SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-122
District Docket No. IV-2014-0021E

IN THE MATTER OF

ANDREW S. ROSENBLOOM

AN ATTORNEY AT LAW

Decision

Argued: June 15, 2017

Decided: September 22, 2017

Andrew J. Karcich appeared on behalf of District IV Ethics Committee.

Respondent waived appearance for oral argument.

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 IV Ethics Committee (DEC). A three-count complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to communicate with the client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in four matters.

We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2002, the New York bar in 2003, and the Pennsylvania bar in 2006. He has no prior discipline in New Jersey. Respondent received a reprimand in Pennsylvania for the misconduct herein.

On February 7, 2017, just prior to the DEC hearing, the parties entered into a stipulation of facts in which respondent admitted all of the charges against him, as follows.

In April 2012, respondent accepted an attorney position with the Sobel Law Group, LLC (SLG), in its New York City office. A few months later, in August 2012, SLG opened an office in Cherry Hill, New Jersey, where respondent was the only employee, until June 2013, when SLG assigned a part-time paralegal to assist him. Respondent remained with SLG until March 17, 2014, when the firm discharged him.

During his tenure with SLG, respondent reported to Seth Rubine, the managing partner of SLG's New York City law office. Respondent was the sole attorney in the New Jersey satellite office, established for both its New Jersey and Pennsylvania cases.

SLG handled litigation defense, and counted among its clients, the Great Atlantic and Pacific Tea Company (A&P), which operated supermarkets throughout New Jersey and Pennsylvania. Respondent handled about seventy-five A&P cases in New Jersey

and another forty-one in Pennsylvania, all at one time. The parties stipulated that respondent's caseload was so overwhelming that four A&P matters "slipped through the cracks," due to his lack of diligence during the discovery phases of those cases.

In Berger v. A&P and Gerena v. A&P (Middlesex County cases), Collins v. A&P (Monmouth County), and Coronado v. A&P (Essex County), respondent failed to conduct discovery, specifically: (1) depositions; (2) diagnostic film reviews; and (3) independent medical evaluations. In Gerena v. A&P, the case was scheduled for trial with no discovery, a fact of which the client was unaware. In addition, in all four matters, respondent submitted misleading reports to A&P's claims personnel that failed to state the true status of the matters.

Respondent stipulated that, by the above actions, he violated RPC 1.3, RPC 1.4, presumably (b), and RPC 8.4(c) in each of the four matters.

In his testimony, respondent urged the hearing panel to consider mitigating factors. He testified that all of the A&P cases originated from SLG's New York office. That office prepared and filed answers prior to respondent's involvement. Once answers were filed from New York, the files were "overnighted" to respondent. Rubine, respondent's supervising

partner in New York, was attorney of record and designated trial counsel in all of the A&P matters, even after their assignment to respondent.

According to respondent, all notices in New Jersey matters were sent to the New York office, where New York staff were to calendar upcoming events and re-route the notices to respondent in New Jersey. Those measures were necessary because respondent initially had no support staff in the New Jersey office to assist him. Eventually, he was assigned a part-time assistant.

Respondent testified that he often received cases from Rubine in which discovery dates had already expired, with instructions to "fix it." Respondent maintained that SLG essentially set him up to fail, and Rubine later used him as a scapegoat for systemic problems in the firm's handling of A&P cases. Further, respondent claimed, Curtis Sobel, a named partner, and the grievant herein, was vindictive in his treatment of respondent, even contesting his application for unemployment benefits after his discharge from SLG.

That notwithstanding, respondent took full responsibility for this misconduct:

> I relied mainly on the New York office as my support because they were the ones that were receiving all of the documents and then sending them to me. I very rarely received any direct mail at the New Jersey office. It

> was just how they wanted everything to be organized.
>
> That does not take away from the fact that I still was handling these matters and that's why I am here today, and that is why I signed the stipulation.
>
> [T35-4 to 13.][1]

Since March 2014, respondent has been under the care of a psychiatrist, who prescribed a daily anti-depressant/anxiety medication. Respondent was still taking that medication as of the date of the DEC hearing. He explained that, during his time at SLG, he also experienced marital difficulties," which also played a huge part in my state of mind while I was working there. And it's also one of the main reasons, due to the stress levels from that job," that respondent continues to take medication.

After departing SLG, respondent obtained employment with another law firm and quickly found his footing, as the new firm had sufficient support staff and did not overwhelm him with cases. Respondent quickly became a partner and serves as chair of the firm's labor and employment practices group.

The presenter sympathized with respondent's plight, noting his particularly difficult personal and professional circumstances. He argued that respondent's misconduct was on the

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[1] T refers to the transcript of the February 7, 2017 DEC hearing.

cusp of a censure or a three-month suspension, citing In re Tiffany, 213 N.J. 37 (2013) (reprimand imposed in a default for attorney found guilty of a pattern of neglect, lack of diligence, failure to communicate with the client, and misrepresentations in three client matters) and In re Casey, 170 N.J. 6 (2001) (three-month suspension imposed on attorney who, in three client matters, was guilty of gross neglect, pattern of neglect, failure to expedite litigation, failure to communicate the status of the matters to his clients, and misrepresentations to them about the progress of their cases; the three-month suspension was imposed because he failed to provide any proof of recovery from the alcoholism that he blamed for his misconduct, and he engaged in a pattern of misrepresentations to his clients; censure was not yet an approved sanction).

Ultimately, the presenter settled on a censure as the appropriate sanction for respondent's misconduct.

The DEC found respondent guilty of having violated RPC 1.3 for his failure to conduct proper discovery in the four matters, RPC 1.4 for his failure to keep A&P reasonably informed about the status of the cases, and RPC 8.4(c) for misleading A&P about the status of these four cases in his care.

In mitigation, the panel considered that respondent

> found himself in an overwhelming setting, brought about by a poor business practice

established by his employer, in which he had little or no assistance while trying to provide effective legal assistance in over 120 cases in two different states. Moreover, to his credit, respondent has been fully forthright, honest and cooperative throughout these proceedings.

[HPR¶21.][2]

Finally, the panel considered respondent's lack of prior discipline in his fifteen years at the bar.

The DEC recommended the imposition of a reprimand.

* * *

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.

During respondent's two years at SLG, he was required to singlehandedly operate its New Jersey satellite law office, from which he attempted to defend seventy-five New Jersey cases and forty-one Pennsylvania cases, all at the same time.

Predictably, with more cases than he could reasonably handle, respondent allowed four A&P matters to "fall through the cracks." In all of those matters, he lacked diligence by failing to conduct discovery within the time permitted. Unbeknownst to A&P, the Gerena v. A&P case was scheduled for trial without

[2] HPR refers to the hearing panel report, dated February 24, 2017.

discovery. In fact, in all four matters, respondent failed to keep A&P apprised of important events in the case. We find that respondent's actions in this regard violated RPC 1.3 and RPC 1.4(b), respectively.

Respondent also misrepresented the status of the cases by submitting reports to A&P omitting the true status of these four matters, which had proceeded in the courts without proper discovery. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984) (sometimes "silence can be no less a misrepresentation than words"). Respondent's misrepresentations constituted violations of RPC 8.4(c).

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to

reply to his client's requests for information or to otherwise communicate with her from June 2009 through January 2011, and his failure to communicate with her, except on occasion, between January 2011 and April 2014, when the client filed a grievance; the attorney never informed his client that a motion to compel had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (attorney assured his client that the matter was proceeding apace, and that the client should expect a monetary award in the near future, knowing these representations were false, thereby violating RPC 8.4(c); the attorney also engaged in gross neglect and lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3, and violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); In re Falkenstein, 220 N.J. 110 (2014) (attorney failed to inform the client that he had not complied with the client's request to file an appeal, instead leading the client to believe that he had filed an appeal, and concocting false stories to support the

lies, a violation of RPC 8.4(c); the attorney also failed to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; he also failed to withdraw from the case when he believed the appeal was meritless, a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)); and In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that her two personal injury complaints had been dismissed, thereby misleading her, by his silence, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's mitigation of an unblemished thirty-four years at the bar was outweighed by his inaction, which left the client with no legal recourse).

Kasdan requires a reprimand, but as the presenter argued, more severe discipline has been meted out in situations where the attorney engages in a pattern of misrepresentation, such as in Casey, the three-month suspension case cited by the presenter, which was decided before censure was an available sanction. We find, however, that this case is less serious than Casey, where no significant mitigation was present, and where the discipline was imposed, in part, to protect the public from the attorney's admitted alcoholism.

Respondent's misconduct more closely resembles that of the attorneys in Dwyer, Falkenstein, and Braverman, supra, all of which involved attorneys who made misrepresentations to clients by silence.

Here, there is also significant mitigation. First, respondent was challenged from the start at SLG, as the law firm apparently failed to provide him with the basic tools necessary to operate a law office and conduct a law practice. Moreover, he was saddled with an overwhelming caseload. To his credit, respondent did not attempt to shift blame for his misconduct, but, rather, took full responsibility for the four A&P cases he had mishandled.

Respondent also fully cooperated with the ethics investigation and stipulated his misconduct, thereby saving disciplinary resources. In addition, respondent experienced personal problems in his marriage at the time that, when combined with his challenging work situation at SLG, required psychiatric and medical intervention.

Respondent has learned from his experience with SLG and has activated a successful law practice with a new law firm, where he is now a partner. Finally, respondent has no prior discipline in New Jersey in fifteen years at the bar. Based on the totality of the circumstances, including the substantial

mitigating factors, we determine that a reprimand is ample sanction for respondent's misconduct.

Chair Frost, Vice-Chair Baugh, and Members Hoberman and Rivera voted for an admonition.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

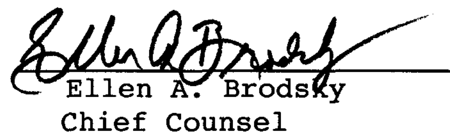
In the Matter of Andrew S. Rosenbloom
Docket No. DRB 17-122

Argued: June 15, 2017

Decided: September 22, 2017

Disposition: Reprimand

Members	Reprimand	Admonition	Did not participate
Frost		X	
Baugh		X	
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman		X	
Rivera		X	
Singer	X		
Zmirich	X		
Total:	5	4	



Ellen A. Brodsky
Chief Counsel