

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-315

IN THE MATTER OF :
ALAN H. MARLOWE, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 23, 1991

Decided: November 8, 1991

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Jay Joseph Friedrich appeared on behalf of respondent.

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

This matter is before the Board based on a Disciplinary Stipulation between respondent and the Office of Attorney Ethics (OAE). Pursuant to the Stipulation, respondent waived the filing of a formal complaint and a formal hearing. Said Stipulation is attached hereto and made a part hereof.

The relevant stipulated facts are as follows:

Respondent was admitted to the New Jersey bar in 1972. On September 17, 1990, he was suspended from the practice of law by the Supreme Court of New Jersey for his failure to demonstrate full compliance with the recordkeeping requirements of R. 1:21-6 and RPC 1.15. Specifically, in February 1990, the OAE conducted a demand audit of respondent's attorney records. The audit was prompted by

respondent's failure to reply to the OAE's letter requesting an explanation for an overdraft in his trust account that occurred in 1989. Although the auditor concluded that the overdraft had been caused by an arithmetic error by respondent, the auditor also found gross recordkeeping deficiencies in respondent's trust account records. Thereafter, the OAE wrote to respondent on April 26, 1990, directing him to correct the deficiencies and to certify this fact to the OAE within forty-five days. Respondent failed to comply with the OAE's direction. The OAE then filed a motion for respondent's temporary suspension, which was granted. On September 17, 1990, the Court entered an order suspending respondent for a period of three months for unethical conduct in other unrelated matters and, at the same time, suspending him until he demonstrated full compliance with the recordkeeping rules.

In February 1991, respondent scheduled two appointments with the OAE in order to show compliance with the OAE's April 26, 1990 letter. He failed to keep both appointments. On August 14, 1991, respondent hand-delivered to the OAE an accountant's letter dated August 2, 1991, together with quarterly reconciliations of his trust account for the period from March 1989 through June 1990, as well as updated receipts and disbursements journals. On August 19, 1991, respondent forwarded to the OAE client ledger cards for that same period. The OAE reviewed said records and found them to be correct, except for minor discrepancies. The OAE is, thus, satisfied that respondent is now in compliance with the recordkeeping provisions of R. 1:21-6 and RPC 1.15.

Respondent acknowledged that he violated the recordkeeping rules and further acknowledged that his failure to cooperate with the OAE constituted a violation of RPC 8.1(b). Respondent conceded that the within infractions are deserving of public discipline, especially in light of his prior disciplinary record. The OAE, on the other hand, recognizes that respondent has been temporarily suspended for more than one year. The OAE, thus, does not recommend the imposition of any additional term of suspension.

CONCLUSION AND RECOMMENDATION

Upon a review of the Stipulation, the Board is satisfied, to a clear and convincing standard, that respondent's conduct was unethical and violative of RPC 1.15 and 8.1(b). The sole issue to be determined is, thus, the appropriate quantum of discipline.

The Board's view is that respondent's conduct warrants public discipline. First, his accounting practices were wholly inadequate. Respondent did not maintain trust receipts and disbursements journals, client ledger cards, or a running balance in the trust account checkbook. He also failed to prepare a schedule of client ledger accounts and to reconcile it to the trust account statement. As a result of his shabby bookkeeping practices, respondent was unable to identify for the OAE auditor the amount of funds on deposit for each client. Second, respondent ignored a letter by the OAE instructing him to correct the aforementioned deficiencies and to certify that fact to the OAE

within forty-five days of the date of the letter. Third, his prior disciplinary record is extensive: a public reprimand in January 1990 for sending a letter to the court containing a misrepresentation, and a three-month suspension in September 1990 for misrepresentation, failure to communicate with his clients and a pattern of neglect.

Although the Board is convinced that public discipline is warranted, it agrees with the OAE's contention that respondent's temporary suspension for a period in excess of one year constitutes sufficient discipline for his derelictions. The Board is of the view that, had respondent had not been temporarily suspended, the active term of suspension warranted by his ethical infractions would have been shorter than his temporary suspension of one year. See, e.g., In re Hern, 121 N.J. 517 (1990) (the Court publicly reprimanded an attorney who failed to maintain proper trust and business account records, failed to correct the cited deficiencies, failed to act with due diligence, failed to communicate with his clients and misrepresented the status of a case); In re Macias, 121 N.J. 243 (1990) (an attorney received a public reprimand for his failure to cooperate with the Random Audit Compliance Program, which directed him to cure certain accounting deficiencies. The attorney had not been previously disciplined); and In re Beltre, 119 N.J. 190 (1990) (the Court suspended for three months an attorney who did not have a business or a trust account, failed to cooperate with the committee and the Board, failed to maintain a bona fide office, failed to prosecute an appeal and practiced law

while on the ineligible list for failure to pay his annual assessment to the Client Protection Fund.)

In view of the foregoing, the Board unanimously recommends that respondent's temporary suspension since September 1990 be deemed sufficient discipline for his transgressions. The Board notes that the duration of respondent's temporary suspension was solely within his control, dependent, as it was, on his compliance with the OAE's directives to cure his deficient accounting practices. See, e.g., In re Rogovoy, 100 N.J. 556 (1985). One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 11/8/1991

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board