DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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March 23, 2016

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Efthemois D. Velahos**
Docket No. DRB 15-409
District Docket Nos. XIV-2012-0682E; XIV-2014-0023E; XIV-2014-0239E and XIV-2014-0208E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (three to six-month suspension) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a six-month suspension is the appropriate quantum of discipline for respondent's violations of RPC 1.15(a)(commingling); RPC 1.15(d) and R. 1:21-6 (recordkeeping); RPC 1.16(a)(1) (failure to withdraw when the representation will result in a violation of the RPCs); RPC 5.3(a), (b), and (c)(1)(2) and (3) (failure to supervise nonlawyer employees); RPC 5.5(a)(1) and R. 1:21-1B(a)(4) (practicing law while ineligible, failure to maintain required professional liability insurance when practicing as a limited liability company, and practicing law in a jurisdiction where doing so violates the regulation of the legal profession); RPC 7.1(a)(1) (material misrepresentation about the lawyer's services) and (2) (creating an unjustified expectation about results the lawyer can achieve); RPC 7.3(b)(5)(i)-(iv) (impermissible client solicitation); RPC 7.4(a) (misrepresenting

that the lawyer has been recognized as certified or as a specialist in a particular field of law); RPC 7.5(e) and R. 1:21-1B(c) (impermissible law firm name); RPC 8.1(a) (misrepresentation to disciplinary officials); RPC 8.4(a) (knowingly violate or attempt to violate the Rules of Professional Conduct), RPC 8.4(b) (commit a criminal act), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Trust Account Overdraft and Recordkeeping Deficiencies and Violations

On December 21, 2012, Fulton Bank notified the OAE of an overdraft of respondent's attorney trust account. Subsequently, audits of respondent's records revealed that he did not maintain any of the financial records required by R. 1:21-6, with the exception of bank statements; that he did not prepare three way reconciliations of his trust account on a monthly basis; that he made electronic transfers without proper written authorization; that he maintained an improper business account designation; and that he allowed a non-attorney to be an authorized signatory on trust account checks, all in violation of RPC 1.15(d) and the provisions of R. 1:21-6.

Website and Advertising Violations

Respondent was a solo practitioner with no associates, partners, or "of counsel" relationship. Nevertheless, respondent used multiple law firm names and website addresses that contained plural designations, such as "Esquires," "Attorneys at law," and "Counsellors at Law" [sic].

Moreover, on his websites, respondent misrepresented the nature and size of his practice, even listing a retired attorney as someone currently associated with the firm in an "of counsel" capacity. Respondent also falsely stated on his website that his firm had been rated "AV" by Martindale-Hubbell, even after that company issued a Cease and Desist letter to him regarding his use of the AV rating. Further, respondent used an impermissible trade name, "Loan Law Center;" included on his website an impermissible client testimonial; stated on his website that he practices and operates as a limited liability corporation under a name not registered with the New Jersey Department of Treasury; did not

maintain professional liability insurance; and did not use the firm name registered with the Department of Treasury in his marketing materials, retainer agreements, and other legal correspondence. Thus, respondent's conduct in this respect violated Rule 1:21-1B(a)(4); RPC 5.5(a)(1), RPC 7.1(a)(1); RPC 7.5(e); and RPC 8.4(c).

Further, in his websites, respondent stated that he was a "renowned expert in Internet Liable [sic] and Slander." In fact, the Supreme Court has never certified respondent in any practice area and respondent's area of practice was limited to mortgage modifications. Respondent's statement regarding his expertise in internet libel was patently false and had the clear potential to discourage clients and third parties from posting negative reviews of respondent's law practice and mortgage modification business, all in violation of RPC 7.4(a) and RPC 8.4(c).

In other marketing materials, such as advertising postcards sent to potential clients, respondent stated that "debt reduction considerations should only be handled by a licensed attorney." Yet, the OAE previously had informed respondent that debt reduction considerations and mortgage modifications also may be handled by licensed debt adjusters, as specifically set forth in Opinion 45 of the Committee on the Unauthorized Practice of Law and Opinion 716 of the Advisory Committee on Professional Ethics (Joint Opinion), 197 N.J.L.J. 59 (July 7, 2009). Respondent's postcards also did not prominently bear the word "ADVERTISEMENT," and did not contain the required notice indicating that the recipient may report any inaccurate or misleading information contained therein to the Committee on Attorney Advertising.

In addition, in mass e-mail solicitations of potential mortgage modification clients, respondent included impermissible client testimonials discussing the firm's "remarkable accomplishments" in reducing principal and interest payments for clients. It failed, however, to provide the required disclaimers that the results will vary depending on the facts of the case. The "e-mail blasts" also failed to include the word "ADVERTISEMENT" or to contain the notices required by RPC 7.3(b)(5)(i),(ii),(iii), and (iv).

Although respondent delegated to his wife the responsibility for marketing and advertising, including the content of his websites, he, nevertheless, was responsible for overseeing the work of his firm's employees, including his wife. Respondent failed to

do so. Furthermore, respondent was aware of the content of his websites, yet he failed to remedy the inaccuracies and misrepresentations contained therein, all in violation of RPC 5.3(a),(b), and (c).

Federal Trade Commission and State Law Violations

Respondent's practices in respect of his mortgage modification and debt reduction services violated both federal and state law. Specifically, respondent collected advance fees in mortgage modification matters both in New Jersey and in other jurisdictions in which he was not authorized either to practice law or to function as a licensed debt adjuster. The Federal Trade Commission (FTC) issued a final rule at 16 C.F.R. Part 322, entitled "Mortgage Assistance Relief Services" (MARS). The MARS rule became effective December 29, 2010 and section 322.5 of the rule became effective January 31, 2011.

Section 322.5 prohibits mortgage relief companies from collecting any fees prior to (1) providing the consumer/client with a written offer from the lender, describing the proposed changes to the mortgage obligation; and (2) the consumer's acceptance of that offer. Consumers who reject the offer are under no obligation to pay the mortgage relief company. Section 322.7 specifically exempts from its operation attorneys who are engaged in the private practice of law; are licensed in the state where the consumer or the dwelling is located; are in compliance with state laws and regulations governing attorney conduct related to the rule; and deposit funds, in a client trust account, received from the consumer prior to performing legal services and also comply with all state laws and regulations, including licensing regulations, applicable to client trust accounts. Respondent fell into none of those categories.

Indeed, respondent represented numerous out-of-state clients where he was not licensed as an attorney.[1] Further, even in New Jersey, respondent did not meet the exemption provided by Section 322.7 of MARS because, under New Jersey's debt adjuster statute,

[1]Even though respondent violated the law of another jurisdiction, he can still be held culpable in New Jersey. RPC 8.5(a) states that "[a] lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs."

N.J.S.A. 17:16G-1c(2), only attorneys who are not principally engaged as debt adjusters are exempt from the licensure requirements of that statute. Respondent, however, was principally engaged as a debt adjuster, since his practice was almost exclusively in the area of mortgage loan modification. Thus, respondent was not exempt from licensure as a debt adjuster in the State of New Jersey and, therefore, was not in compliance with all state laws and regulations, including licensing regulations. Acting as a debt adjuster without a license is a fourth-degree crime in the State of New Jersey, in violation of N.J.S.A. 2C:21-19 and thus, a violation of RPC 8.4(b).[2]

Also in violation of MARS, respondent did not provide clients with a written offer from their lender, which the consumer would have an opportunity to accept or decline, prior to the payment of a fee. Specifically, between July 1, 2012 and June 30, 2014, respondent collected or attempted to collect a total of $216,946.92 in advance fees from 117 clients, in violation of MARS. Eighty-six of those clients were New Jersey residents. Moreover, on receipt of the advance fees, respondent deposited the monies directly into his attorney business account at Fulton Bank, without obtaining their consent for the withdrawal of those fees, consistent with the MARS regulation. During that same time period, respondent collected or attempted to collect $42,363 in advance fees from clients in the States of Pennsylvania, Florida, Maryland, Texas, Washington, Georgia, and Virginia, in violation of MARS. Respondent was neither a licensed attorney nor a licensed debt adjuster in any of those jurisdictions. By taking advance fees in these matters, respondent violated RPC 1.15(a) and RPC 8.4(c).

Out of State Practice and Misrepresentation to Disciplinary Authorities

During the course of the OAE's investigation of respondent's out-of-state practice, respondent informed the OAE that his firm had a co-counsel agreement with Friedman Law Associates P.C. ("FLA"), "a national law firm," for the purpose of "providing a network of instate attorneys to assist in the representation of LLC's clients" in those jurisdictions where respondent was not

[2]Because respondent's practice consists almost exclusively of debt adjustment, he also cannot escape the ban of N.J.S.A. 17:16G-2, which proscribes for-profit debt adjustment.

licensed to practice law. The agreement with FLA, however, was never executed and respondent never partnered with FLA for that purpose. Respondent knew, at the time he told the OAE that his firm had a co-counsel agreement, that local FLA counsel had never been consulted on any of his matters.

In fact, respondent represented clients in multiple matters in jurisdictions in which he was not authorized to practice, without the assistance of local counsel. Respondent conducted no less than eighteen mortgage modifications in the States of Georgia, Washington, New York, Pennsylvania, Virginia, Maryland, Connecticut, Texas, or Florida. Respondent misrepresented to several of these out-of-state clients in the fee agreements that FLA "has been retained as 'Of Counsel' to Loan Law Center." Moreover, respondent engaged in credit and debt adjustment services in Maryland over a two-year period, even after the Commissioner of Financial Regulation for the State of Maryland issued a summary order, followed by a final order to Cease and Desist. When questioned by the OAE about the orders, respondent denied that he had "taken any money" from Maryland. However, the OAE's review of respondent's records disclosed that, during that period, respondent actively represented several Maryland clients in that state and collected fees from them. Respondent's conduct in this respect violated RPC 1.16(a)(1), RPC 5.5(a), RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d).

Practicing While Ineligible

Respondent was declared administratively ineligible to practice law in New Jersey, effective September 30, 2013, through August 7, 2014. Respondent, however, continued to actively work on client mortgage modifications during that period, after the OAE directed him to address his ineligibility status.

* * *

A reprimand is usually imposed for practicing law while ineligible, when the attorney has an extensive ethics history, is aware of the ineligibility and practices law nevertheless, has committed other ethics improprieties, and/or previously has been disciplined for similar conduct. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (reprimand imposed on attorney who practiced law knowing that he was ineligible to do so). The discipline imposed on

attorneys who practice law in jurisdictions where they are not licensed, however, ranges from an admonition to a suspension, depending on whether there are additional ethics violations, on the attorney's disciplinary history, and on the presence of aggravating and mitigating factors. See, e.g., In re Benedetto, 167 N.J. 280 (2001) (reprimand for attorney who pleaded guilty to the unauthorized practice of law, a misdemeanor in South Carolina; the attorney had received several referrals of personal injury cases and had represented clients in five to ten matters in South Carolina, although he was not licensed in that jurisdiction); In re Butler, 215 N.J. 302 (2013), (censure for attorney who practiced with a law firm in Tennessee, although not admitted there, pursuant to an "of counsel" agreement); and In re Lawrence, 170 N.J. 598 (2002) (three-month suspension for attorney practicing law in New York, where she was not admitted; matter proceeded as a default).

Further, misleading statements in direct-mail solicitation communications generally result in an admonition or a reprimand. See, e.g., In the Matter of Jay Edelstein, DRB 03-092 (May 22, 2003) (admonition for attorney who sent a letter to an individual soliciting professional employment, without observing the requirements of RPC 7.3(b)(5); the letter did not include the word "ADVERTISEMENT," did not caution the individual to give the matter careful thought before choosing an attorney, and did not include the information on how to report inaccurate or misleading information to the Committee on Attorney Advertising); In re Garces, 163 N.J. 503 (2000), and In re Grabler, 163 N.J. 505 (2000) (attorneys reprimanded for making false and misleading statements in a yellow page advertisement that included the designation "certified civil and criminal trial attorney," when neither attorney was so certified; the advertisement also included the potentially misleading statement "largest recovery in the shortest time"); and In re Carola, 117 N.J. 108 (1989) (reprimand imposed on attorney who sent a solicitation letter to a prospective client; the letter contained misrepresentations concerning the attorney's background and experience).

Respondent also made misrepresentations both to clients and to disciplinary authorities. A misrepresentation to a client ordinarily merits the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand or censure, however, is typically imposed for a misrepresentation to disciplinary authorities, so long as the lie is not compounded by the fabrication of documents to cover up the misconduct. See, e.g., In

re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner and of the attorney's failure to consult with a client before permitting two matters to be dismissed) and In re Schroll, 213 N.J. 391 (2013) (censure imposed on attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending, when in fact he knew that the complaint had been dismissed over a year earlier; for the next three years, the attorney continued to mislead the committee secretary that the case was still active; in addition, the attorney misrepresented to the client's former lawyer that he had obtained a judgment of default against the defendants; the attorney was also found guilty of gross neglect, lack of diligence, and failure to reply to the client's numerous attempts to obtain information about her case; no prior discipline).

Although respondent's infractions generally would result in a reprimand or a censure when considered on their own, there are aggravating factors to consider. Specifically, respondent has been the subject of discipline (censure) for similar behavior based on grievances that had been filed between 2010 and 2011. In re Velahos, 220 N.J. 108 (2014). In that case, during the course of respondent's relationship with TNFCG, a company owned by his wife, TNFCG demanded an upfront payment to perform loan modification services on behalf of a resident of North Carolina. Later in 2010, respondent and TNFCG were informed by the North Carolina Attorney General that demanding an upfront fee for modification services is unlawful in that state (a misdemeanor). Thus, respondent was on notice for some time that the manner in which he operated his practice in the area of mortgage modification and debt adjustment was unethical. In this matter, respondent received similar warnings for his dealings in Maryland, first in November 2010 and again in November 2012. Despite these warnings, respondent still continued to collect upfront payments for loan modification services from Maryland clients. The Board was concerned by respondent's willing disregard for the laws of various states and for the Rules of Professional Conduct. Respondent was given multiple opportunities to remediate his conduct and blatantly ignored them.

Moreover, respondent engaged in the unauthorized practice of law in a minimum of eighteen out-of-state client matters in multiple jurisdictions where he was not licensed to practice, all with knowledge and all in disregard of that knowledge. Hence, his

conduct is significantly more egregious than that of the attorney in Benedetto, supra, 167 N.J. 280. However, respondent cooperated with disciplinary authorities, whereas the suspension imposed on the attorney in Lawrence, supra, 170 N.J. 598, was based on an enhancement due to the default posture of the case.

Compounding the Board's concern is respondent's pattern of misrepresentations. Respondent repeatedly made misrepresentations to his clients and to the public via his fee agreements, websites, and advertising. Additionally, respondent made two distinct misrepresentations to disciplinary authorities. First, respondent misrepresented his alleged relationship with FLA and then lied about taking fees from clients in Maryland.

The Board also noted however, the substantial mitigation respondent offered. Most significant is the fact that respondent suffers from both bi-polar disorder and alcohol dependency, exacerbated by the tragic death of respondent's three-year-old daughter. Moreover, respondent suffered from these conditions and the emotional turmoil resulting from that tragedy during the time that he committed the misconduct. Although these factors mitigate much of respondent's conduct, they do not justify his misrepresentations to the OAE. That said, respondent has voluntarily discontinued his practice and will no longer pursue a mortgage modification practice unless he can bring himself into compliance with the applicable regulations.

Nonetheless, because of the overwhelming volume of violations respondent committed, the repetitive and knowing nature of those violations, and the failure to learn from prior discipline for similar violations, the Board determined that the appropriate quantum of discipline for respondent's conduct is a six-month suspension. The Board also determined that, prior to his reinstatement, respondent should be required to submit proof of fitness to practice law.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 14, 2015.

2. Stipulation of discipline by consent, dated November 5, 2015.

3. Affidavit of consent, dated October 20, 2015, and amended affidavit of consent, dated February 6, 2016.

4. Ethics history, dated March 23, 2016.

Very truly yours,

Ellen A. Brodsky
Chief Counsel

EAB/tk
c: Bonnie C. Frost, Chair
Disciplinary Review Board
Charles Centinaro, Director
Office of Attorney Ethics
Jason D. Saunders, Deputy Ethics Counsel
Office of Attorney Ethics
Teri S. Lodge, Respondent's counsel