SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-393

IN THE MATTER OF :
:
MICHAEL J. ROSENBLATT :
:
AN ATTORNEY AT LAW :

Decision

Argued: February 8, 2001

Decided: June 20, 2001

Richard J. Engelhardt appeared on behalf of the Office of the Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), following respondent's six-month suspension in the State of New York for violations of New York DR1-102(A)(4), (5) and (8) [corresponding to RPC 8.4 (c) and (d)].

Respondent was admitted to the New Jersey bar in 1988 and has no prior discipline. He failed to notify the OAE of his New York suspension, as required under R.1:20-14(a)(1). The OAE discovered the suspension during a routine search of New York disciplinary cases for the year 1999.

Respondent's suspension was based on facts contained in a decision of the Appellate Division of the Supreme Court of New York, as follows:

> By a Notice and Statement of Charges dated March 13, 1997, the Departmental Discipline Committee charged respondent with violating DR 1-102(A)(4), (5) and (8) of the Code of Professional Responsibility. Respondent allegedly threatened a business associate with physical violence when the latter defaulted in paying the license fees to the copyright owner for a logo used by respondent's restaurant. When questioned by the New York County District Attorney's Office and the Committee, respondent allegedly made false and misleading statements.
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> The Hearing Panel sustained the charges based on the following findings of fact. In 1995, in addition to his law practice, respondent was an officer and shareholder in No Stress Corporation ('NSC'), which owned and operated a Manhattan restaurant. Respondent hired Rudy Mazur in May 1995 to design a logo for the restaurant, which respondent then used on promotional items and on an awning outside the restaurant. Shortly thereafter, The Stock Market Photo Agency, Inc. sent NSC a cease and desist letter saying that Stock Market owned the rights to the logo, which another artist had actually designed. The parties settled the dispute in June 1995. Mazur agreed to pay $20,000 in four installments on NSC's behalf in return for a two-year exclusive license to use the logo.
>
> Mazur defaulted on the third and fourth payments, upon which respondent and his father allegedly came to Mazur's apartment where respondent threatened Mazur with physical harm if the latter did not make the payments to the Stock Market. Respondent also left two threatening messages on Mazur's answering machine on November 24 and 28, 1995.

Mazur tape-recorded his subsequent phone conversation with respondent on November 28, in which respondent, using vulgar language, threatened to beat him up and punch him in the head.

Mazur reported respondent to the New York City Police Department that same day. When questioned by the Assistant District Attorney on December 7, respondent denied making the threats. He repeated these denials, or said he did not recall the incidents, when deposed by Committee staff in July 1996 and when testifying before the Hearing Panel in the Fall of 1997.

The Panel refused to credit theses denials, citing the unchallenged evidence of the tape-recorded threats and the fact that the time period between the threats and the ADA's questioning was too brief for the events to have slipped respondent's memory.

The Hearing Panel sustained all of the charges. Respondent engaged in conduct that adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(8), when he threatened Mazur with physical harm. Respondent engaged in conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(5), and engaged in dishonest conduct, in violation of DR 1-102(a)(4), when he lied about the incident to the District Attorney's Office and made false statements to the Committee under oath.

[OAE's brief at 1-3]

Although the Department Disciplinary Committee for the First Judicial Department recommended a one-year suspension, the hearing panel opted for a recommendation of public censure. The Appellate Division imposed a six-month suspension, effective April 15, 1999,[1] reasoning follows:

This court has previously suspended attorneys for making extortionate threats (Matter of Zer, 218 AD2d 41, 42 [suspended for conspiring to assault opposing

[1] Respondent was reinstated to the practice of law in New York on December 14, 1999.

> counsel and force a settlement]; Matter of Yao, _____ AD2d _____, 680 AD2d 546 [suspended and then disbarred for blackmailing executive about sexual relationships]). While respondent's misconduct is perhaps less extreme, and was motivated by justifiable anger at Mazur, an attorney such as respondent is expected to use reasonable legal means to enforce his rights, not violent threats.
>
> His lack of candor with the ADA and the Committee is a serious aggravating factor. Even an isolated incident assumes larger proportions when it becomes the occasion for respondent to deceive the Committee. Respondent's case resembles Matter of Glotzer (191 AD2d 112, 115), where we imposed a six-month suspension for forging a client's signature on a stipulation and lying about it to the Committee. The attorney had an otherwise unblemished record. The same result should prevail in the instant case.

The OAE argued for the imposition of a six-month suspension.

* * *

Upon review of the full record, we determined to grant the OAE's motion. We adopted the findings of the Appellate Division of the Supreme Court of New York that respondent was guilty of violating New York DR 1-102 (A)(4), (5) and (8) [corresponding to RPC 8.4(c) (dishonesty, deceit and misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice)]. In re Tumini, 95 N.J. 18, 21 (1979); and In re Kauffman, 81 N.J. 300, 302 (1979).

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

> . . . 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;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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 misconduct 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 (E).

Misconduct of this sort, which included threats of physical violence, have been met with a term of suspension in New Jersey. See, e.g. In reViggiano, 153 N.J. 40 (1998) (three-month suspension imposed where the attorney pleaded guilty to two charges of assault for physically attacking another motorist and then assaulting a police officer as he tried to place him under arrest); and In re Vincenti, 92 N.J. 591 (1983) (one-year suspension for displaying a pattern of abuse, intimidation and contempt toward judges, witnesses, opposing counsel and other attorneys).

Respondent's misconduct, which was serious, requires a term of suspension. His threat to "beat up" Mazur was particularly egregious, taking this case out of the three-month category. By the same token, respondent's misconduct was not as severe as that in Vincenti, supra, where the attorney engaged in a lengthy pattern of intimidation and outrageous conduct, continuously hurling horrible insults at witnesses, adversaries, judges and court personnel in a number of unrelated matters. Therefore, in this matter, we unanimously determined to impose a six-month suspension. Two members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 6/20/2001

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board