SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-374
District Docket No. VI-2014-0001E

IN THE MATTER OF	
FRANCISCO S. GUZMAN	
AN ATTORNEY AT LAW	

Decision

Argued: February 18, 2016

Decided: August 3, 2016

Daniel D'Alessandro appeared on behalf of the District VI Ethics Committee.

Vladimir Rene appeared on behalf of respondent.

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

This matter previously was before us on a recommendation for an admonition, filed by the District VI Ethics Committee (DEC). We determined to treat the matter as a presentment and bring it on for oral argument.

A one-count complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect) and RPC 1.3 (lack of diligence). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2001. He has no prior discipline.

This matter stemmed from respondent's representation of Rita G. Vasquez, the grievant, in four collection matters arising out of the 2008 theft of her identity.

I. The New Century Matter

Respondent and Vasquez first met on December 9, 2009, to discuss a lawsuit that a creditor, New Century Financial Services, Inc. (New Century), had filed against her several months earlier. On February 19, 2010, Vasquez signed a written fee agreement providing for a fixed fee of $2,800, which she paid to respondent in monthly installments. Respondent testified that those funds were for his preparation and filing of an order to show cause (OTSC) in Superior Court of New Jersey, Bergen County.

According to respondent, Vasquez' employer, Starting Pointe Day Care Center (Starting Pointe), had received a wage execution order on New Century's judgment. Respondent prepared an OTSC and filed it in Bergen County on March 4, 2010. The court denied the OTSC as "non-emergent" and converted it to a notice of motion. Respondent claimed that he spoke with opposing counsel about a possible settlement and with the

county constable as well, hoping to forestall a wage garnishment. Apparently, those contacts produced no results.

Vasquez testified that respondent neither told her about the OTSC nor furnished her with a copy of it. Respondent was not charged with failure to communicate with the client.

Neither respondent nor Vasquez testified about subsequent events in the New Century action.

II. The Capital One Matter

According to respondent, in the summer of 2010, the attorney for another of Vazquez' creditors, Capital One Bank, told him that he was about to file a complaint against Vazquez. On October 4, 2010, the Capital One complaint was filed. Vasquez paid respondent an additional $2,485 to represent her in that matter.

In late April 2011, Starting Pointe personnel sent respondent a wage execution order in the Capital One matter. Respondent testified that he then sent the constable a letter declaring his intention to file a motion to vacate Capital One's default judgment. That letter was dated April 28, 2011, six months after respondent learned about Capital One's complaint.

Respondent testified that he had prepared a motion to vacate the Capital One default judgment, but explained that it was inadvertently captioned "New Century." Although he informed his client and Starting Pointe that he intended to file that motion, concededly, he never did so.

Two years later, in February 2013, respondent twice met with Vasquez about the lack of progress in the Capital One case, as well as two others, discussed below. He promised her that he would do whatever was necessary to put the matter back on track. To that end, on March 1, 2013, he sent a letter to Capital One's attorneys, informing them that he represented Vasquez, whom he characterized as a victim of identity fraud. He did not, however, file a motion to vacate the default judgment or the wage execution order.

III. The Retail Recovery Matter

Retail Recovery Services of New Jersey (Retail Recovery), filed a lawsuit against a "Reta" Vasquez. Respondent learned about the litigation from Starting Pointe, Vasquez' employer, sometime after the plaintiff had obtained a judgment and wage execution order against Vasquez. On March 28, 2012, respondent sent Starting Pointe a letter (once again using the erroneous caption from the New Century matter) stating his intention to

file a notice of motion to vacate the judgment. The letter also stated, "please not [sic] that while cannot [sic] or provide advise [sic] to you – nonetheless, as an officer of the court I would suggest that you comply with the salary execution – pending the outcome of the motion – thereafter I will contact you with the court's decision."[1] Vasquez' wages were garnished and the judgment ($1,027.93) was satisfied. On May 18, 2012, Retail Recovery filed a stipulation of dismissal and a warrant of satisfaction.

When asked why he had never filed an application to vacate the judgment, respondent replied that he may have had a conversation with Vasquez about the fact that the matter was "for $1,000 . . . is it worth it . . . to go into court or not. I don't . . . sometimes I do have that type of conversation. I think I had it with [Vasquez]." Vasquez, however, recalled events differently. Specifically, respondent had promised her that he was working on having garnished wages returned to her.

On March 1, 2013, almost a year after the judgment had been satisfied through the wage execution, respondent finally sent Retail Recovery's attorneys a letter informing them that

[1] To the extent that respondent's interactions with Starting Pointe might implicate the conflict of interest rule (RPC 1.7), the complaint did not charge a conflict of interest.

he was Vasquez' attorney and that she had been the victim of identity fraud. The letter was virtually identical to the Capital One letter sent on that same date, as noted above. Thereafter, as in the Capital One matter, respondent took no further action in the Retail Recovery matter.

IV. The Portfolio Recovery Matter

Vasquez brought respondent a March 16, 2012 complaint filed against her by Portfolio Recovery Associates, LLC (Portfolio). On April 25, 2012, respondent filed an answer. The next day, Portfolio's attorney sent a request for discovery. According to respondent, he served responses to that discovery request, albeit late, in May 2012. On June 5, 2012, counsel for Portfolio sent respondent a letter, stating that he had received no response to the April discovery demand, and that responses were overdue. Respondent acknowledged receipt of that letter.

Although respondent could not prove that he had sent discovery to Portfolio in May 2012, it was uncontested that he subsequently sent the discovery responses to Portfolio's counsel on July 2, 2012. Previously, however, sometime after June 5, 2012, Portfolio filed a motion to strike Vasquez' answer for failure to provide discovery. That motion was granted, without prejudice, on June 29, 2012, several days

before respondent served the discovery responses on Portfolio's counsel. Respondent testified that he had not been aware of Portfolio's motion until he received opposing counsel's July 13, 2012 letter enclosing the June 29, 2012 order striking his answer.

Also on July 13, 2012, Portfolio's attorney sent respondent a separate letter offering settlement for the entire balance due of $1,297.21. Respondent did not recall receiving that letter, asserting instead that Portfolio's attorney had agreed, in an earlier conversation, to vacate the order striking Vasquez' answer. Although Portfolio did not do so, respondent failed to file a motion to vacate the order. Respondent stated that, in 2013, he may have received a letter from Portfolio's attorneys withdrawing or dismissing the matter. However, he provided no proof for that assertion.

Respondent produced a December 24, 2012 letter to Vasquez, informing her that she was scheduled to appear in the matter on January 11, 2013 in Superior Court in Hackensack, Bergen County. Respondent testified that the letter contained errors, inasmuch as the Portfolio Recovery matter had been venued in Hudson County, not Bergen County. It is unclear why respondent sent Vasquez the letter and whether the matter was

actually scheduled for a hearing that day. Respondent conceded that he never appeared in court on the Portfolio matter.

On February 1, 2013, seven months after Vasquez' answer was stricken, respondent prepared an application to vacate the order and, accompanied by Vasquez, traveled to Hackensack to file it. Because, however, the litigation was venued in Hudson County, the clerk in Bergen County refused to accept the application for filing.

Thereafter, respondent took no action to file the motion in Hudson County. Rather, on February 13, 2013, he conducted an office meeting with Vasquez about her matters. Respondent promised to do everything he could to rectify her situation in all of her pending cases. At a subsequent meeting that same month, attended by both Vasquez and her nephew, respondent made the same assurances and, afterwards, sent the nephew an e-mail stating that he could "rest assured that this office is serving your aunt to the fullest."

On March 1, 2013, the same date of similar letters to counsel for Capital One and Retail Recovery, respondent notified Portfolio Recovery's attorney that he represented Vasquez in the lawsuit and that she had been the victim of

identity fraud.[2] Respondent conceded that, at the time, he was aware of the June 2012 order striking the answer. He further conceded that he had not filed a motion to restore the answer. He was unsure what became of the matter thereafter, stating that he "never followed up" to find out.

Also on March 1, 2013, respondent sent Vasquez a letter informing her that he had placed a fraud alert on her credit history.

By letter dated March 12, 2013, respondent requested from Vasquez' landlords, Carlos and Maria Cuna, a certification to confirm that, as of 2003, Vasquez had lived on their premises, not at the address that had been used by creditors to serve her in these matters. Although respondent believed that he had previously sent a similar letter to the Cunas, he produced only the March 12, 2013 letter in support of his attempt to obtain a certification from them.

Respondent claimed that his attempts to contact Vasquez after February 2013 were largely unsuccessful. He placed in evidence a copy of two envelopes that his office staff had mailed to Vasquez on September 6 and 10, 2013 at 356 Wales

---

[2] This marked the very first time respondent notified the creditors' attorneys that Vasquez had been the victim of identity fraud.

Avenue, Jersey City, New Jersey. Both envelopes were returned by the post office marked "Return to Sender No Such Street Unable to Forward." Every other reference by respondent to Vasquez' address in the record, including his original written fee agreement and several letters to her, listed her street address as 35, not 356, Wales Avenue. Respondent sent the envelopes to have Vasquez "come to the office in view of the fact that we had -- you know, that the summer had already lapsed." Neither the envelopes' contents nor the issue of a wrong address was discussed at the DEC hearing.

Vasquez testified that, after she filed the ethics grievance, in October 2013, she sent a November 5, 2013 letter to respondent, written in Spanish, requesting her files in all of the matters, but respondent never replied to that request. On March 7, 2014, five months after the ethics grievance was filed, respondent sent a letter to Vasquez' employer, Starting Pointe, requesting that Vasquez contact him.

In mitigation, in his answer to the complaint, respondent stated that he "appears to have been distracted with the terminal illness of his mother, who was in 'intensive care' through her death on June 13, 2010."

The DEC found respondent guilty of lack of diligence in three of the matters. In the Capital One matter, the DEC found

that respondent had waited until April 2011, almost a year after learning of the litigation, to notify the constable of his intent to file a motion to vacate the judgment. After attempting to file an OTSC under the wrong caption, he never re-filed it and had no explanation for his failure to do so. Respondent also waited more than two years (March 1, 2013) before notifying Capital One's attorney that he represented the defendant.

In the Retail Recovery matter, although respondent informed his client's employer that he intended to file an application regarding the wage execution, he took no action thereafter. The DEC believed Vasquez' testimony that respondent had promised to seek the return of the wages garnished by her employer. Moreover, the DEC found, respondent waited until a year after learning about the case to inform Retail Recovery's counsel that he represented Vasquez in the action, all in violation of RPC 1.3.

In the Portfolio Recovery matter, the DEC found that, although respondent filed an answer to the complaint, he allowed it to be stricken for failure to provide responses to discovery requests. Moreover, respondent had no explanation for his failure to take action on Vasquez' behalf after Portfolio's attorneys did nothing to vacate the June 29, 2012

order. Further, after trying unsuccessfully to file an application in the wrong county, respondent took no action to file the application in the correct one. Finally, the DEC found credible Vasquez' testimony that, despite the garnishment and satisfaction of judgment, respondent had agreed to seek the return of the garnished wages. He did not do so.

In the New Century matter, however, the DEC found no clear and convincing evidence that respondent lacked diligence.

The hearing panel dismissed the pattern of neglect charge (RPC 1.1(b)), stating as follows:

> Under the case law, a pattern of negligence or neglect must consist of three separate instances of neglect on [sic] three separate client matters. In the case at hand, there are no other pending matters against Respondent. Although Grievant had four separate cases that Respondent was handling for her, all three cases were interconnected with each other as Grievant was a victim of identity fraud. Thus, even though respondent's conduct could reasonably be seen as negligence, we cannot establish that a pattern of neglect occurred.
>
> [HPR7.][3]

[3] "HPR" refers to the June 29, 2015 DEC hearing panel report.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent neglected three of the four matters he had undertaken in Vasquez' behalf.

In the Capital One matter, respondent was retained to contest a wage execution order. Although he prepared a motion to vacate default, he had done so under the "New Century" caption from another matter and the motion was never filed under the correct caption. Indeed, two years after he accepted the case, respondent informed Capital One's attorneys, for the first time, that he represented Vasquez and that she was a victim of identity theft. By his conduct, thus, respondent lacked diligence, a violation of RPC 1.3.

In the Retail Recovery matter, respondent promised Vasquez that he would fight a second wage garnishment action. The garnishment took place, and the $1,027.93 judgment was satisfied. Thereafter, respondent took no action to seek the return of Vasquez' garnished wages, as Vasquez believed he had promised. Almost a year after the satisfaction of judgment was entered, respondent finally informed Retail Recovery's attorneys that he represented Vasquez, a victim of identity fraud. Respondent's failure to seek the return of the

garnished wages amounted to a lack of diligence, a violation of RPC 1.3.

In the Portfolio Recovery matter, respondent properly filed an answer to the plaintiff's complaint. Thereafter, Portfolio filed a motion to strike the answer for failure to comply with discovery deadlines. Respondent was not able to establish that he had replied to discovery requests prior to July 2, 2012, several days after the order granting Portfolio's motion was entered. Although respondent claimed that he did not learn of Portfolio's motion until July 13, 2012, when he received the court's June 29, 2012 order, he offered no explanation for his lack of awareness.

Seven months later, respondent tried to file an application to vacate the order, but did so in Bergen, rather than Hudson County. Inexplicably, he took no action thereafter to file it in Hudson County. By his conduct in this matter too, respondent lacked diligence, a violation of RPC 1.3.

The DEC correctly dismissed the charges in the New Century matter for lack of clear and convincing evidence. In that matter, respondent filed an OTSC for Vasquez regarding a wage execution. The court denied the OTSC and converted it to a notice of motion. No evidence was presented about events in the case thereafter. It is possible that it resolved in Vasquez'

favor. Thus, for lack of clear and convincing evidence of wrongdoing, we dismissed the RPC 1.3 and RPC 1.1(b) charges in the New Century matter.

There remains the charge of a pattern of neglect in the Capital One, Retail Recovery, and Portfolio matters. For a finding of a pattern of neglect, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). The DEC incorrectly dismissed the pattern of neglect charge, having reasoned that all of the matters were for a single client and were "interconnected." Although they all arose out of identity fraud, three discrete creditors filed separate lawsuits in different venues against Vasquez. Respondent was retained to defend all of them. Yet, he neglected them. Moreover, we previously have found a pattern of neglect in a case involving a single client with multiple claims. See, e.g., In re Manns, 157 N.J. 532 (1999) (attorney found guilty of RPC 1.1(b) for the neglect of a slip-and-fall action, a collection action, and an automobile accident/personal injury action, all for the same client).

Here, in the Capital One matter, respondent prepared an OTSC that contained mistakes. He neither corrected those mistakes nor filed the OTSC, an act of neglect. In the Retail Recovery matter, respondent promised Vasquez that he would seek

the return of wages that had been garnisheed from her. Yet, he never sought their return, an act of neglect. Lastly, in the Portfolio Recovery matter, respondent prepared an application to vacate the order striking Vasquez' answer. After a failed attempt to file it in the wrong county, he failed thereafter to file it in the correct county, an act of neglect. We, therefore, find this pattern of neglect to constitute a violation of RPC 1.1(b).

If an attorney displays a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Azar, 216 N.J. 414 (2013) (attorney engaged in a pattern of neglect, lack of diligence, failure to communicate with clients, and failure to return client files in three matters; in mitigation, the attorney had no prior discipline in a thirty-five year career; in aggravation, the attorney lacked contrition and had expressed a cavalier attitude toward his clients); In re Tyler, 204 N.J. 629 (2011) (in six bankruptcy matters, the attorney was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; in one matter the attorney communicated with a client represented by counsel; mitigation included the attorney's lack of a disciplinary history and her health and mental problems at the time of her misconduct); In re Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect,

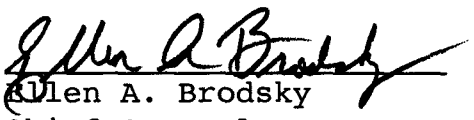
pattern of neglect, and lack of diligence; the attorney failed to timely file three appellate briefs, failed to communicate with his client in two of the matters, and failed to appear on the return date of an order to show cause, without notifying the court that he would not appear, conduct prejudicial to the administration of justice; aggravating factors included his ethics history: two private reprimands and an admonition; mitigating factors included his financial problems, depression, and serious personal problems); In re Balint, 170 N.J. 198 (2001) (in three matters, gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (in a number of cases handled on behalf of an insurance company, gross neglect, pattern of neglect, lack of diligence, and failure to communicate).

Azar, above, is very similar to the within matter. Azar too was not charged with gross neglect in any of the three matters forming his pattern of neglect. Like respondent, Azar had no prior discipline in a thirty-five year career, but that mitigation was counterbalanced by aggravating factors. Here, too, there is an aggravating factor – respondent was paid at least $5,285 for these representations, but accomplished

precious little for it.[4] We, therefore, determine that a reprimand is the appropriate sanction for respondent's lack of diligence and pattern of neglect.

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
Chief Counsel

[4] We note that there is no evidence in the record that Vasquez ever availed herself of the fee arbitration process in an attempt to recover these fees.

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Francisco S. Guzman
Docket No. DRB 15-374

Argued: February 18, 2016

Decided: August 3, 2016

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			9			

Ellen A. Brodsky
Chief Counsel