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SUPREME COURT OF NEW JERSEY

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RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

ELLEN A. BRODSKY
CHIEF COUNSEL

PAULA T. GRANUZZO
DEPUTY CHIEF COUNSEL

MELISSA URBAN
FIRST ASSISTANT COUNSEL

TIMOTHY M. ELLIS

LILLIAN LEWIN

BARRY R. PETERSEN, JR.

COLIN T. TAMS

KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

July 26, 2017

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

Re: In the Matter of Mitchel Tarter

Docket No. DRB 17-174
District Docket Nos. XIV-2014-0430E;
XIV-2014-0431E; XIV-2014-0432E;
XIV-2014-0433E; XIV-2014-0434E;
XIV-2014-0435E; XIV-2014-0436E;
XIV-2014-0437E; and XIV-2014-0438E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (one-year suspension or such lesser discipline as the Board deems warranted), filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following its review of the record, the Board determined to grant the motion and to impose a six-month suspension on respondent for his stipulated violation of RPC 1.4, presumably (b) (failure to communicate with the client), RPC 1.16(a)(2) (prohibiting the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client), RPC 1.16(d) (upon termination of representation, failure to protect a client's interests), RPC 5.4(a) (sharing legal fees with a nonlawyer), RPC 7.2(c) (giving something of value to a person for recommending the lawyer's services, other than by advertising), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The Board

dismissed, as inapplicable, the stipulated violation of RPC 7.3(d) (compensating or giving something of value to a person for recommending the lawyer's services, other than by an approved lawyer referral service).

Specifically, in October 2011, while temporarily residing in a California sober living home, and at the suggestion of his non-lawyer friend, Brian Suder, respondent established MBS Litigation Group (MBS), a New Jersey limited liability company. The purpose of MBS was to file a predatory lending mass tort lawsuit on behalf of nationwide clients, who were behind in their mortgage payments, against the banks holding their mortgages. Suder had worked in the mortgage industry, and, thus, had developed many contacts, who could refer potential mortgage assistance relief clients to him. He, in turn, could refer them to respondent.

US Legal Network (US Legal), a California company that employed only nonlawyers, provided MBS with advertising services, solicited clients, conducted "intake," and processed new clients. US Legal paid for all advertising, including purchasing leads and "targeting" distressed mortgage holders as potential plaintiffs in the mass tort lawsuit.

Respondent purchased a website for MBS. US Legal staff assisted potential clients in completing an MBS online questionnaire to determine whether they could be plaintiffs in a predatory lending action. If the potential client met a sufficient number of criteria, US Legal deemed the loan "predatory," and asked the client to sign a retainer agreement for MBS's services. The retainer agreement required the payment of a flat fee, usually \$5,000, plus \$59.99 per month to cover "incidentals," for work related to a multi-plaintiff lawsuit against a number of banks, venued in the United States District Court for the Southern District of New York (federal court).

US Legal had a subsidiary, Data Services, referenced in the stipulation as "US Legal/Data Services." On an unidentified date, US Legal/Data Services entered into an agreement with respondent to perform "issuance, oversight, and funding of [MBS] approved marketing, and document retention." In this regard, US Legal/Data Services was to purchase leads and make calls and/or send mailers, which required respondent's pre-approval. The agreement prohibited US Legal/Data Services from providing any legal services to MBS clients.

Also, under the agreement, US Legal/Data Services was to receive fifty percent of the fee paid by MBS clients. US Legal/Data Services sent the full fee and the retainer agreement to respondent, who deposited the funds in his "operating account." He then wired fifty percent of the fee to US Legal/Data Services. Respondent's conduct in this regard violated both RPC 5.4(a) and RPC 7.2(c).

In September 2012, respondent filed a complaint in federal court against several banks, alleging that they had engaged in "predatory lending, servicing and securitization." The complaint named fifty-two plaintiffs from sixteen states. On April 5, 2013, respondent filed an amended complaint.

Subsequently, respondent was temporarily suspended from the practice of law, effective May 1, 2013, based on his failure to comply with a stipulation of settlement he had entered into with the District VIII Fee Arbitration Committee, requiring him to refund fees to his client. After his suspension, respondent did not file the affidavit of compliance with R. 1:20-20, a violation of both RPC 8.1(b) and RPC 8.4(d).

On August 9, 2013, the federal court dismissed the amended complaint, without prejudice. Consequently, MBS offered the plaintiffs complimentary mortgage modification services. Although respondent intended to file another complaint in federal court, his active drug addiction precluded him from accomplishing that goal. Specifically, during the summer of 2013, respondent was using cocaine heavily on a daily basis. By autumn, he was receiving "a steady stream" of client referrals from US Legal/Data Services, but was unable to service those clients, due to his addiction. For example, respondent was not making or returning many clients' calls. Thus, he violated RPC 1.4(b) and RPC 1.16(a)(2).

Respondent discussed with US Legal his addiction problems and inability to properly service clients. In the fall of 2013, at US Legal's suggestion, the fee structure between respondent and US Legal/Data Services was revised, with US Legal/Data Services collecting the fee, retaining eighty percent, and wiring twenty percent to respondent's personal bank account.

On October 23, 2013, respondent stopped using cocaine and alcohol. On that same date, he sent a letter to US Legal, terminating his association with US Legal/Data Services, and stating that he would no longer accept new clients.

On January 16, 2014, the Court suspended respondent for three months, based on conduct, in multiple client matters, similar to his actions in these matters. His substance abuse was a factor in those matters as well. On February 18, 2014, respondent filed a R. 1:20-20 affidavit, asserting that he had informed each of his MBS clients of the suspension. He also instructed each client not to make any further payments to MBS and acknowledged that he owed them money for work not completed.

As of the date of the stipulation, the New Jersey Lawyers' Fund for Client Protection (CPF) had paid \$10,297.95 in claims filed against respondent. Although respondent was current with his \$200 CPF monthly payment plan, he still owed \$6,497.95. Thus, he has not refunded all of the grievants' funds, a violation of RPC 1.16(d).

In the Board's view, respondent's most serious ethics infraction was the fee-sharing arrangement between MBS and US Legal/Data Services, which also constituted a violation of RPC 7.2(c). Based on the stipulated facts, US Legal/Data Services received at least \$74,232.06 in fees for its referral of thirty client matters over a period of approximately two years. Only nine of those clients filed a grievance against respondent. However, we considered the total number of clients and fees shared in determining the appropriate measure of discipline.¹

The Board determined that, based on a totality of the circumstances, a six-month suspension is warranted. Respondent was involved in an improper fee-sharing arrangement with US Legal/Data Services for a two-year period. During that time, he obtained thirty clients through US Legal/Data Services' efforts. Cases involving similar facts have resulted in three-month suspensions. See, e.g., In re Howard Gross, 186 N.J. 157 (2006) (three-month suspended suspension imposed on an attorney who had paid \$300 to a runner on at least fifty occasions between 1998 and 2000); In re Pease, 167 N.J. 597 (2001) (three-month suspension imposed on an attorney who paid \$16,500 to a runner for referring fifteen prospective clients during a four-month period); and In re Bregg,

¹Respondent represented twenty-one additional homeowners, who were neither from New Jersey nor plaintiffs in the federal court action. Collectively, they paid him \$100,748.16 in fees, which he shared with unidentified non-attorneys. The stipulation is silent in respect of any services respondent may have provided to these homeowners.

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61 N.J. 476 (1972) (three-month suspension for attorney who paid part of his fees to a runner from whom he had accepted referrals in thirty cases over a two-and-a-half-year period). Yet, in this case, there were other factors that the Board took into consideration.

In addition to the improper fee-sharing arrangement, respondent committed other, less serious infractions, which ordinarily would warrant either an admonition or a reprimand. See, e.g., In the Matter of Sean Lawrence Branigan, DRB 14-088 (June 23, 2014) (admonition for failure to send the client an invoice for the time spent on her matrimonial case and ignoring her e-mail and telephone calls); In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (admonition imposed on attorney who, among other violations, failed to cooperate with the ethics investigation); In re Duffy, 208 N.J. 431 (2011) (reprimand for misconduct in five client matters, including failure to return unearned fees; prior admonition); In re Girdler, 179 N.J. 227 (2004); and In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6) (threshold measure of discipline for an attorney's failure to file a R. 1:20-20(b)(15) affidavit is a reprimand). Moreover, in 2014, respondent received a three-month suspension, which involved conduct similar to his conduct in this matter.

Thus, based on the totality of respondent's ethics infractions, together with his disciplinary history, the Board voted to impose a six-month suspension.

Finally, the Board determined that respondent's continued struggle with alcohol and drugs requires his reinstatement to be conditioned on the following: submission of proof of his fitness to practice law, as attested to by a mental health professional approved by the OAE, and proof of his continuing participation in AA, Lawyers Concerned for Lawyers, and the New Jersey Lawyers' Assistance Program. Further, upon reinstatement, respondent must practice under the supervision of a proctor, approved by the OAE, for a period of two years.

Enclosed are the following documents:

1. Unredacted notice of motion for discipline by consent, dated May 2, 2017, referencing respondent's address (confidential).

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2. Stipulation of discipline by consent, dated May 1, 2017.
3. Affidavit of consent, dated May 15, 2017.
4. Ethics history, dated July 26, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/sl

encls.

c: (w/o encls.)

Bonnie C. Frost, Chair

Disciplinary Review Board

Charles Centinaro, Director

Office of Attorney Ethics

Christina Blunda Kennedy, Deputy Ethics Counsel

Office of Attorney Ethics

Mitchel Tarter, Respondent

Meher Wanker, Grievant

Beverly Thorney, Grievant

Edward McCaffery, Grievant

Christina Ganzer, Grievant

Paula Duncan, Grievant

Chantell Curl, Grievant

Tanya Copeland, Grievant

Leah Bullen, Grievant

George Ashjian, Grievant