SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-347
District Docket No. XIV-2017-0198E

IN THE MATTER OF	:
RICHARD EUGENE EHRLICH	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 18, 2018

Decided: April 4, 2018

Johanna Barba Jones appeared on behalf of the Office of Attorney Ethics.

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 motion for reciprocal discipline, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, following respondent's three-month suspension in Florida for ethics infractions stemming from interstate solicitations for loan modification work by nonlawyers acting on behalf of his firm, charging illegal fees, failing to act diligently in respect of the loan modification

clients, failing to supervise his nonlawyer employees, and practicing law in Maryland, a state in which he was not admitted to the bar.

The OAE seeks the imposition of a three-month suspension, based on respondent's violation of New Jersey RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with the client), RPC 1.5(a) (unreasonable fee), RPC 5.3(a) (failure to make reasonable efforts to ensure that the conduct of nonlawyers is compatible with the lawyer's professional obligations), RPC 5.5(a)(1) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction), RPC 7.3(b)(5) (initiating unsolicited direct contact with a prospective client when a significant motive is pecuniary gain), RPC 7.3(d) (compensating or giving something of value to a person for recommending the lawyer's services), and RPC 8.4(a) (violating or attempting to violate the RPCs, knowingly assisting or inducing another to do so, or doing so through the acts of another). Respondent agrees with the discipline the OAE seeks.

We determined to grant the motion for reciprocal discipline and impose a three-month prospective suspension on respondent for his violation of all of the above RPCs, except RPC 1.3, RPC 1.5(a), and RPC 7.3(d).

Respondent was admitted to the New Jersey and New York bars in 1986, the Washington, DC bar in 1988,[1] and the Florida bar in 1991. At the relevant times, he maintained an office for the practice of law in Coral Springs, Florida, which operated under both the names Ehrlich, Franz, & Harris, as well as Ehrlich & Franz (the Ehrlich firm).

Respondent has no disciplinary history in New Jersey.

The facts are taken from two sources. The first is the December 7, 2016 conditional guilty plea for consent judgment (consent judgment), which was tendered to the Florida Bar prior to the filing of a formal ethics complaint. The Florida Bar approved respondent's plea and submitted it to the Supreme Court of that state (Florida Court). On February 16, 2017, the Florida Court approved the consent judgment and imposed a ninety-day suspension on respondent.

The second source is respondent's sworn statement, given to Florida Bar Counsel, Michael Soifer, on May 17 and June 30, 2016 (sworn statement). Given the lack of detail in the consent judgment, we found it necessary to supplement the facts with information from respondent's sworn statement.

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[1] Respondent has not maintained his Washington, DC license for many years.

Prior to the formation of the Ehrlich firm, respondent previously worked in the mortgage and title industries. In the spring of 2011, one of his former colleagues suggested that respondent take on loan modification work.

In August 2011, respondent and his partners formed Ehrlich, Franz & Harris. When Harris left in late 2012, the firm changed its name to Ehrlich & Franz. In January 2014, respondent and Franz split the practice.

When the Ehrlich firm was formed, the bulk of respondent's practice was wills, trusts, and estates, along with occasional transactional work. Harris handled general litigation matters, and Franz worked on personal injury cases.

In addition, from its inception until mid-2014, the Ehrlich firm offered services to individuals seeking modification of their residential mortgage loans. The partners decided to take on loan modification work, as a way "to join the practices." For example, Franz would increase his caseload by representing clients in bankruptcy and foreclosure proceedings.

Franz was charged with researching the proper way to take on such work. According to respondent, Franz's research "was fairly vast," and, based on his advice, communications with the Florida Bar's ethics department, and the review of both state and

federal loan modification rules and statutes, the firm proceeded with the loan modification work.

Respondent and his partners employed nonlawyers to perform the loan modification work. "For the most part," the nonlawyer employees communicated with the clients. Indeed, respondent stated to Florida Bar counsel that he never met with, or even talked to, the twenty-six grievants, all of whom spoke Spanish. The Spanish-speaking clients communicated with employees Joe Sagarra; Claudia Perrera, whom respondent identified as a "processor;" and, to a lesser degree, Sylvia Montero, "a kid that worked for us for a few months."

Sagarra played a large role in the firm's representation of loan modification clients. He solicited many of them, some of whom resided in Maryland. The Maryland clients were charged upfront retainer fees, which was improper, as respondent was not licensed to practice law in that state.

In addition to Maryland residents, Sagarra solicited Florida residents. He obtained a multitude of clients for the firm via "referrals through his system of people." Sagarra's "people" included several churches, from at least one of which he secured the "entire" congregation as respondent's clients. Another source was Nelly Gerson, a loan modification client.

Twenty-six clients filed grievances with Florida Bar Counsel. When the Ehrlich firm learned of the grievances, it fired Sagarra and began winding down the loan modification operation. Respondent made full restitution to the grievants, totaling $98,855.[2]

Based on the above facts, respondent admitted having violated the following Florida RPCs:

- 4-1.3 [Diligence];
- 4-1.4 [Communication];
- 4-1.5(a) [Fees and Costs for Legal Services];
- 4-5.3(b) [Responsibilities Regarding Nonlawyer Assistants];
- 4-5.5 [Unlicensed Practice of Law; Multijurisdictional Practice of Law];
- 4-7.18 [Direct Contact with Prospective Clients]; and
- 4-8.4(a) [Misconduct].

In the consent judgment, respondent asserted the following mitigating factors: (a) absence of a disciplinary record; (b) absence of a dishonest or selfish motive; (c) timely good-faith

[2] Initially, respondent refunded approximately $89,500 to most of the complaining clients. Although he took the position that other clients were not entitled to refunds because the firm had provided services to them, he agreed to make full restitution, as part of the consent judgment.

effort to make restitution or to rectify the consequences of misconduct; (d) full and free disclosure to the disciplinary board and cooperative attitude toward proceedings; and (e) character and reputation.

As stated above, on February 16, 2017, the Florida Court approved the consent judgment and suspended respondent for ninety days, effective March 1, 2017. On March 7, 2017, respondent's counsel in the Florida ethics proceeding notified the OAE of the suspension.

* * *

Following a review of the record, we determine to grant the OAE's motion. Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). Thus, like Florida, we determined to impose a three-month suspension on respondent.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

We encountered some challenge in analyzing the facts against the applicable New Jersey RPCs. Specifically, many of the Florida Rules are worded differently from New Jersey's RPCs. Moreover, the consent judgment omits the applicable section(s) or subsection(s) of some of the Florida Rules that respondent violated.

To begin, we analyze the simpler RPCs. Florida RPC 4-1.3, like New Jersey RPC 1.3, requires a lawyer to act with reasonable diligence and promptness in representing a client. Here, the consent judgment recites only that the Ehrlich firm offered loan modification services and that nonlawyers performed the work. There are no facts that suggest any delay in providing the services for which the Ehrlich firm was retained. Although, as discussed below, the provision of loan modification services through the work of nonlawyers resulted in other RPC infractions, nothing in the record supports a finding that respondent violated New Jersey RPC 1.3. Thus, we dismiss that alleged violation.

Florida RPC 4-8.4(a), like New Jersey RPC 8.4(a), characterizes the following as professional misconduct: violating or attempting to violate the RPCs, knowingly assisting or inducing another to do so, or doing so through the acts of another. As shown below, respondent violated New Jersey RPC 8.4(a), by violating the Rules of Professional Conduct through the acts of Sagarra.

Florida RPC 4-1.4 governs a lawyer's communication with the client. Although similar to New Jersey RPC 1.4 in some respects, the Florida Rule is different in others. The consent judgment

does not identify which of the sections and subsections of Florida's RPC apply to respondent's behavior.

Because respondent admitted that, "[f]or the most part," nonlawyer employees communicated with the clients, he violated RPC 1.4(c), as he failed to explain the matters to those clients individually to the extent reasonably necessary to permit them to make informed decisions regarding the representation.

It cannot be said, however, that respondent violated either RPC 1.4(b) or (d). In respect of (b), there is no evidence that the clients were not kept informed of the status of their matters or that respondent failed to comply with their reasonable requests for information. Certainly, respondent was able to act through his employees.

Further, respondent did not know that his provision of loan modification services to distressed mortgage holders was prohibited and, thus, he cannot be found guilty of RPC 1.4(d), which requires knowledge that the assistance the client seeks is not permitted under the RPCs. Thus, the record supports only the finding that respondent violated RPC 1.4(c).

Florida RPC 4-5.5(a) provides:

> (a) Practice of Law. A lawyer may not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the

> lawyer's home state or assist another in doing so.

This Rule is comparable to New Jersey RPC 5.5(a)(1) and (2), which, together, prohibit a lawyer from "practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction" and from assisting a person who is not a licensed attorney "in the performance of activity that constitutes the unauthorized practice of law." Respondent was not admitted to the Maryland bar and, thus, violated RPC 5.5(a)(1) when he undertook the representation of residents in that state. He also violated RPC 5.5(a)(2), by allowing Sagarra to perform work on the Maryland clients' cases.

Florida RPC 4-1.5(a) provides:

> (a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:
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> (1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or
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> (2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

Unlike the Florida Rule, New Jersey RPC 1.5(a) prohibits only an unreasonable fee. The RPC does not mention an illegal fee. New Jersey RPC 1.5(d) specifies two "prohibited" fees: a fee in a domestic relations matter that is contingent on certain factors not applicable here and a contingent fee in a criminal case. Finally, the New Jersey RPC contains no provision governing a fee obtained through illicit "advertising or solicitation."

As for Florida's prohibition against charging an excessive fee, that RPC considers an excessive fee to be one that "exceeds a reasonable fee . . . to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney." Florida RPC 4-1.5(a)(1). New Jersey RPC 1.5(b) lists eight factors to be taken into consideration when making that determination, as does Florida RPC 4-1.5(b).

The consent judgment does not specify the nature of respondent's fee violation. Thus, we do not know whether the stipulated violation was based on fees that were "illegal, prohibited, or clearly excessive" or "generated by employment that was obtained through advertising or solicitation not in compliance with the [Florida RPCs]."

The OAE takes the position that the fee was illegal, and, thus, unreasonable per se. The OAE argues that, under the Mortgage Assistance Relief Services (MARS) rule of the Federal Trade Commission, 16 C.F.R. § 322 (2010), lawyers are prohibited from

charging advance fees, unless the fees are deposited in a client trust account. To be sure, the advance fees paid by respondent's clients were not deposited in the Ehrlich firm's trust account. Although an attorney's failure to deposit advance fees in the trust account is a MARS violation, it is not a violation of New Jersey RPC 1.5(a).[3] In New Jersey, absent an express agreement with the client to the contrary, the advance payment of a fee is not required to be deposited in a trust account. Moreover, the deposit of a fee into the wrong account does not render the fee unreasonable.

Furthermore, although the Florida RPC bars the collection of an illegal fee, New Jersey bars only an unreasonable fee. As stated above, in making such a determination, we must be guided by the eight factors enumerated in the Rule. There is insufficient evidence in this record on which to make the determination regarding the reasonableness of respondent's fee, either in Florida or in New Jersey.

The OAE also contends that an improper fee share arrangement between respondent and Sagarra violated Rule 1.5(a). Yet, an improper fee share arrangement does not render the fee itself

[3] Respondent's acceptance of an advance fee and his attendant failure to deposit that fee in his trust account, until his client accepted the terms of an approved mortgage modification, in violation of MARS, may well have violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). However, the OAE did not charge that violation.

unreasonable. Rather, such an arrangement violates RPC 5.4(a) and, perhaps, RPC 7.3(d). Respondent, however, did not admit violating either RPC, and we are unable to discern any findings of fact to support such violations.

Based on the facts, we do not find that respondent violated RPC 1.5(a), by charging an unreasonable fee. Therefore, we dismiss that alleged violation.

Florida RPC 4-5.3(b) provides:

> (b) Supervisory Responsibility. With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:
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> (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, must make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
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> (2) a lawyer having direct supervisory authority over the nonlawyer must make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
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> (3) a lawyer is responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer:
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> (A) orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
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> (B) is a partner or has comparable managerial authority in the law firm in which

> the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Florida RPC 4-5.3(b) and New Jersey RPC 5.3(a), (b), and (c) are similar. Respondent violated both Rules, in numerous respects.

As a partner in the Ehrlich firm with managerial authority over Sagarra, and as a lawyer with direct supervisory authority over Sagarra, respondent made no effort to ensure that Sagarra's conduct was "compatible with the professional obligations of the lawyer." Florida RPC 4-5.3(b)(1); New Jersey RPC 5.3(a) (requiring every lawyer to adopt and maintain "reasonable efforts" to ensure that nonlawyer employee conduct is compatible with the lawyer's professional obligations) and (b) (requiring the same efforts as in (a) of a lawyer with "direct and supervisory authority" over the nonlawyer). As shown below, Sagarra solicited clients, a violation of Florida RPC 4-7.18. The Ehrlich firm had no procedures in place to ensure that its employees were behaving appropriately. Further, respondent was well aware of Sagarra's manner of obtaining clients for the firm, and did nothing to address it, thus ratifying it, a violation of Florida RPC 4-5.3(b)(3)(A) and New Jersey RPC

5.3(c)(1). In this regard, respondent violated New Jersey RPC 5.3(a), (b), and (c)(1).[4]

Although Florida RPC 4-7.18 is a multi-part RPC, the consent judgment does not identify the particular provision violated by respondent. We presume, however, that section (a)(1) applies in this case. This part of the Rule provides:

> (a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:
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> (1) solicit, or permit employees or agents of the lawyer to solicit on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes any written form of communication, including any electronic mail communication, directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

New Jersey RPC 7.3(b)(5), comparable to the Florida RPC, provides as follows:

> (b) A lawyer shall not contact, or send a written communication to, a prospective client

[4] Although the OAE did not charge respondent with a violation of RPC 5.3(b) and (c), as noted, those subparts are very similar to Florida's RPC 4-5.3(b), to which respondent admitted. Thus, we see no notice issue in finding respondent guilty of those subsections.

> for the purpose of obtaining professional employment if:
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> . . .
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> (5) the communication involves unsolicited direct contact with a prospective client . . . when such contact has pecuniary gain as a significant motive. . . .

Here, respondent, through Sagarra, violated New Jersey RPC 7.3(b)(5) by making unsolicited direct contact with prospective loan modification clients for the purpose of generating revenue for the firm.

As stated previously, by violating RPC 4.5-3(a), (b), and (c)(1) and RPC 7.3(b)(5), either directly or through Sagarra, respondent violated RPC 8.4(a).

In requesting a three-month suspension, the OAE relies on what it describes as respondent's impermissible fee share arrangement with Sagarra. In support of this claim, the OAE cites the Notice of Grievance Committee Review (notice of grievance), which apprised respondent of the allegations and charges that the committee would review and determine whether probable cause warranted further proceedings.

The notice of grievance referred to the improper compensation paid by respondent to Sagarra for "soliciting" clients for the loan modification business. Further, the notice identified Florida RPC 4-5.4(a) (sharing legal fees with a nonlawyer) as one of the many Rules that respondent had potentially violated. However, respondent

entered his conditional guilty plea, and the consent judgment was finalized, prior to the filing of a formal ethics complaint against respondent. Florida RPC 4-5.4(a) was not among the charges that respondent admitted having violated.

Further, in respondent's sworn statement, he steadfastly maintained that Sagarra was compensated at an hourly rate, plus overtime. Sagarra's compensation started at $50 an hour, and increased to $100 an hour by the end of 2012. He worked at least eight hours every day, and, from late 2011 to early 2014, brought in 350 to 400 files.

Respondent expressly denied that he had shared fees with Sagarra, although "[c]ertainly [Sagarra] would have liked that to have been the case" because Sagarra believed that he was "responsible for all this wealth that was being created." Yet, according to respondent, there was "no way to do something exactly along those lines." Juxtaposed against that testimony was the 1099 Form issued to Sagarra in 2013, which reflected $221,395.49 in compensation.[5]

Respondent did not admit to the fee-sharing violation, and, thus, was not disciplined for that infraction. Moreover, the record

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[5] We note that, at $100 per hour, if Sagarra worked forty hours a week, and took two weeks of vacation, he would have earned $200,000. According to respondent, however, Sagarra was in the office "all the time," and worked "at least" eight hours "on most days."

does not contain clear and convincing evidence that respondent engaged in improper fee-sharing. Accordingly, we decline to impose reciprocal discipline on that basis.

Further, because the record does not support a finding that respondent shared fees with Sagarra, but rather simply compensated him at an hourly rate, the RPC 7.3(d) charge cannot stand. That Rule prohibits a lawyer from compensating or giving anything of value to a person to recommend or secure, or as a reward for having made a recommendation resulting in, the lawyer's employment by a client.

To conclude, we find that the consent judgment and the content of respondent's sworn statement demonstrate, by clear and convincing evidence, that he violated New Jersey RPC 1.4(c); RPC 5.3(a), (b), and (c)(1); RPC 5.5(a)(1) and (2); RPC 7.3(b)(5); and RPC 8.4(a).

There remains for determination the appropriate quantum of discipline to impose on respondent for his infractions. In recommending a three-month suspension, the OAE relies exclusively on the following loan modification cases: In the Matter of Ejike Ngozi Uzor, DRB 12-075 (May 29, 2012) (admonition); In re Velahos, 220 N.J. 108 (2016) (Velahos I) (censure); In re Aponte, 215 N.J. 298 (2013) (censure); and In re Velahos, 225 N.J. 165 (2016) (Velahos II) (six-month suspension for second violation, combined with other offenses). Although we determine that a three-month suspension is appropriate for respondent's infractions, in our view, these cases are inapplicable, as the only similarity between them and this

matter is that the lawyers were involved in the provision of loan modification services.

In the cases cited by the OAE, the lawyers were involved in affiliations with for-profit loan modification companies, an arrangement prohibited by Joint Opinion No. 716 of the Advisory Committee on Professional Ethics and Opinion No. 45 of the Committee on the Unauthorized Practice of Law, 197 N.J.L.J. 59 (July 6, 2009) (Joint Opinions 716 and 45). Specifically, Joint Opinions 716 and 45 prohibit New Jersey attorneys from providing legal advice to customers of for-profit loan modification companies, whether the attorneys be considered in-house counsel to the companies, formally affiliated or in a partnership with the companies, or separately retained by the companies.

In In the Matter of Ejike Ngozi Uzor, DRB 12-075 (slip op. at 1), the attorney became legal counsel to a loan modification entity, for which he received a weekly salary to handle customer complaints and to advise the company how to respond to them. The attorney also opened a law practice in the company's office space. Ibid. When the company was forced to relinquish its trade name, the attorney permitted it to operate under his law firm name, with the company's nonlawyers administering the law firm's finances through his business account. Id. at 2.

In Velahos I and Velahos II, the attorney was listed as a representative of various loan modification companies owned by his

wife, a nonlawyer, and his law firm's address and telephone number were listed as the contact information for those companies. Velahos I, DRB 14-055 (slip op. at 2), and Velahos II, DRB 15-409 (slip op. at 8).

In In re Aponte, 215 N.J. 298, the attorney, as a means to expand his bankruptcy practice to include foreclosure matters, entered into a "professional service agreement" with two former loan officers who had their own loan modification business. In the Matter of Ernest A. Aponte, DRB 13-064 and DRB 12-371 (June 25, 2013) (slip op. at 3). The parties' agreement set forth a flat fee schedule for services provided to clients, as well as a flat fee to be paid to the former loan officers for their services as "subcontractors." Id. at 4. All fees were paid to the attorney, who then paid the subcontractors. Ibid.

The attorney provided the subcontractors with business cards, identifying them as mortgage analysts for his law firm and listing his law office address and telephone number. Ibid. The subcontractors did not provide legal advice to the clients. Ibid. Instead, they produced mortgage modification clients and assisted the attorney in "putting his bankruptcy petitions together." Ibid.

We also note that the discipline in the above matters took into account factors not present here, such as prior discipline (Velahos II); other accompanying disciplinary violations, including a pattern of neglect (Aponte) and a pattern of misrepresentations (Velahos

II); and compelling mitigation (Aponte). Most significant is that, unlike Velahos, respondent was not principally engaged as a debt adjuster, which is a fourth-degree crime in New Jersey.

In our view, regardless of how Sagarra was paid, it is obvious that he functioned as a runner. Although there is no clear and convincing evidence that respondent directed Sagarra to solicit clients, he was fully aware that, in a few years, Sagarra had obtained 350 to 400 clients through what respondent described as Sagarra's "system of people." Thus, given the number of clients obtained through Sagarra's improper solicitation, for which we find a violation of RPC 7.3(b)(5), we discern no reason to deviate from the discipline imposed in Florida for that conduct simply because the record lacks clear and convincing evidence that respondent shared legal fees with him.

In runner cases, the discipline ranges from a three-month suspension to disbarment. See e.g., In re Howard Gross, 186 N.J. 157 (2006) (three-month suspended suspension imposed for the attorney's use of a paid runner; the attorney stipulated that he paid $300 to the runner on at least fifty occasions between 1998 and 2000; in mitigation, the attorney inherited a system that his father had established); In re Pease, 167 N.J. 597 (2001) (three-month suspension imposed on attorney who paid a runner for referring fifteen prospective clients to him and for loaning funds to one of those clients; in mitigation, the attorney had

not been disciplined previously, he had performed a significant amount of community service, and the misconduct was limited to a four-month period, which took place more than ten years prior to the ethics proceeding, when the attorney was relatively young and inexperienced); In re Bregg, 61 N.J. 476 (1972) (attorney suspended for three months for paying part of his fees to a runner from whom he had accepted referrals in thirty cases over a two-and-a-half-year period; mitigating factors included the attorney's candor and contrition); In re Chilewich, 192 N.J. 221 (2007) and In re Sorkin, 192 N.J. 76 (2007) (companion cases; on a motion for final discipline, one-year suspension imposed on attorneys, who admitted having runners refer to them twenty and fifty cases, respectively, and filed false retainer reports with the New York Office of Court Administration; considerable time had passed between the misconduct and the disciplinary proceedings); In re Berglas, 190 N.J. 357 (2007) (on a motion for reciprocal discipline, attorney received a one-year suspension for sharing legal fees with a nonlawyer and improperly paying third parties for referring legal cases to him; the conduct took place over three years and involved two hundred immigration and personal injury matters); In re Birman, 185 N.J. 342 (2005) (attorney received a one-year suspension by way of reciprocal discipline; he had agreed to compensate an

existing employee for bringing new cases into the office, after she offered to solicit clients for him); In re Frankel, 20 N.J. 588 (1956) (two-year suspension imposed on attorney who paid a runner twenty-five percent of his net fee to solicit personal injury clients, which also represented the runner's primary source of income); In re Introcaso, 26 N.J. 353 (1958) (three-year suspension for attorney who used a runner to solicit clients in three criminal cases, improperly divided legal fees, and lacked candor in his testimony); In re Pajerowski, 156 N.J. 509 (1998) (disbarment for attorney who, for almost four years, used a runner to solicit personal injury clients, split fees with the runner, and compensated him for referrals in eight matters involving eleven clients; although the attorney claimed that the runner was his "office manager," in 1994, the attorney had compensated him at the rate of $3500 per week ($182,000 a year) for the referrals); and In re Shaw, 88 N.J. 433 (1982) (disbarment for attorney who used a runner to solicit a client in a personal injury matter, "purchased" the client's cause of action for $30,000, and then settled the claim for $97,500; the runner forged the client's endorsement on the settlement check, depositing it in his own bank account, rather than the attorney's trust account; the attorney also represented a passenger in a lawsuit against the driver of the same automobile

and represented both the passenger and the driver in litigation filed against another driver).

Here, Sagarra was not a classic runner, trolling for personal injury clients by monitoring accident reports, running to the scene, and handing out the attorney's business card (Gross), directly contacting hospitalized victims (Pajerowski), acquiring information through a tow truck business (Pease), or bribing hospital employees for patient information (Chilewich and Sorkin), to cite just a few examples. Rather, Sagarra targeted distressed homeowners, assessed their circumstances, and, if appropriate, referred them to respondent. That notwithstanding, his actions were sufficiently similar to traditional "running" so as to warrant application of the runner cases to determine the appropriate measure of discipline to impose on respondent in this matter.

The case most on point is In re Berglas, 190 N.J. 357. Over a three-year period, Berglas received two hundred immigration and personal injury matters through the efforts of a translator with whom he shared office space. Here, respondent received 350 to 400 clients over a two-year period. We note, however, that the one-year suspension imposed on Berglas encompassed a second matter in which he had provided false New York addresses for his immigration clients.

The attorneys who received three-month suspensions were not as embroiled in the practice as respondent. The attorney in Gross paid a runner $300 on at least fifty occasions during a two-year period. In Pease, the lawyer paid a runner $16,500 for referring fifteen prospective clients during a four-month period. In Bregg, the attorney shared his fees with a runner from whom he had accepted about thirty referrals over a period of more than two years.

Berglas notwithstanding, a longer term of suspension is unwarranted here because there is no evidence of the hardened disregard of ethics principles or total lack of candor found in the lengthy suspension cases: Chilewich, and Sorkin (one-year suspensions; filed false retainer statements with the New York courts); Frankel (two-year suspension; the runner's job was to run cases for the attorney); Introcaso (three-year suspension; lack of candor in his testimony); Pajerowski (disbarment; improper loans and conflicts present); and Shaw (disbarment; attorney forged the client's name on the settlement check and committed other improprieties, such as improper loans to the client). Here, as soon as respondent learned that a grievance had been filed against him and realized that he had been engaged in unethical conduct, he fired Sagarra, took steps to unwind

that part of his practice, and refunded the fees to the grievants.

In short, although the record lacks clear and convincing evidence that respondent shared legal fees with Sagarra, there is no doubt that, with respondent's knowledge and assent, Sagarra solicited hundreds of loan modification clients over several years. Because a three-month suspension is the minimum measure of discipline in cases involving unlawful running, and because respondent received a three-month suspension in Florida, we find no basis to deviate from that determination.

Even if we were inclined to lessen the severity of the discipline, on the ground that the record lacks evidence of fee sharing, the other infractions committed by respondent militate against discipline short of a suspension. For example, failure to communicate with a client, standing alone, typically results in the imposition of an admonition. See, e.g., In re Matheke, ___ N.J. ___ (unpublished 2014) (between June 2006, when motions to dismiss began to surface in a client's medical malpractice case, and August 2010, when the client learned, on her own, that her case had been dismissed with prejudice two years earlier, the attorney failed to inform her client about virtually every important event in the action; violation of RPC 1.4(b) and (c)).

In cases involving an attorney's failure to supervise nonlawyer staff, admonitions or reprimands have been imposed. See, e.g., In the Matter of Leonard B. Zucker, DRB 12-039 (April 23, 2012) (admonition; after the attorney had filed a foreclosure complaint against a California resident, the defendant retained a New Jersey attorney, who provided proof that the defendant was not the proper party and requested the filing of a stipulation of dismissal; the attorney ignored the request, as well as all telephone calls and letters from the other attorney; only after the other attorney had filed an answer, a motion for summary judgment, and a grievance against him did he forward a stipulation of dismissal; this particular foreclosure matter had "fallen through the cracks" in the attorney's office due, in part, to the large number of foreclosure matters that the firm handled and the failure to direct the attorney's calls and letters to the staff members trained to handle the problems that arose therefrom; violations of RPC 3.2 and RPC 5.3(a); attorney had an otherwise unblemished record of fifty-two years and was semi-retired at the time of the events; the firm apologized to the grievant, reimbursed his legal fees, and instituted new procedures to avoid the recurrence of similar problems); and In re Diaz, 209 N.J. 89 (2012) (reprimand imposed on managing attorney in the New Jersey

office of a national law firm that processed mortgage loan defaults through foreclosures and related bankruptcy matters; the firm used pre-signed certifications in support of ex parte applications for relief or motions for relief in bankruptcy court, even after the attorney who signed them had left the firm; attorney violated RPC 5.3(c)(1) and RPC 5.1(c)(1) (failure to supervise lawyer employee); attorney also violated RPC 8.4(a) (violating or attempting to violate the RPCs, knowing assisting or inducing another to do so, or doing so through the acts of another), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice); mitigating factors included the absence of a disciplinary history, the discontinued use of the certifications six years prior to the referral to the OAE, and the attorney's full cooperation with the disciplinary authorities).

Attorneys who engage in the unauthorized practice of law, by practicing in states where they are not licensed, have received discipline ranging from an admonition to a suspension, depending on the presence of other ethics infractions, as well as mitigating and aggravating factors. See, e.g., In the Matter of Duane T. Phillips, DRB 09-402 (February 26, 2010) (admonition imposed on attorney who was not admitted in Nevada, yet represented a client

who was obtaining a divorce in that state; we considered, in mitigation, that the conduct involved only one client, that the attorney had no ethics history, and that a recurrence of the conduct was unlikely); In re Brown, 216 N.J. 341 (2013) (reprimand imposed on attorney who, after agreeing to represent a client before the Court of Appeals for Veterans Claims (CAVC), failed to advance the appeal, failed to keep the client informed about the status of his matter, and failed to notify him that he had terminated the representation; moreover, because the attorney had not been admitted to practice before the CAVC, he engaged in the unauthorized practice of law; violations of RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 5.5(a); no prior discipline); In re Benedetto, 167 N.J. 280 (2001) (reprimand imposed on attorney who pleaded guilty to the unauthorized practice of law, a misdemeanor in South Carolina; the attorney had received several referrals of personal injury cases and had represented clients in five to ten matters in the first half of 1997 in South Carolina, although he was not licensed in that jurisdiction; prior private reprimand for failure to maintain a bona fide office in New Jersey); In re Butler, 215 N.J. 302 (2013) (censure; for more than two years, attorney practiced with a law firm in Tennessee, although not admitted there; pursuant to an "of counsel" agreement, the attorney was to become a member of the Tennessee bar and the law

firm was to pay the costs of her admission; the attorney provided no explanation for her failure to follow through with the requirement that she gain admission to the Tennessee bar; the attorney was suspended for sixty days in Tennessee, where the disciplinary authorities determined that her misconduct stemmed from a "dishonest or selfish motive"); In re Kingsley, 204 N.J. 315 (2011) (censure; motion for reciprocal discipline from Delaware; attorney had engaged in the unlawful practice of law by drafting estate planning documents for a public accountant's Delaware clients, many of whom he had never met, when he was not licensed to practice law in Delaware; he also assisted the public accountant in the unauthorized practice of law by preparing estate planning documents based solely on the accountant's notes and by failing to ensure that the documents complied with the clients' wishes); and In re Lawrence, 170 N.J. 598 (2002) (default; three-month suspension for attorney who practiced in New York, where she was not admitted to the bar; the attorney also agreed to file a motion in New York to reduce her client's restitution payments to the probation department, failed to keep the client reasonably informed about the status of the matter, exhibited a lack of diligence, charged an unreasonable fee, used misleading letterhead, and failed to cooperate with disciplinary authorities).

Finally, we note that, prior to this incident, respondent, who has been an attorney for thirty years, had no history of discipline in this jurisdiction; that as soon as the grievances were filed in Florida, he discontinued offering the loan modification services and refunded the grievants their money; and that he promptly reported to the OAE the discipline imposed in Florida. Nevertheless, based on the totality of the circumstances, we determine to impose a three-month prospective suspension on respondent for his violation of RPC 1.4(c); RPC 5.3(a), (b), and (c)(1); RPC 5.5(a)(1) and (2); RPC 7.3(b)(5); and RPC 8.4(a).

Chair Frost and Member Zmirich did not participate.

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
Bruce W. Clark, Vice-Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard Eugene Ehrlich
Docket No. DRB 17-347

Argued: January 18, 2018

Decided: April 4, 2018

Disposition: Three-Month Suspension

Members	Three-Month Suspension	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