

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 16-057  
District Docket No. XI-2012-0015E

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IN THE MATTER OF  
AZAR ABASI MENHAJI  
AN ATTORNEY AT LAW

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Decision

Argued: June 16, 2016

Decided: September 21, 2016

Jeffrey M. Fiorello appeared on behalf of the District XI Ethics Committee.

Salvatore T. Alfano 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 recommendation for a reprimand, filed by the District XI Ethics Committee (DEC). The complaint charged respondent with having violated RPC 1.15(b) (failure to promptly deliver property which a client is entitled to receive), more properly RPC 1.16(d) (upon termination of representation, failure to surrender client's property), and RPC 8.4(e) (stating or implying an ability to influence improperly a government agency or

official or to achieve results by means that violate the Rules of Professional Conduct or other law). We recommend that the matter be dismissed.

Respondent was admitted to the New Jersey bar in 1997. She has no history of discipline.

At the outset, on the first day of hearings before the DEC, the presenter moved to dismiss count two of the complaint. That count charged respondent with failure to return to the grievant, Guillermo Vega (Vega), his son's (Danner Vega) original passport. It was later determined that respondent was not in possession of the passport, because it had been filed with an application to stay deportation on behalf of Danner and remained in the custody of the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE). Thus, the only charge that remained was respondent's alleged violation of RPC 8.4(e). The facts pertaining to that charge are limited to a ten-minute verbal exchange among respondent, Vega, and two of his friends, who had accompanied him. The exchange took place late in the afternoon on June 22, 2012, outside respondent's law office. There are no allegations arising from the substance of the representation.

Respondent practices predominantly in the area of immigration law. On June 4, 2012, she met with Vega and his wife

at her law office, for a consultation on an immigration matter involving their son Danner. Respondent's secretary attended the meeting to act as a translator.

At that meeting, the parties discussed Danner's detention at an immigration facility in Elizabeth, New Jersey. Respondent determined that she could do nothing to prevent his deportation. Respondent claims that, at this meeting, Vega told her that Danner had a girlfriend, Susan Deacon, and asked whether their marriage could prevent deportation. Respondent explained that ICE would not look favorably on any marriage that took place subsequent to detention.

On June 13, 2012, the Vegas returned to respondent's office after having consulted with several other attorneys who confirmed respondent's assessment of Danner's deportation. The Vegas then retained respondent, for a \$1,500 fee, to expedite Danner's deportation to Costa Rica. The parties signed a retainer agreement, which included a \$100 consultation fee credited toward the \$1,500 that the Vegas paid in two installments.

On June 14, 2012, respondent met with Danner for two hours at the detention center. From there, she went to ICE headquarters to meet with his deportation officer, who was not able to meet with her at that time. However, they arranged to meet the following day, on June 15, 2012.

Coincidentally, on that same day, President Obama announced a new immigration policy known as Deferred Action for Childhood Arrivals (DACA). Although respondent recognized that this program may benefit Danner, she could not determine his eligibility without first stopping his deportation. Hence, on June 16, 2012, she met with the Vegas, informed them about DACA, and explained the need to file an application to stay removal. The Vegas agreed to pay respondent an additional \$1,500 for her to submit the application to stay removal.

The next day, Vega delivered various documents to respondent's secretary, including birth certificates for all of his children, tax documents for Danner, and other documents related to Danner's landscaping business. He did not see respondent that day.

The deadline for the application to stay Danner's removal was June 21, 2012. Respondent, therefore, cancelled her appointments for the next two days and immediately began the process of collecting the necessary components of the application. On June 21, 2012, at 3:40 p.m., she hand-delivered the application to ICE for filing. At 6:00 p.m. that night, the deportation officer called respondent and expressed his displeasure with the application due to serious omissions, including Danner's arrest record, criminal conviction, and

problems with his federal taxes.<sup>1</sup> Respondent immediately contacted the Vegas. During that call, Vega became angry and accused respondent of lying because his son had never been arrested. The next day, on June 22, 2012, Danner was deported to Costa Rica.

Vega testified that at 5:00 a.m. on June 22, 2012, he learned that his son had been deported. Soon thereafter, he called respondent's office and informed her secretary that he would be picking up all of the documents. That afternoon, according to Vega, he went to respondent's office, with Walter Zarate and Margarita Deacon, to pick up the documents.

Vega testified that the three arrived at respondent's office about 4:45 p.m. and that respondent was inside with the lights on. They knocked on the office door, but there was no answer. When they walked around to the back porch, respondent opened the door and came out carrying a stick saying, "this is your fault." Because respondent spoke English, Zarate translated for Vega, explaining that respondent had threatened to call the police and/or immigration and stated that she had friends there.

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<sup>1</sup> Danner had been convicted in Westwood Municipal Court of hindering apprehension.

Vega admitted that he never understood respondent's threats because they were in English.

At the hearing, Zarate testified that respondent came out of her office wielding a stick (or an umbrella) telling Vega that what happened to his son was Vega's fault and that he was stupid. Zarate added, however, that they were in a hallway outside of respondent's office, as opposed to the porch, as Vega had testified.

According to Zarate, respondent became very angry and continued to yell, saying:

[Y]ou owe me money. I put all these hours yesterday and today to do this work and you have to pay me. You have to pay me. And then Mr. Guillermo answer her no, my son is already in Costa Rica, there's nothing else to do that. And then she said you cannot come to my office without an appointment. And she said to the effect, and you owe me money. I am, I am a U.S. citizen, you are just an immigrant. I can call Immigration and police, okay, and the next time you come without an appointment, I will call my friends in Immigration and police. You cannot come here without an appointment. I said . . . I looked at her and said you cannot do that. That's illegal, I said. You can't do that. You can't threaten him this way. That's what I said to her in English.

At that point, the three left because they feared for Vega's safety.

Margarita Deacon also testified regarding the events of June 22, 2012. In her version, she had accompanied Vega and

Zarate to respondent's office between 5:00 and 5:30 p.m. that afternoon. They entered through the first door to the building into a hallway that led to respondent's office door. They rang the bell to the office, but it took almost a minute before respondent came out. When she did exit the office, she immediately began asking for more money and said that Vega was "guilty of something." Deacon claimed that, because respondent had a stick, Deacon stepped between respondent and Vega to prevent Vega from being hit. She believed the stick to be a curtain rod. According to Deacon, respondent threatened to call the police. The incident occurred in that hallway, and her fiancé, Zarate, remained silent the entire time.

Vega, Deacon, and Zarate all testified that no one touched respondent at any point during the incident.

In contrast, respondent testified that she was leaving her office about 7:00 p.m. that night and that it was raining hard. As she left from the back entrance of her office toward the gated parking lot, she heard her name called. She then noticed three individuals running toward her from the alley in between the two buildings. She recognized Vega, but did not know the other two individuals. Vega was visibly upset and "shaky." His female companion, Deacon, was very angry and "very verbal." She was pointing her finger, telling respondent that God was going

to punish her and that she was the reason Danner got deported. Deacon further accused respondent of taking poor people's money and doing nothing for them. They demanded that respondent return to her office to give them the file and the documents related to the matter. According to respondent, although Zarate never said a word, she found him to be intimidating.

Respondent testified that, as she started walking toward her car, Vega grabbed her arm to prevent her from leaving. She told Vega that, if he touched her one more time, she would call the police. Deacon was still screaming and yelling and appeared very angry. Respondent continued walking toward her car. As she tried to unlock the car, Deacon grabbed her shoulder and demanded that she return to her office and give them the documents. At that point, respondent became very scared. She told Deacon that, if Deacon touched her again, she would have to call the police and "you know what will happen if the police come here".

According to respondent, Vega spoke only Spanish during the interaction, most of which she did not understand. Respondent informed them that the office was closed, and instructed them to call the following week to schedule an appointment to retrieve the documents. Respondent then left in her car. She denied that she had a stick or a curtain rod during this encounter.



Several days later, on June 27, 2012, respondent's secretary sent Vega a bill for \$1,500 related to the filing of the application to stay removal. The following day, Vega, in an angry state, called respondent's office, claiming that another attorney had told him not to pay respondent because she was the reason his son was deported. He further stated that this attorney was going to help him "punish" respondent.

Respondent denied having threatened Vega with his own deportation or the deportation of any of his family members. Indeed, she claimed to have secured an oral promise from Danner's deportation officer not to approach his family members. According to respondent, when one family member is detained, an attorney typically will obtain a promise from the deportation officer to leave the other family members out of the matter.

Additionally, respondent reasoned that her reputation as an immigration attorney would be destroyed by such a threat. She explained that her entire business revolves around the immigrant community; she has legalized many Costa Rican clients since June 2012; the immigration community is very tight-knit; if the community thought that she was capable of hurting an immigrant, her business would fall apart; and such a statement would be "career suicide." Respondent denied having used the word "immigration" with Vega or his companions. Rather she claims,

she told them that, if they touched her, she would call the police.

The panel asked respondent to clarify her statement to Deacon that she "knows what would happen if the police were to come." Respondent explained that she knew Vega was undocumented, that his son had criminal immigration problems related to detention and criminal convictions, and that the three had trespassed on a private part of her property. If she filed a police report that they had physically assaulted her, it would not have been good for Vega. She maintained that she was trying to protect Vega from immigration problems.

Respondent presented two character witnesses, both New Jersey attorneys, who had known respondent for over ten years. Both testified that they spoke with respondent regularly, about every two weeks; that they value her advice on immigration matters; that she is very honest; and that she has a stellar reputation in the legal and immigration communities.

The DEC determined that respondent "maybe" used the word "immigration" during the encounter with Vega and his companions, on June 22, 2012, and certainly used the term "police." The DEC noted that respondent admitted that she threatened to call the police and that she stated, "you know what will happen if the police come here." She also admitted that she was upset by

Vega's visit and that she knew he was undocumented. Although she testified that she felt frightened during the encounter, she claimed that the threat to call the police was her way of "protecting" Vega.

The DEC concluded that, although respondent's threat to call the police was justified, her threat to call "immigration" and "friends" who worked for "immigration" was not. Rather, the DEC found that these statements were made simply to intimidate Vega. The hearing panel further found that respondent intended to imply that she had the ability to influence officials at immigration and that, with such influence, she could have Vega deported.

The DEC found highly credible Vega's and Zarate's testimony that the encounter with respondent had ended on the porch of respondent's office, and not in the parking lot, as respondent had claimed. The panel remarked that, even if it accepted respondent's version of the events of June 22, 2012, specifically, that the encounter had continued to her office parking lot, and that she felt threatened, she was not justified in threatening to call "immigration" or her "friends at immigration". Accordingly, the DEC found that respondent violated RPC 8.4(e).

In determining the appropriate quantum of discipline, the DEC considered, in aggravation, that respondent neither admitted wrongdoing nor showed remorse for her conduct. In mitigation, it considered respondent's unblemished career. Based on the foregoing factors, the DEC recommended a reprimand.

Following a de novo review of the record, we conclude that the DEC's finding that respondent's conduct was unethical is not supported by clear and convincing evidence.

This matter involves four versions of one event. A significant language barrier exacerbates the differences in those versions. Moreover, the hearing panel report includes several inconsistencies that further muddy the waters.

Respondent has highlighted some of the inconsistencies among the witnesses' versions of the encounter and the hearing panel's findings. For example, respondent correctly points out that Vega admitted in his testimony that he never heard respondent make any threats, or use the word "immigration." Although, Vega speaks no English (the language that respondent used), respondent asserted that the Spanish and English words for "immigration" are so similar that, if respondent had used the word, Vega would have understood it. Yet, it is uncontroverted that Vega's knowledge of respondent's statement

during the ten-minute incident is based solely on what Zarate told him respondent said.

Zarate is the only witness who testified that respondent referred to her "friends in immigration." This critical statement, however, does not appear anywhere in the grievance, which Zarate drafted on Vega's behalf. Here, respondent makes a strong point.

Similarly, respondent points out that, although the grievance does not refer to a stick or curtain rod, all three of the presenter's witnesses testified that respondent was wielding a stick.

Additionally, respondent points out that, in recommending a reprimand, the DEC's analysis contained several inconsistencies. For example, the DEC concluded that respondent was justified in threatening to call the police. Yet, respondent asserts, this finding conflicts with the DEC's acceptance of the witnesses' testimony that they had not attempted to assault respondent. Further, the DEC concluded that respondent had used the word "immigration" when confronting Vega and his friends, but only after it determined that "maybe" she had used that word. Here, respondent is correct. "Maybe" she used the word "immigration" does not satisfy a clear and convincing standard.

It matters not whether respondent was wielding a stick, a curtain rod, or an umbrella; whether she assaulted Vega; whether Vega assaulted her; or whether she used the word "immigration." Rather, the relevant inquiry here, in the context of an RPC 8.4(e) violation, is whether respondent stated or implied an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law. In our view, this record lacks clear and convincing evidence of that alleged violation.

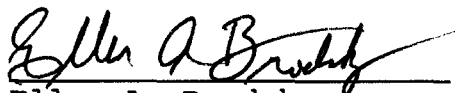
Although the DEC determined that the testimony of Vega and Zarate was highly credible, it did not determine that respondent's testimony was incredible. In fact, the DEC used her testimony when necessary to support its ultimate recommendation. Nonetheless, even if we accepted Zarate's and Vega's story as the most likely version of events, there is no evidence that respondent threatened an ability to influence ICE at all, let alone improperly. The immigration troubles that Vega may have encountered had respondent chosen to call the police would have been a natural consequence of Vega's own status and not the result of any specific action respondent may have taken. Thus, the record lacks clear and convincing evidence that respondent threatened to pursue any adverse immigration action against Vega

by leveraging friends or connections within any particular governmental agency.

Based on language barriers, the witnesses' own biases, and the clearly emotional nature of the interaction, we appreciate that words and actions may have been misinterpreted and that memories of the interaction differed – sometimes significantly. Respondent may have acted unprofessionally in an exchange with a client who had become passionate in the wake of his own son's deportation. Without more, however, we do not view her conduct as rising to the level of an ethics violation. Therefore, we determine to dismiss the charges.

Members Hoberman and Rivera did not participate.

Disciplinary Review Board  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Azar A. Menhaji  
Docket No. DRB 16-057

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Argued: June 16, 2016

Decided: September 21, 2016

Disposition: Dismiss

<i>Members</i>	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:				7		2

  
Ellen A. Brodsky  
Chief Counsel