SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-159
District Docket No. XIV-2012-0097E

IN THE MATTER OF

DAVID A. DORFMAN

AN ATTORNEY AT LAW

Decision

Argued: July 16, 2015

Decided: December 29, 2015

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

John Bowens appeared on behalf of respondent.

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). In August 2007, respondent entered a guilty plea, in the United States District Court for the Southern District of New York, to contempt of court, in violation of 18 U.S.C. § 401(3). Thereafter, New York disciplinary authorities determined that respondent committed a "serious crime," in violation of Section 90(4)(d) of the Judiciary Law and Title 22, Section 603.12(a) of

the New York Codes, Rules, and Regulations (NYCRR). As a result of this determination, the Supreme Court of New York, Appellate Division, First Judicial Department, issued an order suspending respondent for one year, effective February 28, 2011.

The OAE recommended a one-year suspension, but expressed no position on whether it should be retroactive or prospective. In reply to the OAE's Motion for Reciprocal Discipline, respondent submitted a "Consent to Motion for Reciprocal Discipline," which stated that he will "respect Reciprocal Discipline or any decision of the Disciplinary Review Board." At oral argument, respondent's counsel requested that the suspension be retroactive to February 28, 2011, the date of respondent's suspension in New York.

For the reasons set forth below, we determine to impose a one-year suspension, retroactive to January 23, 2012.

Respondent was admitted to the New Jersey bar in 1991 and the New York bar in 1992. He has no history of discipline in New Jersey. However, in 2003, respondent was censured in New York for misconduct he had committed in connection with his representation of Ricky Baker in his action against the New York Department of Health (NYDH), as described below. In that case, respondent had made egregious misrepresentations in his resume

that had induced Baker to retain him, specifically with respect to his litigation experience. He was also found negligent in the prosecution of Baker's lawsuit, culminating with his failure to file a timely notice of claim against the NYDH to preserve Baker's claim.

Specifically, in 1993, Baker retained respondent to represent him as the plaintiff in a lawsuit against NYDH claiming infliction of emotional distress. After undergoing a blood test, Baker had been mistakenly informed by the NYDH that he was HIV positive. Approximately one year later, the NYDH informed him that his test result was actually negative, not positive. Respondent's representation of Baker was unsuccessful, as the claim was dismissed after respondent missed the filing deadline and failed to seek leave to file a late notice of claim.

In 1997, Baker sued respondent in federal court for malpractice. Summary judgment was granted in favor of Baker. The case proceeded to a damages hearing and a jury awarded Baker $385,000, including $25,000 in punitive damages. At the time, respondent had no malpractice insurance and did not have sufficient funds to pay the full judgment. Thus, he engaged in discussions with Baker's counsel regarding his ability to pay.

Respondent made some payments towards the judgment, but eventually, with the assistance of counsel, converted his law firm into a professional service limited liability company (PLLC) in an attempt to separate his business and personal assets. In response, and in order to protect Baker's interests and to collect on the judgment against the PLLC, Baker's counsel applied to the federal court to have the PLLC deemed the successor-in-interest to respondent's prior law firm. Respondent did not oppose this application.

In 2001, based on respondent's inconsistent payments towards the judgment, Baker's counsel moved for and was granted a receivership over respondent's law firm. Subsequently, respondent disagreed with decisions made by Baker's counsel (as receiver) regarding the operation of the firm and, with the assistance of counsel, filed for corporate bankruptcy and the protection of a bankruptcy receiver. After the bankruptcy filing, respondent and Baker reached a settlement agreement obligating respondent to make a series of escalating payments to Baker. Respondent, however, did not comply with the terms of the settlement agreement.

In 2005, Baker escalated his actions to enforce the judgment against respondent. Baker's counsel sought an order

declaring respondent to be in contempt of court for failing to satisfy the judgment. During prior proceedings relating to payment of the judgment, the court had ordered respondent to reduce law firm expenditures that the court had deemed excessive or unnecessary and to report, to both the court and Baker's counsel, all income and expenses exceeding a $100 threshold.

As part of the contempt proceedings, responded submitted a spreadsheet to the court, which documented his firm's expenses, along with bank statements, cancelled checks, payroll reports, and a narrative summary of income and expenses. During the New York disciplinary proceedings, respondent admitted that this submission contained discrepancies and omissions, particularly concerning the firm's income, but claimed they were mistakes rather than intentional attempts to deceive the court. He was strident in his claims that he had not personally benefited from the errors. Respondent also admitted that, in two payroll periods, his firm had exceeded the eighty hours of paid staff time allowed under the prior court orders governing his practice.

Based on the discrepancies and violations contained in his submissions to the court, the judge referred respondent to the United States Attorney's Office, recommending that a charge of

criminal contempt be brought against him. In August 2007, respondent pleaded guilty to criminal contempt, admitting he had employed and paid staff members for more than the maximum of eighty hours allowed per payroll period under the court's prior order. As a result of his conviction, he was sentenced to serve six days of confinement in a halfway house and two years of supervised probation.

As a condition of his probation, respondent's right to travel was restricted. After being ordered to produce his passport, respondent eventually admitted that he had violated his probation by traveling out of New York State and out of the country without the advance permission of his probation officer, including to run marathons in Rome and Paris with the Leukemia and Lymphoma Society team. The federal court terminated his probation, citing respondent's "various dishonest and deceptive maneuvers to avoid paying [the Baker judgment]," and his "pattern of deception," concluding that respondent's deeply imbedded character flaws would not change "during a period of supervision," and sentenced respondent to incarceration for thirty days, which he completed in the fall of 2009.

Also in 2009, respondent and Baker settled the judgment, in full, when respondent paid a final lump sum of $50,000 to Baker.

During the New York disciplinary proceedings, respondent testified that, over the course of twelve years, he had paid Baker approximately $260,000 of the original $385,000 judgment.

After a hearing, the Department Disciplinary Committee, Supreme Court, Appellate Division, First Judicial Department, determined that respondent's guilty plea to contempt of court constituted a "serious crime" pursuant to Section 90(4)(d) of the Judiciary Law and 22 NYCRR 603.12(a). The committee recommended imposition of a two-year suspension. However, after considering respondent's matter on appeal, the Supreme Court of New York, Appellate Division, First Judicial Department, suspended respondent for only one year, effective February 28, 2011. In its decision, the court stated that "respondent displayed remarkable focus in his efforts to avoid making payments on the Baker judgment . . . and [engaged in] willful disobedience of court orders . . ."

Following a review of the full record, we determine to grant the OAE's motion for reciprocal discipline. "[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a

disciplinary proceeding in this state." R. 1:20-14(a)(5). Therefore, we adopt New York's disciplinary findings and determine that respondent's conduct violated RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

> 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:
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> (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 subparagraphs (A) through (E), above.

The OAE relied primarily on In re Rosen, 213 N.J. 36 (2013), in support of its position that its motion should be granted and respondent should be suspended for one year. In Rosen, the attorney represented an heiress to several family trusts with substantial holdings. In the Matter of Stephen H. Rosen, DRB 12-208 (December 11, 2012) (slip op. at 4). The attorney, along with other counsel to the heiress, proceeded to create new trusts for the client's benefit, exceeding $1 million in value, naming him as the trustee. Ibid. Additionally, a limited liability corporation (LLC) was formed, which was funded by the trusts, naming Rosen as president, and giving him a 1% ownership interest. Id. at 5. Pursuant to the LLC's operating agreement, Rosen was given control of the corporation and was empowered to purchase and sell property and assets on behalf of the LLC. Ibid.

At some point, litigation ensued in New York, brought against Rosen by the client's family, and he was restrained, by

two court orders, from disbursing assets of his client's trusts and the LLC. Id. at 10. The court specifically found that Rosen's interests were adverse to his client's interests and that he was manipulating his client for his own benefit. Ibid. Rosen was eventually found guilty of criminal contempt when the New York court determined that, despite its standing orders, he had sold property of the client's trust without court approval. Id. at 14. Rosen was subsequently found guilty, at a DEC hearing, of violating RPC 8.4(d), the only allegation charged in the complaint. Finding that Rosen had "knowingly and purposefully defied two court orders," we sustained the violation and, citing his significant ethics history, determined to suspend him for one year. Id. at 26. The Court agreed.

In the instant case, respondent clearly violated RPC 8.4(d). Violations of RPC 8.4(d) come in a variety of forms and the discipline imposed typically results in either a reprimand or a censure, depending on the presence of circumstances such as the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Gellene, 203 N.J. 443 (2010) (reprimand for attorney found guilty of conduct prejudicial to the administration of justice

and knowingly disobeying an obligation under the rules of a tribunal, for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who failed to comply with court orders (at times defiantly) and the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, we considered that the attorney's conduct occurred in the course of his own child custody case; no prior

discipline); and In re Hartmann, 142 N.J. 587 (1995) (attorney reprimanded for intentionally and repeatedly ignoring four court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest; the attorney also displayed discourteous and abusive conduct toward a judge with intent to intimidate her; no prior discipline).

A censures was imposed in In re D'Arienzo, 207 N.J. 31 (2011). There, the attorney failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial. By scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and the defendants. In addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date. Aggravating factors, including the attorney's prior ethics history (three-month suspension and two admonitions) and his failure to learn from similar mistakes, justified a censure. See also In re LeBlanc, 188 N.J. 480 (2006) (attorney's misconduct in three client matters included conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court

order for failure to produce information, and other ethics violations; mitigation included, among other things, the attorney's recognition and stipulation of his wrongdoing, his belief that his paralegal had handled post-closing steps, and a lack of intent to disregard his obligation to cooperate with ethics authorities; no prior discipline).

Suspensions were imposed where attorneys either had significant ethics histories or were guilty of violating a number of ethics rules, or both. See, e.g., In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for attorney who arranged three loans to a judge in connection with his own business, failed to disclose to opposing counsel his financial relationship with the judge and failed to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest; no prior discipline); In re Block, 201 N.J. 159 (2010) (six-month suspension where attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead leaving the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file

the affidavit required by R. 1:20-20; failed to cooperate with disciplinary authorities; failed to provide clients with writings setting forth the basis or rate of the fees; lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2004) (motion for reciprocal discipline; two-year suspension for attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations; no prior discipline).

In addition to violating RPC 8.4(d), respondent violated RPC 3.3(a)(1), via both misrepresentation and omission, in his submissions to the federal court during contempt proceedings. 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 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; no prior discipline); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated; no prior discipline); In re Lewis, 138 N.J. 33 (1994) (admonition for attorney who attempted to deceive a court by introducing into evidence a document falsely showing that a heating problem in an

apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons; in mitigation, we considered that the court was not actually deceived because it discovered the impropriety before rendering a decision and that no one was harmed as a result of the attorney's actions; no prior discipline); In re Whitmore, 117 N.J. 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim; two prior private reprimands); In re Shafir, 92 N.J. 138 (1983) (an assistant prosecutor who forged his supervisor's name on internal plea disposition forms and misrepresented information to another assistant prosecutor to consummate a plea agreement received a reprimand); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the

whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension; no prior discipline); In re Hasbrouck, 186 N.J. 72 (2006) (attorney suspended for three months for, among other serious improprieties, failing to disclose to a judge his difficulties in following the judge's exact instructions about the deposit of a $600,000 check in an escrow account for the benefit of the parties to a matrimonial action; instead of opening an escrow account, the attorney placed the check under his desk blotter, where it remained for eight months; no prior discipline); In re Evans, 181 N.J. 334 (2004) (three-month suspension for attorney who, while general counsel for Holt Cargo Systems, a defendant in a lawsuit about spoilage brought by Ocean Spray Cranberries, knowingly withheld critical information from Ocean Spray and from Holt Cargo's outside counsel with regard to a prior cover-up and fabrication of records by Holt in order to avoid liability in the lawsuit; no prior discipline); In re Forrest, 158 N.J. 428 (1999) (attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator was suspended for six months; the attorney's motive was to obtain a personal injury settlement; prior private reprimand); In re Marshall, 165 N.J. 27 (2000) (one-year

suspension for attorney who deceived his adversary and the court in a litigated matter by failing to reveal a material fact during litigation, serving false answers to interrogatories, and permitting his client to produce misleading documents to his adversary, while maintaining his silence; the attorney backdated a stock transfer document and put an incorrect date in his notarization of the transfer agreement, knowing that the timing of the transfer could have a material effect on the case; no prior discipline); 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; two prior private reprimands); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who was 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; no prior discipline).

Respondent's disobedience of the federal court's order also violated RPC 3.4(c). Attorneys who have failed to obey court orders generally have been reprimanded. See, e.g., In re Cerza, 220 N.J. 215 (2015) (reprimand imposed on attorney who failed to obey a bankruptcy court's order compelling him to comply with a subpoena, which resulted in a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); the attorney also violated RPC 1.15(b) in a related real estate transaction when he disbursed a $100 survey refund to the wrong party, failed to refund the difference between the estimated recording costs and the actual recording costs, and failed to disburse the mortgage pay-off overpayment, which had been returned to him and held in his trust account for more than five years after the closing; prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); In re Gellene, supra, 203 N.J. 443 (reprimand for attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal, for failing to appear on the return date of an

appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition); and In re Geller, supra, 177 N.J. 505.

Finally, when an attorney's misconduct culminates in a criminal contempt conviction, as is the case here, a suspension has been imposed. See In re Dogan, 198 N.J. 479 (2009). In Dogan, at the time of his misconduct, the attorney was not practicing law, but was working as a food director at a long-term care facility. In the Matter of Walter Ryan Dogan, DRB 08-178 (October 29, 2008) (slip op. at 2). The State of Georgia, Department of Human Resources (DHR), had filed a long-arm petition against him for paternity and child support and served him with a request for production of documents, including paycheck stubs and other evidence of income. Ibid.

The DHR discovered that Dogan had fabricated the paycheck stubs he had submitted in connection with the petition by altering the income figures on the stubs. Id. at 3. During a

bench trial, the Georgia court concluded that Dogan had committed the fabrications to convince the court that his earnings were half of their actual amount. Ibid. The court found him in "direct criminal contempt of court" and sentenced him to serve twenty days in jail. Ibid. It referred the case to the Georgia bar, where he was also admitted to practice law. Id. at 3-4. The Georgia Court of Appeals affirmed the conviction. Id. at 4. Dogan defaulted in the Georgia ethics proceedings, where he was ultimately disbarred. Id. at 4-5.

Determining to impose a term of suspension, we relied on In re Lawrence, 185 N.J. 272 (2005), where the attorney had also engaged in deception to advance his own personal, financial interests. Lawrence's deception, however, had been committed over an extended period of time, at least eight years, and "encompassed numerous transactions, all designated to cover up substantial assets of the marital and bankruptcy estates." In the Matter of Herbert F. Lawrence, DRB 05-076 (July 7, 2005) (slip op. at 21). Although we found that Dogan's conduct was not as widespread as Lawrence's, Lawrence had proffered compelling mitigating factors that were not present in Dogan. Ibid. We, therefore, determined that the same discipline, a six-month suspension, was warranted in both cases.

Based on the totality of respondent's misconduct, a one-year suspension is clearly justified. During contempt proceedings in federal court, respondent, like the attorney in Marshall, made false statements of material fact and omitted material facts regarding the financial details of his firm, which he knew, due to prior court orders, were under close scrutiny. As in Dogan and Lawrence, respondent engaged in this deception to advance his own personal and financial interests. His false statements and documents were offered, as the federal judge decreed, as part of a "pattern of deception" since respondent, like the attorney in Rosen, had defied court orders by, at a minimum, exceeding the maximum hours he was allowed to pay employees at his firm. Respondent's misconduct led to a guilty plea and federal conviction for contempt of court.

As the New York disciplinary authorities determined, "respondent displayed remarkable focus in his efforts to avoid making payments on the Baker judgment . . . and [engaged in] willful disobedience of court orders . . ." There is no mitigation offered by respondent and, aside from his lack of prior discipline, none to consider. There is, thus, no compelling reason to deviate from the same discipline imposed in New York — a one-year suspension.

We determine that the suspension should be retroactive to January 23, 2012, the date respondent reported his suspension to the OAE. During oral argument before us, the OAE acknowledged that the adjudication of this matter was delayed for three years from the date respondent reported his New York suspension, due to inaction on the part of the OAE and through no fault of respondent, who cooperated fully with the OAE's investigation of the matter.

Member Zmirich agrees that a one-year suspension is appropriate, but believes it should be prospective. Member Gallipoli recused himself. 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: /s/ Paula T. Franzoso
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David A. Dorfman
Docket No. DRB 15-159

Argued: July 16, 2015

Decided: December 29, 2015

Disposition: One-year retroactive suspension

Members	Disbar	One-year Retroactive Suspension	One-year Suspension	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark						X
Gallipoli					X	
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich			X			
Total:		5	1		1	1

By: Ellen A. Brodsky
Chief Counsel