SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-149
District Docket No. XIV-2014-0152E
and
Docket No. DRB 15-150
District Docket No. XIV-2014-0153E

IN THE MATTERS OF	:
SAL GREENMAN	:
AND	:
JONATHAN GREENMAN	:
ATTORNEYS AT LAW	:

Decision

Decided: December 22, 2015

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

These matters came before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The two-count complaint charged respondents with one count each of having violated RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities), based on their alleged failure to cooperate with the OAE's audit of their books and

records. We determine that a censure for both respondent Sal Greenman (hereinafter Sal), and respondent Jonathan Greenman (hereinafter Jonathan), is the appropriate quantum of discipline.

Sal was admitted to the New Jersey bar in 1993. He has no history of final discipline. On February 20, 2015, however, he was temporarily suspended by the Supreme Court for failing to comply with a random compliance audit request by the OAE. In re Greenman, 220 N.J. 489 (2015). He remains suspended to date.

Jonathan was admitted to the New Jersey bar in 2003. On January 23, 2014, Jonathan received an admonition for lack of diligence and failure to communicate with the client, in one client matter. In the Matter of Jonathan Greenman, DRB 13-328 (January 23, 2014). Additionally, on February 20, 2015, he was temporarily suspended by the Supreme Court for failing to comply with a random compliance audit request by the OAE. In re Greenman, 220 N.J. 490 (2015). He remains suspended to date.

On March 24, 2015, the OAE sent a copy of the complaint to each respondent in accordance with R. 1:20-7(h), at their last known home address listed in the records of the Lawyers' Fund for Client Protection (CPF), by regular and certified mail. The complaints sent by certified mail were delivered on March 23, 2015. The undated certified mail receipts were returned with illegible signatures. The regular mail was not returned.

On April 20, 2015, the OAE sent a second letter to both respondents at the same home address, by both regular and certified mail. The letter directed respondents to file a verified answer to the complaint within five days of the date of the letter and informed them that, if they failed to do so, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). A notice of the certified mail was left on April 23, 2015; the regular mail sent to this address was not returned. As of April 29, 2015, the date of the certifications of the record, neither respondent had filed an answer to the complaint.

On June 24, 2015, respondents filed a motion to vacate the defaults, which the OAE opposed on June 29, 2015. For the reasons set forth below, we determined to deny the motion.

To successfully move to vacate a default, a respondent must meet a two-pronged test. First, a respondent must offer a reasonable explanation for his or her failure to answer the ethics complaint. Second, a respondent must assert meritorious defenses to the underlying charges.

As to the first prong of the test, respondents assert that they both received the June 3, 2015 (scheduling) letter, sent by Office of Board Counsel. This letter was sent to both respondents at the same address used to serve them with the complaint and the

"five day" letter. Respondents explained that the letter was sent to an address where Sal's ninety-four year old mother, who is ill and wheelchair bound, resides. They further claim that her home healthcare aide, who does not speak English, was the initial recipient of the letter, that "all mailings" were received late, and that this caused the delay in their response.

Respondents, however, failed to explain why they did not answer the complaint in the first instance. They neither deny receiving the complaint nor challenge the validity of its service on them. They merely explain that, as a result of the actions of Sal's mother's home healthcare aide, their motion to vacate the default was filed on the last day permitted by the scheduling letter. This explanation, however, is unrelated to their failure to answer the disciplinary complaint. Respondents essentially admit receiving the complaint, asserting only that "all mailings" were late. They also fail to clarify when the mailings were received.

As previously noted, the complaints sent to respondents by certified mail were delivered to each of them on March 27, 2015. Although the signatures on the certified mail cards are illegible, it is clear that they are two different signatures. Hence, two separate people received these packages.

Additionally, respondents imply that the mail was sent to an address where they do not reside. The record, however, makes clear

that all mail was sent to the last known home address for respondents as it appears in the records of the CPF. If respondents claim that service of the complaints was invalid because the complaints were not sent to their current home address, that argument must fail. New Jersey attorneys have an affirmative obligation to inform the CPF and the OAE of changes to their home and primary law office address, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). That respondents may have failed in their obligation to comply with this Rule should not vitiate proper service in this matter. To find otherwise would condone behavior whereby attorneys could avoid service of process for disciplinary matters without consequence. Thus, respondents have failed to meet the first prong of the test.

Nevertheless, even if respondents had met the initial threshold to vacate the default, the motion still would fail based on their failure to satisfy the second prong of the test.

Respondents argue that they have meritorious defenses in that they have attempted to fully cooperate with the OAE and did not miss any audits due to anything but "lack of knowledge and timing." They maintain that they simply missed audits because their records were not ready; that they "immediately" hired an accountant to assist but eventually, that accountant found that he could not complete the project in accordance with the demands of

the OAE; that they then hired a second accountant with experience with the RPCs and attorney trust accounting; and that the second accountant has been diligently working to reconcile the records for presentation to the OAE.

As will be detailed below, respondents attempt to minimize what is a blatant disregard of their responsibility to cooperate with disciplinary authorities. OAE auditors scheduled three separate audits. Respondents were unprepared with any records for the first audit and failed to appear for the other two audits. They submitted two significantly deficient document productions to the OAE, failed to answer myriad telephone calls and letters from the OAE and its auditors, and ignored two separate demands, sent December 24, 2012 and again on October 24, 2014, that they complete and return a Certification of Accounting Services.

Notwithstanding respondents' claim that they "immediately" hired an accountant, Sal first indicated, in a December 3, 2014 letter to the OAE, that an accountant had been hired. A year has passed since the December 3, 2014 letter to the OAE, and two-and-a-half years have passed since the records were allegedly stolen, and yet, the documents still are not available for inspection.

Further, since the December 3, 2014 letter, respondents neither appeared for an audit nor replied to the OAE's multiple attempts to communicate with them. They also ignored two subsequent Court orders compelling them to appear for an audit. In

fact, this motion is the first communication from respondents since December 3, 2014. Hence, their proffered defenses are woefully inadequate.

In short, respondents did not present a reasonable excuse for their failure to file an answer and did not advance any meritorious defenses to justify their pattern of obfuscation and lack of cooperation. For the above reasons, we denied the motion.

The facts of this matter are as follows:

Sal, and his son, Jonathan, operate The Sal Greenman, P.C. law firm. In an August 23, 2012 letter, the OAE notified the firm that it had been selected for a random compliance audit, scheduled to occur on September 10, 2012. Sal requested that the OAE reschedule the audit because he had not received the audit notification letter. On September 4, 2012, the OAE sent a letter granting the request and rescheduling the audit for October 22, 2012.

On October 22, 2012, Senior Random Compliance Auditor Mimi Lakind and (now former) OAE Auditor Christopher Spedding appeared for the audit. Sal claimed that, due to a sudden illness of Jonathan, he was unprepared. Thus, on October 25, 2012, the OAE sent a letter to respondents, rescheduling the audit to December 17, 2012. However, neither of them were available when Lakind and Spedding appeared for the audit on that date. Jonathan claimed that he had parked his car in New York to have the law firm

records printed at Kinkos, but someone broke into the vehicle and stole the law firm records. Sal claimed that he had laid all recordkeeping responsibility on his son, since Sal was burdened by overseeing the care for his own ill and elderly mother.

The OAE then informed respondents that a demand audit would take place on December 20, 2012. Sal, however, claimed that he would be on vacation at that time. When Lakind pressed him to provide proof of his reservations, she received documentation showing that his flight was scheduled for December 25, 2012, five days after the scheduled audit.

On December 18, 2012, Jonathan sent a letter confirming a telephone conversation that he had with Lakind earlier that day. Enclosed with the letter were business account records for the four-month period of September through December 2012, but not for the full two-year audit period that the OAE had requested. Jonathan again explained that his car had been towed in Manhattan when he brought his records to Kinkos to be printed and the records were stolen from the car. Despite four requests by Lakind, Jonathan never provided documentation showing that his car had been towed.

Jonathan's failure to produce all the records that should have been made available at the audit prompted the OAE to send an "Atlas" letter to respondents' law firm on December 24, 2012, by fax and regular mail. The letter, in addition to reciting the

missing records and the audit findings, required the law firm to obtain the services of a certified public accountant in order to reproduce the records they claimed were stolen and to return to the OAE the Certification of Accounting Services. The OAE required the records and the reconstruction to be submitted by February 28, 2013. Respondents never returned the certification and no further response was forthcoming from them, notwithstanding the fact that Lakind had left voice mail messages on the extensions for both respondents on at least two occasions.

On June 12, 2013, Lakind sent a letter to respondents confirming the deficiencies outlined in the Atlas letter of December 24, 2012 and their failure to respond to the demands therein. On June 20, 2013, in a written response, Jonathan claimed that he had not received the December letter. The OAE had faxed that letter at 3:30 p.m. on December 24, 2013, and had received a fax delivery confirmation. Moreover, the OAE also had sent the letter by regular mail, which was not returned. Nevertheless, Jonathan requested an extension of time to supply the required records.

Jonathan included with his June 20, 2013 letter, a trust receipts journal, a listing of client files, and some client ledger sheets. Included in the submission was only the first page of a bank statement. The submission gave the impression that the trust account was a fungible account, that is, one in which all

client funds are aggregated without regard to the individual client. The trust account, however, was an "umbrella" or "escrow" type bank account, which consisted of individual clients' segregated sub-accounts. With an umbrella type trust account, each trust check written and each deposit to be credited must indicate the client sub-account credited or charged for the particular transaction.

Respondents failed to submit the monthly trial balance bank statements that had been provided each month by the bank, which identify the owners of the funds in the account. Respondents also failed to submit monthly trust account reconciliations that reveal whose funds are required to be on deposit on the ledgers and in the bank. Similarly, no disbursements journals were provided, in total disregard of the specific demands made in the December 24, 2012 Atlas letter, and again in the June 12, 2013 follow-up letter.

Prior to the Atlas letter, on December 20, 2012, the OAE served a subpoena on Bank of America seeking business and trust records for the period from 2010 through 2012. Although those documents were received, the subaccount ledgers and monthly trial balance statements were not included. The OAE's telephone messages left for respondents were not returned.

On February 25, 2014, when it became clear that respondents would not be providing any additional records that would enable

Lakind to determine the identity and preservation of client trust monies, the OAE served Bank of America with a second subpoena. This subpoena again required the bank to update the statements and retrieve the monthly trial balances with the attendant sub-account ledgers, which reflect only the transactions for the current month for each client on the appropriate ledger.

Lakind's review of the trust bank statements for the period January 1, 2011 through July 2011 disclosed a large volume of online transfers to the business account. Specifically, Lakind compiled trust records, which disclosed that more than ninety online transfers, totaling more than $89,000, took place during that seven-month period in 2011, without a single notation for the client charged.

Following these discoveries, the OAE scheduled a demand audit for March 27, 2014, via letter sent by regular and certified mail to respondents' law office. The certified mail was received and the receipt appeared to be signed by Jonathan. The regular mail was not returned. Nonetheless, respondents neither appeared for the audit nor communicated in any manner with the OAE.

On April 25, 2014, the OAE sent another letter to respondents scheduling a new demand audit for June 19, 2014. On June 6, 2014, the OAE sent another letter to correct the scheduled date to July 19, 2014. On June 17, 2014, the OAE sent a third letter, rescheduling the demand audit to July 17, 2014. Neither the

regular mail nor the green cards for the certified mail were returned for any of the letters.

Respondents never appeared at the July 17, 2014 audit. No communication was received from either of them. A call from the auditor and three calls by the OAE to the law firm went to voice mail. The OAE left a message on Sal's telephone extension, another on Jonathan's telephone extension, and another on the firm's telephone line. Consistent with their pattern of ignoring the OAE, respondents did not communicate with the OAE.

Subsequently, on Friday, August 22, 2014, Lakind placed a telephone call to the Fair Lawn Post Office (across from respondents' office) and spoke with a postal employee who tracked the certified mail. Only the June 17, 2014 certified letter was shown to be received by that branch. The records of the Fairlawn Post Office showed that respondents had not retrieved the certified letter.

On September 2, 2014, based on respondents' failure to cooperate, the OAE filed a Petition for Emergent Relief seeking the immediate temporary suspension from the practice of law of both respondents. On October 15, 2014, the Court ordered respondents to appear for an audit at the OAE and to provide the records requested to date within sixty days after the filing date of the order.

In accordance with that order, on October 24, 2014, the OAE sent a letter to respondents scheduling a demand audit for December 4, 2014. Included with that letter was another blank Certification of Accounting Services, which respondents were required to complete and return to the OAE, along with the name and scope of accounting services to be provided. The Certification of Accounting Services was not returned.

On December 1, 2014, the OAE received a letter, dated November 20, 2014, on the letterhead of Sal Greenman & Associates PC in which Sal requested an adjournment of the demand audit. Sal recited a number of reasons, such as medical issues, childcare arrangements, and the upcoming holidays. In a December 2, 2014 letter to Sal, sent by fax and certified mail, the OAE denied the adjournment request and reminded Sal that failure to appear on December 4, 2014 for the demand audit would result in an application to the Court for his temporary suspension from the practice of law.

On December 3, 2014, Sal replied via a faxed letter explaining why he would not be appearing for the demand audit scheduled for the next day. He claimed that he had a serious medical condition in which he had lost all vision in his right eye and was awaiting eye surgery. Further, he noted that he had no records and that he had hired an accountant and a bookkeeper, without specifying whom he hired, and that the records would not

be available for weeks. He further noted that should the request be denied, he would ask Jonathan to appear. Although the OAE called Sal at his law office just twenty minutes after Sal's adjournment request letter was faxed to the OAE, there was no answer. The OAE left a message on Sal's voice mail. On that same date, at 4:45 p.m., the OAE left another telephone message on the firm's voice mail system. The OAE made clear in the message that the adjournment had not been granted.

On December 4, 2014, the OAE sent a letter to Sal reminding him that the demand audit had not been adjourned and that ethics counsel and Lakind were present at the OAE offices to conduct the audit. No response was received and neither of the respondents appeared for the audit.

On December 18, 2014, based on respondents' failure to cooperate, the OAE filed a second Petition for Emergent Relief, seeking the immediate temporary suspension from the practice of law of both respondents. On January 14, 2015, the Court again ordered respondents to appear for an audit at the OAE and to provide the records requested to date on or before February 13, 2015. The order further provided that, on the submission of a detailed certification from the OAE, respondents would be temporarily suspended from the practice of law without further notice. The Court announced that no further extensions would be granted.

In accordance with the January 14, 2015 order, the OAE sent a January 15, 2015 letter scheduling a demand audit for February 3, 2015. The letter was sent to both respondents via fax, certified mail, return receipt requested, and regular mail. The fax was confirmed to have been delivered but the regular mail was returned to the OAE on February 10, 2015 with handwritten markings of "RTS" and "UKN". Respondents did not appear for the February 3, 2015 audit or provide the records requested.

The OAE made two telephone calls to respondents' law office to determine whether they intended to appear for the audit, but there was no answer and no answering machine was available to leave a message. Respondents did not telephone or otherwise contact the OAE to explain why they did not appear for the audit on February 3, 2015.

On February 11, 2015, Robert J. Prihoda, Chief of the OAE Random Audit Program, drove to respondents' law office in Fair Lawn, New Jersey, arriving at about 3:00 p.m. The building was closed and there were no cars in the parking lot. At the entrance to the law office, he left an envelope containing his business card and the information previously sent to the law firm. Respondents did not reply. Prihoda then visited the post office across the street from the law firm and spoke with two postal employees, who stated that all mail addressed to the law office is delivered only to the law office post office box. There is no mail

delivered to the law office building. Both postal employees stated that they know who Jonathan is and that he personally picks up the mail on a regular basis.

On February 20, 2015, the OAE filed an affidavit with the Court and, based on both respondents' continuing failure to cooperate with the OAE, the Court ordered their temporary suspension from the practice of law.

The complaint alleges sufficient facts to support the charges of unethical conduct. Respondents' failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondents, despite extraordinary opportunities extended by both the OAE and the Supreme Court, utterly have failed to comply with their obligation to comply with the OAE's requests for the production of their records. Not only have they failed to comply with these lawful demands, but also they have attempted to spin a tale of deceit and misdirection that pales in comparison only to how poorly constructed or easily exposed those tales were. Respondents have compounded their blatant disdain for the disciplinary system by failing to file answers to the disciplinary complaint, defaulting on the matter.

Over the course of almost two-and-a-half years, respondents were unprepared for one audit when the auditors arrived and failed

to appear for two others. Despite multiple demands, they made two incomplete document productions, which were so deficient that they created more questions than answers. They failed to respond to no less than six letters sent by the OAE and ignored a multitude of telephone messages. Respondents also made numerous excuses for their lack of cooperation, including an unsubstantiated report of a towed car; stolen records from that car; a misrepresentation regarding the dates of a scheduled vacation; a sudden illness for Jonathan; an illness and required surgery for Sal; and the need for Sal to care for his elderly mother. Sal also claimed, on at least one occasion, that his son was responsible for the recordkeeping in what could reasonably be interpreted as an attempt to shift the recordkeeping and cooperation responsibility entirely to Jonathan. Respondents also ignored two Court orders, directing them to appear for an audit.

Respondents, thus, violated RPC 8.1(b) and R. 1:20-3(d)(3) by their blatant and consistent failure to cooperate with the OAE's audit.

Failure to cooperate with disciplinary authorities typically results in an admonition, if the attorney does not have an ethics history. See, e.g., In the Matter of Richard D. Koppenaal, DRB 13-164 (October 21, 2013) (attorney failed to cooperate with the district ethics committee's demand for information about an ethics grievance; no prior discipline); and In the Matter of Lora M.

Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until finally retaining counsel to assist her; no prior discipline).

If the attorney has been the subject of prior discipline, but the attorney's ethics record is not extensive, reprimands have been imposed. See, e.g., In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Sal has no history of discipline. Therefore, an admonition is the baseline discipline for his failure to cooperate violation. That discipline ordinarily would be increased to a reprimand for his failure to file an answer to the disciplinary complaint. In a default matter, the otherwise appropriate discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities. In re Kivler, 193 N.J. 332, 342 (2008). We determined, however, that further enhancement to a censure is appropriate for Sal, based on several aggravating factors.

First, the law firm is in Sal's name and, therefore, he is responsible for its activities. Based on the record, it appears that Sal is the partner and Jonathan the associate and therefore, Sal has the additional responsibility of supervising his son. Second, we found it disturbing that Sal attempted to pass the onus of responsibility to his son by telling the OAE he has nothing to do with recordkeeping, but rather his son handles that aspect. Third, Sal, at best, misled investigators when he claimed an audit would conflict with a planned family vacation. Upon receiving proof of that vacation, the investigator determined that the trip was to begin five days after the scheduled audit date. These factors convinced us that a reprimand is insufficient and we, therefore, determined that Sal should receive a censure.

Jonathan, on the other hand, has a prior admonition for lack of diligence and a failure to communicate with the client. Therefore, his baseline discipline is a reprimand, which we determined to increase to a censure, based on his failure to file an answer to the disciplinary complaint in this matter.

One last observation warrants mention. The indifference that these respondents displayed not only toward their obligation to cooperate with the Court's processes, but also and importantly toward their obligation in respect of identifying and accounting for their clients' funds, is astounding. They continue to ignore their responsibilities, even in the face of temporary suspension.

We find respondents' complete abdication of this very basic and important responsibility disgraceful and have considered their indifference in our determination to enhance discipline in this matter.

Member Clark did not participate.

We further determine to require respondents to reimburse the Discipline Oversight Committee for administrative costs and actual expenses incurred in the prosecution of these matters, 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 Matters of Sal Greenman and Jonathan Greenman
Docket No. DRB 15-149 and DRB 15-150

Decided: December 22, 2015

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark						X
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			7			1

Ellen A. Brodsky
Chief Counsel