey inheritance tax return in a timely fashion. After balancing the ethics infractions with the attorney's marital and financial difficulties, alcohol and drug-related problems, and a prior private reprimand, the Board recommended -- and the Court agreed -- that the attorney be publicly reprimanded.

Here, too, the Board is persuaded that a public reprimand is the appropriate measure of discipline, in light of the nature of the offenses as well as respondent's ethics record. A private reprimand would not sufficiently vindicate the public's interest in maintaining the integrity of the system. The Board unanimously recommends that respondent be publicly reprimanded. One member did

not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 5/25/90

By _____
Raymond R. Trombadore
Chair
Disciplinary Review Board