SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-170
District Docket No. XIV-2011-0460E

| | |
|---|---|
| IN THE MATTER OF | |
| ROSS MITCHELL GADYE | |
| AN ATTORNEY AT LAW | |

Decision

Argued: September 15, 2015

Decided: December 18, 2015

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a)(4), based on respondent's disbarment in New York for violations of that state's equivalents of RPC 1.1(a) (displaying gross neglect), RPC 1.2(d) (counseling or assisting a client in illegal or fraudulent conduct), RPC 1.7(a) (engaging in a concurrent conflict of interest), RPC 3.4(c)

(knowingly disobeying an obligation under the rules of a tribunal), RPC 4.4(a) (using means that have no substantial purpose other than to embarrass, delay, or burden a third person), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

The OAE recommends a two-year or three-year suspension. We determine to impose a two-year prospective suspension.

Respondent was admitted to the New Jersey bar in 1987, the New York bar in 1987, and the Washington, D.C. bar in 1989. On November 29, 1999, he received an admonition for practicing law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. In the Matter of Ross Mitchell Gadye, DRB 99-261 (November 29, 1999).

On April 22, 1999, the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department (Committee) filed a Notice and Statement of Charges related to thirteen separate violations of the New York Disciplinary Rules.

On June 9, 1999, respondent and the Committee entered into a pre-hearing stipulation that addressed all of the charges pending against him in five separate client matters.

## I. The Samuel Matter

In January 1995, Jeannette Samuel met with respondent for the first time to discuss a possible Chapter 7 bankruptcy petition. Her husband, Jacob, and another individual, Scott Frostbaum, were also present at the meeting, during which they discussed Samuel's finances and the bankruptcy process. Samuel paid respondent $200 in cash, to be applied toward his $750 total fee.

On February 27, 1995, prior to any bankruptcy filing, Samuel transferred title to her Florida real estate to her husband. In June 1995, Samuel again met with respondent about her bankruptcy, giving him $550 furnished by Frostbaum, representing the remainder of the legal fee.

On December 22, 1995, respondent filed a bankruptcy petition on Samuel's behalf. The petition, however, made no reference to Samuel's ownership and transfer of the Florida property to her husband. Specifically, schedule A, a listing of the debtor's real property, represented that Samuel had no real estate interests. Additionally, the debtor's statement of financial affairs, which requires the debtor to list "all property, other than property transferred in the ordinary course of business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately

preceding the commencement of this case," indicated that Samuels had transferred no property during the prior year.

Also in the statement of financial affairs, respondent misstated that his first meeting with Samuel occurred on May 5, 1995, even though he first met with her in January 1995. He further reported that he had received the initial payment of $200 on May 5, 1995, when he actually had received it in January 1995. In addition, although the bankruptcy rules required respondent to disclose the actual source of his entire fee, he failed to disclose that Frostbaum — not Samuel — had paid $550 of his $750 fee.

Samuel's statement of financial affairs required a listing of all lawsuits in which she was a party within one year of the bankruptcy filing. The statement disclosed only an American Express lawsuit. Shortly after the February 9, 1996 first meeting of creditors, Jacob asked respondent to assume the representation in his action for injuries sustained when he was a passenger on a Port Authority bus that was involved in an accident. Samuel, too, had a claim for loss of consortium in that litigation, although she was referred to as "Janet," not Jeannette, in that action.

Respondent was aware that Samuel's petition did not reflect her interest in the Port Authority lawsuit, yet he did not amend it with that new information.

In August 1996, the bankruptcy court issued Samuel's bankruptcy discharge and closed the case.

The following month, respondent settled the Port Authority litigation for $125,000 and instructed the defendant's insurance carrier to issue a settlement check payable to "Janet Samuel, Jacob Samuel and respondent as attorney." The carrier, however, issued a check payable only to Jacob and respondent. Respondent failed to inform the bankruptcy court of the settlement or his receipt of funds for Samuel's claim.

On July 16, 1997, after the Chapter 7 trustee learned that there were inconsistencies in Samuel's case, the matter was re-opened for an investigation into possible misrepresentations about her assets. The trustee then filed adversary proceedings against Samuel and respondent, alleging fraudulent conduct through non-disclosures and misrepresentations. On October 2, 1998, the trustee moved for summary judgment. The record is silent about the result of that motion.

Respondent admitted, and in a May 31, 2000, opinion, the special referee in the New York disciplinary proceeding found, that respondent had (1) misrepresented to the bankruptcy court

that his first meeting with Samuel occurred in January 1995; (2) failed to disclose to the court that $550 of Samuel's legal fees had been paid by a third party; (3) failed to disclose in the bankruptcy petition either that Samuel had a claim in her husband's Port Authority lawsuit for loss of consortium or that respondent had become counsel in that litigation in February 1996; and (4) failed to disclose to the court that Samuel had transferred her real estate interest in Florida to her husband within one year of the filing of the bankruptcy petition.

The special referee also concluded that respondent had known about Samuel's transfer of the Florida property prior to the February 1996 meeting of creditors, but failed to take action to amend the petition or to alert the trustee and the court about it. The referee further found that respondent had counseled Samuel to make a false statement on an audio tape, which he had procured for his own protection, concerning his purported lack of knowledge of the Florida property transfer and other facts relating to his preparation of the bankruptcy petition.

Finally, the special referee found a conflict of interest because respondent failed to advise Samuel that, by virtue of the Chapter 7 trustee's adversary proceedings against each of them, respondent's interests and hers were in conflict.

In all, the special referee found respondent guilty of the New York equivalents of RPC 1.2(d), RPC 1.7(a), RPC 8.4(c), and RPC 8.4(d).

## II. The Vega Matter

In June 1995, Nancy Vega retained respondent for a divorce matter. In July 1995, respondent served Vega's husband with a divorce complaint. At the same time, respondent sought an order of protection for Vega. On July 27, 1995, he billed Vega $1,500 in legal fees and requested payment of the $2,000 balance of his retainer, which Vega immediately paid.

In June 1997, after the parties settled the matter and executed a settlement agreement, respondent was obligated to prepare the proposed judgment of divorce, but never did so.

On January 13, 1998, Vega wrote to respondent requesting the status of her divorce, documentation, and an accounting of his legal services. Hearing nothing, on March 24, 1998, Vega again wrote to respondent and requested a reply within one week, warning respondent that she otherwise would file an ethics complaint.

On March 31, 1998, respondent replied to Vega's requests in a letter, enclosing a proposed judgment of divorce. Respondent represented that the judgment would be presented to the court on April 15, 1998.

Hearing nothing further from respondent, Vega sent him an August 24, 1998 letter requesting a copy of the final judgment of divorce. Respondent replied that the court required further information about her healthcare coverage. Vega provided that information in October 1998.

Respondent admitted, and the special referee found, that respondent neglected Vega's matter, a violation of the New York equivalent of RPC 1.1(a). The special referee dismissed the charge that respondent failed to communicate with Vega.

**III. The Roth Matter**

In December 1996, Katherine Roth retained respondent for a bankruptcy matter, for which she paid him $750. In late January 1997, respondent filed Roth's bankruptcy petition and informed her that she would soon receive a date for the first meeting of creditors.

In May 1997, Roth received notice of the May 21, 1997 creditor's meeting. She sent respondent a letter complaining that he had failed to return her telephone calls and requesting that he contact her in preparation for the meeting.

Roth's social security number on the petition contained an error. At the hearing, respondent agreed to amend the petition to correct that error. Thereafter, on May 23 and June 4, 1997, Roth sent respondent reminder letters to amend the petition. He did not do so.

On August 22, 1997, the bankruptcy court granted respondent's discharge. The court order, however, bore the erroneous social security number.

On September 19, 1997, respondent filed a motion to amend the petition, with a return date of October 8, 1997.

Between September 1997 and March 1998, respondent took no action to resolve the motion and never contacted the bankruptcy court about its status.

On January 27, 1998, Roth sent respondent a letter requesting the status of the motion. Hearing nothing from respondent, in February 1998, Roth filed an ethics grievance against him, after which respondent obtained an amended order from the bankruptcy court correcting Roth's social security number.

The special referee found that, although respondent "was not as diligent as he should have been" in responding to the client's requests that he correct "errors in filings that were brought to his attention," his actions did not rise to the level of New York's equivalent of RPC 1.1(a). The special referee dismissed the charges in the Roth matter.

On December 14, 1999, the Committee filed a Supplemental Statement of Charges alleging misconduct by respondent in two additional client matters. On January 3, 2000, respondent and the Committee entered into a supplemental stipulation that addressed the new charges against him.

## IV. The Brandi Matter

On March 3, 1997, Robert and Suzanne Brandi retained respondent to represent them in a foreclosure action initiated by GMAC Corp. The Brandis paid respondent's $1,750 fee in several installments.

Two months later, on May 8, 1997, the Bank of New York (BNY), which held the second mortgage on the Brandis' property, also filed suit against them.

When the Brandis told respondent about the BNY action, he discussed the advantages of filing for bankruptcy protection. As a result of that discussion, the Brandis decided not to

participate in the BNY action, allowing BNY to obtain a judgment, with a foreclosure sale scheduled for November 12, 1997.

On November 6, 1997, the Brandis retained respondent to represent them in a Chapter 13 bankruptcy, for a fixed fee of $1,250. The next day, respondent filed a "barebones" petition that did not include all of the required schedules or a Chapter 13 plan. Under the bankruptcy rules, a barebones petition must be cured within fifteen days. Respondent, however, never filed the documents necessary to cure the deficiencies.

On January 11, 1998, the bankruptcy trustee moved to dismiss the petition, based on the Brandis' failure to file the required documents. However, respondent filed the required documents before the return date of the petition.

Thereafter, a confirmation hearing was scheduled for April 8, 1998. Although respondent claimed to have sent the Brandis a March 2, 1998 letter informing them of the hearing date and requesting their confirmation that they would attend, the Brandis denied receiving the letter.

Neither respondent nor the Brandis appeared at the April 8, 1998 confirmation hearing. Respondent maintained that he retained John Reeves, Esq., a per diem attorney, to appear in his place that day. Reeves, who had no recollection of being

retained by respondent for that purpose, did not appear at the hearing. Respondent had no documentary evidence to support his assertion that Reeves was to appear in his stead.

After the Brandis failed to appear at the hearing, the trustee moved to dismiss the case. Respondent filed no objection and the case was dismissed on May 6, 1998.

After the Brandis learned about the dismissal, respondent promised to file the case anew. On August 20, 1998, they signed a new petition and gave him the $175 filing fee, but he never filed it.

In early 1999, the Brandis received letters from GMAC indicating the bank's intent to foreclose. They forwarded the letters to respondent, contacted the bankruptcy court, and learned that respondent had not filed the second bankruptcy petition. They immediately called respondent to inquire again about the status of their second bankruptcy filing. On March 22, 1999, respondent finally filed the second petition. At respondent's direction, an "intern" in his office informed the Brandis that their petition had been filed that day.

Respondent's second petition and schedules were virtual duplicates of the original filings from November 1997 and, therefore, contained stale information. Respondent submitted the same tax returns, which were no longer the Brandis' most recent

tax returns and listed the same ages for the Brandis and their children (now two years out of date), all of which rendered the petition "untruthful and inaccurate." Respondent attributed the errors to "inadvertence." He also listed a homestead exemption of $115,000, when the bankruptcy rules allowed a claim of only the first $20,000 of equity in the property. Respondent "knew or had reason to know" that the Brandis could not legally claim $115,000, but attributed the $115,000 figure to a "typographical error." In April 1999, at the trustee's request, respondent provided the Brandis' 1997 and 1998 tax returns.

The first meeting of creditors was held on April 23, 1999. Respondent did not appear, but arranged for another attorney to appear in his place. At the meeting, the trustee advised the Brandis to obtain new counsel. The trustee moved to dismiss the case, with prejudice, on the basis that it was a bad faith filing, intended "solely to invoke the automatic stay . . . without any intent of carrying out a viable Chapter 13 plan." The second petition and schedules were copies of the old filing, and they failed to disclose the Brandis' 1998 and 1999 income, instead showing their 1995 and 1996 income. In addition, the debtors' circumstances had not changed sufficiently to warrant a new bankruptcy. The trustee also requested that respondent's fee be denied and sanctions imposed.

On May 6, 1999, the Brandis retained new counsel, Frederick B. Rosner, who informed respondent that he would not take a position at the hearing on respondent's fee and sanctions. On May 10, 1999, Rosner submitted a response to the motion, including a revised homestead exemption of $20,000, which ultimately prompted the trustee to withdraw the motion to dismiss the petition and to "order" respondent to pay $150 in costs.

On May 21, 1999, Rosner sent respondent a copy of his opposition to the trustee's motion to dismiss the case, along with various amended schedules and a new Chapter 13 plan. He also informed respondent about the pending May 26, 1999 hearing date, which apparently was rescheduled to June 9, 1999.

On May 28, 1999, Rosner sent respondent a copy of the Brandis' affidavit in which they blamed respondent for delays in the case and errors in the documents. The affidavit contained a reference to the return date of June 9, 1999. Respondent claimed not to have received the affidavit until July 1999, due to an issue with his mail delivery. The June 9, 1999 return date also appeared in a June 3, 1999 supplemental response from Rosner, a copy of which he sent to respondent on June 3, 1999.

Respondent did not oppose the trustee's motion or appear at the June 9, 1999 hearing on the motion, at which time the

bankruptcy court dismissed the petition and sanctioned respondent in the amount of $5,000. On July 1, 1999, respondent received the court's notice of dismissal and its reference to the court's June 29, 1999 order. He made no attempt to obtain a copy of that court order and did not pay the sanction, claiming that it had no force or effect because he received no "Notice of Entry of the Order."

On September 21, 1999, the trustee served respondent with a notice of entry of the June 29, 1999 order. Respondent informed the Committee that he intended to file a motion to vacate that order, but never did so. Respondent also failed to pay the sanction.

Respondent admitted, and the referee found, a violation of the New York equivalents of RPC 1.1(a) for respondent's failure to (1) appear at the Brandis' April 8, 1998 confirmation hearing; (2) object to the trustee's motion to dismiss the first Chapter 13 case; (3) take action to vacate the dismissal; (4) promptly file the second Chapter 13 petition; (5) file the second petition and schedules with new information; and (6) keep the Brandis informed about the status of their matter from August 1998 to March 1999.

Respondent admitted, and referee found that by filing a petition and schedules that contained inaccurate and untruthful

information, respondent engaged in conduct prejudicial to the administration of justice, in violation of the New York equivalent of RPC 8.4(d).

Finally, respondent admitted, and the referee found that by failing to pay the $5,000 sanction imposed by the bankruptcy court, respondent disregarded the ruling of a tribunal, made in the course of a proceeding, in violation of the New York equivalent of RPC 3.4(c).

## V. The Oak Ja Park Matter

In October 1997, Oak Ja Park retained respondent for a civil matter involving non-payment of rent and a promissory note relating to a business property owned by Su Jong Lee. On January 2, 1998, Lee obtained a default judgment. A marshal's sale of Park's inventory was scheduled for February 3, 1998. On that date, respondent filed an order to show cause (OSC) to vacate the default judgment and, on February 23, 1998, the sale was stayed. When Park did not appear for the March 16, 1998 return date, the OSC was dismissed.

On April 9, 1998, respondent filed a second OSC, but failed to file a proof of mailing, rendering it "a nullity." On April 27, 1998, respondent filed a third OSC, but on June 26, 1998, the court denied Park's motion to vacate the default judgment for

failure to offer a justification for failing to answer the complaint or to offer a meritorious defense to the underlying allegations. Respondent neither filed a motion for reconsideration of the order nor appealed it. On July 29, 1998, Church & 18 Realty Corp. (Church), the new owner of the property, terminated Park's month-to-month tenancy, effective August 31, 1998.

On August 13, 1998, respondent filed another OSC seeking to vacate the default. In his affirmation in support of the OSC, respondent made the same arguments he had advanced in the third OSC. Although respondent made reference to the prior OSC, he did not disclose the date of its adjudication or the basis for its denial. The fourth OSC was denied that same day.

The very next day, on August 14, 1998, respondent filed a Chapter 13 petition on Park's behalf, which stayed all of the matters then pending against her, including the lease termination. Church then filed a motion for relief from the automatic stay, in order to reclaim possession of the business property that Park occupied.

In October 1998, the trustee moved to dismiss the case after Park failed to appear at the first meeting of creditors and to make plan payments. On December 7, 1998, the bankruptcy court dismissed the petition and granted Church's motion for relief from

the automatic stay. Respondent did not appear on the return date of the trustee's motion.

On December 16, 1998, Church served Park with a second notice of termination, effective January 31, 1999, based on the claimed lack of a written lease. Just prior to the effective date, on January 12, 1999, respondent filed another Chapter 13 petition in Park's behalf. That same day, the trustee filed a motion to dismiss the case, alleging bad faith on Park's part, whose circumstances had not changed since the dismissal of the previous petition.

Church filed a new motion for relief from the automatic stay, and for sanctions against respondent, also on the grounds of a bad faith filing. Lee, too, filed a motion for relief from the stay and for sanctions.

At respondent's direction, Reeves appeared for him on the March 2, 1999 return date of the motions. Reeves had informed respondent, when he agreed to take the assignment, that he had another court appearance later that same day in a different court. Respondent prepared an affirmation stating that Park had submitted a plan on January 12, 1999 and provided procedural evidence that Park had made the required plan payments. Respondent gave the documents to Reeves for filing with the court at the hearing, but

failed to serve Church and Lee with them. The affirmation did not address the requests for sanctions against him.

Reeves appeared at the bankruptcy court on March 2, 1999, but left the courthouse before the matter was heard, in order to attend to his other matter in another court. Therefore, respondent's affirmation was never considered by the court. The bankruptcy court dismissed Park's second Chapter 13 petition with prejudice for one year and scheduled an evidentiary hearing on the issues of the lease and sanctions.

On March 5, 1999, the trustee sent respondent a notice of settlement and proposed order dismissing the second petition presented for settlement on March 17, 1999. The proposed order sought to set respondent's fee at zero, to direct him to refund all monies received from Park, and to require respondent to file an affidavit of compliance with the court.

Respondent filed an affirmation in opposition. He stated that Park had provided him with a written lease under which she had a nineteen percent equity interest in the property and, thus, offered a basis for the court to deny the adversaries' requested relief from the automatic stay. Respondent attached a copy of a written lease between Lee and Park, allegedly signed by Lee, as well as other signed business documents.

On March 8, 1999, Church sent a letter to the bankruptcy court claiming that the lease filed by respondent was fraudulent. He pointed out the "marked difference" between Lee's purported signature on the lease and his notarized signature on a September 16, 1998 affidavit and a February 27, 1998 bargain and sale deed.

Respondent claimed to have received a copy of the lease just before preparing the affirmation and admitted failing to compare Lee's purported signature on the lease to authentic examples of his signature on other documents in the Park matter.

At the March 10, 1999 hearing, which respondent did not attend, the bankruptcy judge stated on the record that respondent had not opposed the trustee's motion to dismiss the case, which had been granted on March 2, 1999. The judge found that the petition had been filed for "an improper purpose" and that there was no "properly executed written lease." He also granted Church and Lee relief from the automatic stay, as well as attorney's fees and costs.

Respondent reported to the courtroom long after the case had been heard that day, at which time the judge made additional findings that respondent had "violated his obligation under [Bankruptcy Rule] 9011 to make a reasonable investigation of relevant facts," given the differences between Lee's signature on the purported lease and on other documents. The judge also noted

on the record that the dismissal of Park's second Chapter 13 case was premised on the basis of the debtor's insufficient means to fund the plan and on respondent's failure to appear at the March 2, 1999 hearing. The bankruptcy judge signed orders dismissing the case, granting relief from the automatic stay, and directing that Park and/or respondent pay $4,042.84 and $3,007.45 in costs and attorney's fees, to Church and Lee, respectively. Respondent was also ordered to return Park's legal fee.

Park ultimately paid Church and Lee's attorney's fees and costs in late 1999. On December 9, 1999, respondent returned Park's $500 legal fee.

Respondent admitted, and the special referee found, violations of the New York equivalent of RPC 1.1(a) for respondent's failure to appear on the return date of the second OSC; to file opposition to the trustee's motion to dismiss the case; and to investigate the authenticity of Lee's signature on the purported lease.

The special referee also found that, by filing the fourth OSC on the same grounds as the prior OSC and failing to inform the bankruptcy court that it had already been denied on the merits, respondent engaged in conduct prejudicial to the administration of justice, in violation of the equivalent of RPC 8.4(d). The special referee further concluded that, by doing so the day after the

fourth OSC was denied and two weeks after the first Chapter 13 petition's dismissal, respondent filed suit on behalf of his client "when it was obvious that such action would serve merely to harass or maliciously injure another," in violation of the equivalent of RPC 4.4(a).

Finally, the special referee determined that, by failing to refund Park's fee, as ordered by the bankruptcy court, respondent knowingly disobeyed an obligation of a tribunal, in violation of the equivalent of RPC 3.4(c).

On March 15, 2001, the Committee presented a petition to the New York Supreme Court, Appellate Division, First Judicial Department, in which the parties jointly recommended a five-year suspension for respondent. An appellate hearing panel then accepted the referee's determination of the charges, but recommended disbarment.

On March 24, 2001, the New York Supreme Court, Appellate Division, First Judicial Department, disbarred respondent, effective June 25, 2001.

On July 30, 2001, respondent was disbarred by the United States District Court for the Eastern District of New York (District Court) and, on March 18, 2002, he was disbarred by the United States Supreme Court.

Respondent never notified the OAE of his New York discipline, as required pursuant to R. 1:20-14(a), or of his indictment in the District Court on charges (unspecified by the OAE), that were "referred for deferred prosecution" and eventually dismissed.

As previously noted, the OAE seeks a two-year or three-year suspension for respondent's New York misconduct.

In his July 7, 2015 brief, respondent urged us to impose a two-year suspension, retroactive to May 24, 2008, the date that he was eligible to apply for reinstatement in New York.

Respondent offered mitigation for his actions in these matters, which occurred almost twenty years ago, in 1995 and 1996. He explains that he did not offer mitigation in the New York disciplinary matter because he stipulated to a suspension.

In mitigation, respondent asserted that the following factors contributed to his "appalling poor judgment." In 1995, his father was diagnosed with lung cancer and passed away on May 28, 1996 in Portland, Oregon. His mother became terminally ill during this same period and passed away on February 2, 2000. Respondent was under extreme pressure at the time that he engaged in the wrongdoing, flying to and from Oregon to be with his dying parents.

Respondent urged us to consider that he "paid an extremely serious price for [his] misconduct as a lawyer . . . and learned a profound lesson." Today, respondent is "54 years old, married with two children, and [is] guided each day by the mistakes of [his] past."

Since 1999, before his New York suspension, respondent has been employed full-time with a respected real estate brokerage company, Brown Harris Stevens. His first position there, in 1999, was as an assistant in training. He was promoted to a position providing him with his own desk, then to vice-president and director. Respondent's record as a broker is unblemished over that time. He is a member of the Real Estate Board of New York and has won numerous awards at Brown Harris Stevens, including the 2005 listing broker of the year award for the Greenwich Village office.

In 2006, when respondent's real estate broker's license in New York was scheduled for renewal, the New York State Department of Licensing sent him a notice that his disbarment in that state created a negative presumption that he was unfit to sell real estate. He overcame that presumption by presenting evidence of his good character and performance of his duties as a broker without complaint.

Respondent believes that his success as a real estate broker shows his "work ethic, integrity and honesty . . . the lessons that [he has] learned, and [his] capacity to be an honest and able attorney."

Although respondent attached to his brief a copy of the November 15, 2011 OAE letter initiating its investigation, after it learned about his New York disbarment, he provided no explanation for his failure to inform the OAE of the disbarment.

In 2012, respondent was diagnosed with multifocal motor neuropathy (MMN), "a rare neurological condition that causes weakness and a great deal of dysfunction and disability. It affects nerves in the hands, arms, and legs causing muscles to become atrophied." Respondent receives weekly infusions of intravenous immunoglobulin. Although bedridden, respondent continues to hold his position at Brown Harris Stevens, but is unable to work as a broker, due to his affliction. He is still able to represent buyers and sellers of residential real estate, with the help of support staff.

Respondent asserts that, "notwithstanding [his] past misconduct, the memory of which guide[s] [him] every day," his disability makes "practice outside of New Jersey nearly impossible." He has a "passion for the law," and "a wealth of positive experience and knowledge that [he] brings to the law."

According to respondent, he is current with the annual assessments to the New Jersey Lawyers' Fund for Client Protection and is in compliance with the continuing legal education requirements for New Jersey attorneys.

Finally, respondent states:

> Unfortunately, I cannot erase the events of my past. I can only learn from them and be a better person. With respect, I submit that my conduct for the years subsequent to my sanction and the supporting documentation submitted herewith demonstrate that I have learned from my past mistakes and have become a better person with the capacity to be an honest and able attorney. Not a day goes by when I do not experience profound remorse for my misconduct.
>
> [Rb¶19.]

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a) (4), which provides that

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not

> remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). However, paragraph (E) applies. In New Jersey, discipline for respondent's misconduct would merit discipline less severe than the disbarment meted out in New York, from which an attorney may seek reinstatement after seven years.

In total, respondent was found guilty of twenty separate charges, arising from his representation of four clients (the Roth matter was dismissed). According to the New York Appellate Division order for his disbarment, he grossly neglected numerous client matters; made bad faith court filings; failed to comply with court orders; engaged in a conflict of interest with a current client; repeatedly committed acts of dishonesty, fraud, and misrepresentation; participated in a fraud upon the bankruptcy court; and engaged in conduct prejudicial to the administration of justice.

Respondent's most serious misconduct took place in the Samuel, Brandi, and Park bankruptcies. It involved his

misrepresentations, lack of candor to courts and frivolous filings in the bankruptcy court.[1]

In Samuel, respondent misrepresented to the trustee, creditors, and the bankruptcy court that Samuel had no real estate interests. Yet, respondent knew that she had transferred her Florida property to her husband after their first meeting with respondent, but before respondent prepared and filed the petition. Respondent misrepresented the timing of that first meeting, in order to hide the fact that they had met to discuss her bankruptcy prior to her fraudulent transfer of the property. Respondent hid another asset as well – the loss of consortium claim in her husband's Port Authority lawsuit. Respondent also failed to disclose to the bankruptcy court that a portion of his fee came from Frostbaum, a third party. Finally, respondent counseled Samuel to make false statements on an audio tape regarding his purported lack of knowledge regarding the Florida

---

[1] The OAE likened respondent's violations of New York DR 7-102(A)(1) (filing a suit knowing that such action would serve merely to harass or maliciously injure another) to RPC 4.4(a) (using means that have no substantial purpose other than to embarrass, delay, or burden a third person). As used by the New York authorities in this matter, DR 7-102(A)(1) is also in the nature of RPC 3.1 (bringing a frivolous claim).

property transfer and other facts relating to his preparation of the bankruptcy.

In addition, respondent grossly neglected the Samuel matter and engaged in a conflict of interest. In all, he violated RPC 1.2(d), RPC 1.7(a), RPC 8.4(c), and RPC 8.4(d).

In the Vega matter, respondent was found guilty only of grossly neglecting the client's case, a violation of RPC 1.1(a).

In the Brandi matter, respondent misrepresented the debtors' exemption for the homestead property as $115,000, instead of the actual $20,000 exemption, and re-filed a bankruptcy petition and schedules virtually identical to those filed in their earlier dismissed bankruptcy. The new documents contained outdated and incorrect information. Respondent was found to have filed the petition in bad faith, simply to invoke the automatic stay provisions of the bankruptcy code, in order to halt a foreclosure action. By his conduct, respondent violated RPC 1.1(a), RPC 3.4(c), and RPC 8.4(d).

Respondent used the same improper tactics in the Park matter, filing a bankruptcy petition for the sole purpose of staying a marshal's sale. He also filed a contract with the court containing an obviously fraudulent signature purported to have been from Park's landlord. He did so without making any attempt to authenticate the signature, solely to stay the claims

that Lee had against Park. Finally, respondent failed to comply with the terms of the bankruptcy court's order to refund Park's fee. In doing so, respondent violated RPC 1.1(a), RPC 3.4(c), RPC 4.4(a), and RPC 8.4(d).

Misrepresentations or lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of Richard S. Diamond, DRB 07-230 (November 15, 2007) (admonition for attorney who filed certifications with the family court making numerous references to attached psychological/medical records, which were actually mere billing records from the client's medical provider; although the court was not misled by the mischaracterization of the documents, the conduct nevertheless violated RPC 3.3(a)(1)); In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an assistant prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed

inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, at the attorney's direction, staff completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise non-lawyer employees); In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, as to the date the attorney learned of the dismissal of the complaint; the attorney also lacked diligence in the case, failed to expedite litigation, and failed to properly communicate with the client; prior reprimand); In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a motion filed with the court; the attorney had no disciplinary record); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board Of Immigration Appeals; the attorney also failed to

adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home and drafted a false certification for the client, which was submitted to the court in a domestic violence trial); In re Perez, 193 N.J. 483 (2008) (on motion for final discipline, three-month suspension for attorney guilty of false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked the municipal prosecutor to request a bail increase for the person charged with assaulting him); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge

one week later that he had lied because he was scared; the attorney was suspended for six months); In re Moras, 220 N.J. 351 (2015) (default; one-year suspension imposed on attorney who exhibited gross neglect and a lack of diligence and failed to communicate with the client in one matter, misled a bankruptcy court in another matter by failing to disclose on his client's bankruptcy petition that she was to inherit property, and failed to cooperate with the ethics investigation in both matters; extensive disciplinary history consisting of two reprimands, a three-month suspension, and a six-month suspension); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing).

Attorneys who, like respondent, have filed frivolous litigation and engaged in conduct prejudicial to the administration of justice, have received suspensions. See, e.g., In re Shearin, 166 N.J. 558 (2001) (Shearin I) (one-year suspension imposed in a reciprocal discipline matter where the attorney filed two frivolous lawsuits in a property dispute between rival churches; a court had ruled in favor of one church and enjoined the attorney's client-church from interfering with the other's use of the property; the attorney then violated the injunction by filing the lawsuits and seeking rulings on matters already adjudicated; she also misrepresented the identity of her client to the court, failed to expedite litigation, submitted false evidence, counseled or assisted her client in conduct that she knew was illegal, criminal, or fraudulent, and made inappropriate and offensive statements about the trial judge); In re Garcia, 195 N.J. 164 (2008) (fifteen-month suspension imposed in a reciprocal discipline matter, where the attorney filed several frivolous lawsuits and lacked candor to a tribunal; after her husband, with whom she practiced law, was suspended from the practice of law, the attorney aided him in the improper practice of law and used firm letterhead with his name on it during his suspension; the attorney also lacked candor to a tribunal and made false and reckless allegations about judges' qualifications in court

matters); In re Khoudary, 213 N.J. 593 213 N.J. 593 (2013) (two-year suspension imposed for misconduct in a bankruptcy matter; the attorney formed a corporate entity, SSR, to hold his investments in several assignments of mortgage and a default judgment for three tracts of land, investments that were in foreclosure at the time; the ownership of SSR was vested in his then-wife; four days after forming SSR, the attorney filed a "barebones" Chapter 11 bankruptcy petition, ostensibly to reorganize SSR, but actually to stay the foreclosure proceedings pending in state court; fewer than two months into the Chapter 11 proceeding, the bankruptcy court dismissed the petition as a bad faith filing and lifted the automatic stay, allowing the matters to proceed in state court; four weeks later, Khoudary filed a second bankruptcy petition for SSR, which again stayed the foreclosure proceeding; the bankruptcy court immediately dismissed that petition as a bad faith filing and imposed more than $11,000 in sanctions against him; violations of RPC 3.1, RPC 8.4(c), and RPC 8.4(d); in aggravation, the attorney had a prior two-year suspension for unrelated conduct); In In re Shearin, 172 N.J. 560 (2002) (Shearin II) (three-year suspension imposed on attorney Shearin, who had previously received a one-year suspension for misconduct surrounding a church representation; the attorney sought the same relief as in prior unsuccessful lawsuits against

her client's rival church, regarding a property dispute; the attorney burdened the resources of two federal courts, defendants, and others in the legal system with the frivolous filings; she knowingly disobeyed a court order that expressly enjoined her and the client from interfering with the rival church's use of the property, and made disparaging statements about the mental health of a judge).

Although attorneys Shearin and Garcia engaged in discourteous conduct toward courts and others, and Khoudary had a prior suspension, elements not present here, respondent committed additional unethical conduct not present in those matters. He grossly neglected three of the four client matters: Vega, Brandi, and Park. In addition, in the Samuel matter, respondent counseled his client in conduct that he knew was illegal or fraudulent and engaged in a concurrent conflict of interest.

Here, the totality of respondent's misconduct warrants substantial discipline. He has assented to a two-year suspension, the same baseline sanction sought by the OAE and as imposed in Khoudary, above. Respondent, however, argues that the suspension should be made retroactive to May 24, 2008, the date that he became eligible for reinstatement in New York.

We considered, in aggravation, that respondent failed to report to the OAE his 2001 disbarment in New York, his

subsequent District Court and U.S. Supreme Court disbarments, and his indictment on unspecified charges that were later dismissed in New York. We consider it important that, although respondent's misconduct is remote in time, most of that time passage (May 2001 to November 2011, when the OAE first learned, on its own, of the disbarment) is attributable to respondent. In the interim, he was free to continue to practice in New Jersey without consequence.

In mitigation, respondent was preoccupied with the terminal illnesses of both his parents at the time of the misconduct. Respondent also has enjoyed a complaint-free, sixteen-year career selling real estate in New York; he took responsibility for his actions, stipulating in the New York proceeding that they were unethical; he has apparently learned from those mistakes; he has expressed deep remorse for his misdeeds; and he suffers from multifocal motor neuropathy, which limits him to practicing law in the future, if anywhere, in New Jersey.

Nevertheless, respondent's misconduct was serious and pervasive. Importantly, he failed to alert the OAE to New York, District Court, and U.S. Supreme Court disbarments, or his indictment. We conclude that only a prospective suspension of two years' duration will adequately address his misconduct.

Vice-Chair Baugh and Member Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ross M. Gadye
Docket No. DRB 15-170

Argued: September 15, 2015

Decided: December 18, 2015

Disposition: Two-year suspension

| ***Members*** | Disbar | Two-year Suspension | Reprimand | Dismiss | Disqualified | Did not participate |
|---|---|---|---|---|---|---|
| Frost | | X | | | | |
| Baugh | | | | | | X |
| Clark | | | | | | X |
| Gallipoli | | X | | | | |
| Hoberman | | X | | | | |
| Rivera | | X | | | | |
| Singer | | X | | | | |
| Zmirich | | X | | | | |
| Total: | | 6 | | | | 2 |

Ellen A. Brodsky
Chief Counsel