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SUPREME COURT OF NEW JERSEY

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July 26, 2017

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

Re: **In the Matter of Omotayo F. Mebude**
Docket No. DRB 17-185
District Docket No. VA-2015-0037E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem appropriate) filed by the District VA Ethics Committee (DEC), 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 reprimand is the appropriate measure of discipline for respondent's misconduct.

Specifically, on June 8, 2009, Okoro Ifeanyi retained respondent to represent him and his automobile dealership, Amiri Mbubu Auto Sales (Amiri) in connection with a forfeiture matter in the United States District Court for the District of New Jersey (USDNJ). That action centered on the impounding of funds in Amiri's Bank of America (BOA) account, which held \$90,745.88 at the time. Ifeanyi paid respondent \$2,500 for the representation. When respondent accepted the case, he had no previous experience with forfeitures and was unfamiliar with forfeiture law.

On September 3, 2009, the government filed a complaint in the USDNJ seeking the forfeiture of the BOA funds, pursuant to 31 USC §5317(c) and §5324(a).

Respondent stipulated that he lacked diligence and grossly neglected the Amiri matter, as follows. He was retained in June 2009 to stop the potential forfeiture of the more than \$90,000 held in Amiri's BOA account. On September 16, 2009, respondent was served with the complaint. He took no action thereafter to file a claim or a motion to extend the time to file a claim, which was due no later than October 19, 2009. Thereafter, respondent: (1) failed to file a timely claim or a request for an extension of the time to file a claim, pursuant to federal rule; (2) allowed default to be entered against his client; (3) failed to move to vacate the default; (4) failed to timely oppose the government's motion for default judgment; (5) failed to seek leave to file an untimely claim; and (6) failed to appeal or move for reconsideration of the entry of default judgment and the final order of forfeiture. In so doing, respondent violated RPC 1.1(a) and RPC 1.3.

On November 30, 2009, respondent filed a motion to extend the time within which to file an answer to the underlying forfeiture complaint. His stated reason was the need to "analyz[e] voluminous documents that comprise the record relative to the forfeiture." That statement was untrue, because he had no documents from his client to review. Respondent added this language to his motion papers because he wanted more time for Ifeanyi to furnish him with pertinent documents and the names of potential claimants.

Respondent also represented in the motion that the government "will not oppose such a motion." However, respondent had not spoken to his government adversary since October 16, 2009, when they discussed the deadline for the filing of claims. Respondent stipulated that the above language suggested to the court that the government had consented to an extension of time for Amiri to file an answer, when he had not sought or obtained such consent. By misleading the USDNJ in this manner, respondent violated RPC 8.4(c).

In mitigation, the parties cited respondent's lack of prior discipline since his 2001 admission to the bar, his admission of wrongdoing, and his cooperation with ethics authorities by stipulating to his misconduct.

Lack of candor to a tribunal or misrepresentations to courts have resulted in discipline ranging from an admonition to a short-term suspension, if the conduct is not egregious or there is compelling mitigation. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition imposed on attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; consequently, they were unavailable for trial, a violation of RPC 3.3(b) and RPC 3.4(c); at the next trial date, the attorney finally informed the court and his adversary that his client, the witnesses, and his own law firm were unaware that a trial had commenced, resulting in a mistrial; on the same day, the attorney informed his law firm of the offense; the law firm notified the client of these events, reimbursed the client \$40,000 in attorney fees and costs, stripped the attorney of his shareholder status, suspended him for an undisclosed period of time and, after his reinstatement to the firm, had his legal work monitored by senior partners; in aggravation, the Board found that, prior to the attorney's admission of wrongdoing, judicial resources had been wasted when the court impaneled a jury and commenced trial; in mitigation, the Board noted that this was the attorney's first ethics infraction in his thirty-eight year legal career; he suffered from anxiety and high blood pressure at the time of his actions; the client suffered no pecuniary loss; his law firm had demoted him from shareholder to hourly employee, resulting in significantly lower earnings on his part; and he was remorseful and committed to working hard to regain the trust of the court, his adversaries, and the members of his firm); In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney, who had attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who then died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a motion filed with the court; after accepting a breach-of-contract case in which a complaint had already been filed against the client, the attorney failed to answer the complaint or to take any other action on behalf of the client for nine months; thereafter, the plaintiff obtained a default judgement; in an attempt to obscure his inaction, the attorney then failed to adequately explain, or misrepresented to the client, the

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actual events of the case; shortly thereafter, the client's wages were garnished and a levy placed against her bank accounts; the attorney, in an attempt to put the case back on track, filed a motion to vacate the default judgment, in which he falsely stated that his client had a meritorious defense for setting aside the judgment and that she had applied for a mortgage, but was unable to obtain financing; the attorney knew, when he made that statement, that it either was not truthful or that it omitted material facts; the motion to vacate the default judgment was denied; censure imposed based on default status of the case; the attorney had no prior discipline); and In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home and drafted a false certification for the client, which was submitted to the court in a domestic violence trial).

This case is similar to Hummel, above, where the attorney, like respondent, grossly neglected a client's case and permitted it to proceed to a default judgment. Both attorneys then made misrepresentations to a court in a motion designed to restore their respective cases. Hummel's sanction was enhanced from a reprimand to a censure, however, due to the default nature of the matter, an element not present here. Like, Hummel, respondent has no prior discipline.

Here, in mitigation, respondent stipulated to his misconduct, thereby saving disciplinary resources.

Although admonitions have been imposed for a misrepresentation to a court, respondent twice made misrepresentations to the USDNJ in documents filed in a federal forfeiture action. In addition, the client suffered significant harm, forever losing any claim to the more than \$90,000 in forfeited funds. For all of these reasons, the Board determined to impose a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 17, 2017.
2. Stipulation of discipline by consent, dated May 17, 2017.
3. Affidavit of consent, dated April 10, 2017.

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4. Ethics history, dated July 25, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

c: w/o enclosures

Bonnie C. Frost, Chair (via e-mail)

Disciplinary Review Board

Charles Centinaro, Director (via e-mail)

Office of Attorney Ethics

David M. Dugan, Chair

District VA Ethics Committee

Deborah Berna Fineman, Vice-Chair

District VA Ethics Committee

Natalie Watson, Secretary

District VA Ethics Committee

Lindsay Ann Dischley, Esq., Presenter

District VA Ethics Committee

Keith Anderson, Esq., Respondent's Counsel (via e-mail
and regular mail)

Isabel McGinty, Statewide Ethics Coordinator (via e-mail)
Office of Attorney Ethics

Okoro Ifeanyi, Grievant (via regular mail)