

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-274

1800

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IN THE MATTER OF :
:
WILLIAM J. MULKEEN, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 21, 1990

Decided: April 3, 1990

Theodore J. Romankow appeared on behalf of the District XII Ethics Committee.

Respondent waived appearance.

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

This matter is before the Board based upon three presentments filed by the District XII Ethics Committee.¹

Respondent was admitted as a member of the New Jersey bar in 1973. In 1990, respondent requested that he be transferred to inactive status because he teaches at Union County College on a full-time basis and is no longer engaged in the practice of law.

¹A fourth matter, the Falk complaint (XII-88-12E), was dismissed when grievant, who had moved to California, did not appear to testify at the ethics committee hearing.

JEFFERIES MATTER (XII-88-27E)

In February 1987, respondent was retained by grievant's aunt, Ms. Hassler, to represent the estate of Richard V. Sisk, of which Ms. Hassler was the executrix and sole beneficiary. Ms. Hassler decided to give part of the estate to her niece, the grievant, although she was not required to do so legally.

The estate consisted mainly of a home for which respondent handled the closing on December 18, 1987. At the time of the closing, Ms. Hassler gave grievant \$13,537 of the proceeds (PJ-8 in evidence, 3T110²).

In the spring of 1988, grievant retained an attorney to press respondent to file the inheritance tax return so the administration of the estate could be completed (PJ-3, PJ-4, PJ-5, and PJ-6 in evidence). Ms. Hassler, the executrix, had not requested her niece to pressure respondent, and had not expressed any concern over the time involved in the handling of this estate (R-2 in evidence; 3T102-3T103). In October 1988, the executrix signed the inheritance tax return, which respondent promptly filed (RJ-9 in evidence, 3T113). On January 5, 1989, the Department of the Treasury sent the inheritance tax bill to respondent, who paid the bill on February 16, 1989 (PJ-11 in evidence).

²3T denotes the transcript of the March 7, 1989 District Ethics Committee hearing.

The committee found that there was no formal attorney/client relationship between grievant and respondent, but that respondent owed a duty to act diligently to the general public, which included grievant. The committee found respondent's lack of diligence violated RPC 1.3, and his failure to file the inheritance tax return in a timely manner constituted gross neglect, in violation of RPC 1.1(a).

HARBUZINSKI MATTER (XII-87-18E)

Grievant, Richard Harbuzinski, retained respondent to represent him in the purchase of a new home. The closing occurred in March 1986. In June 1986, grievant received a letter from the seller indicating that respondent had not paid two mortgages, for which respondent had segregated \$40,000 from the closing proceeds. Grievant tried unsuccessfully to reach respondent by telephone; thereafter, he sent a letter requesting that the mortgages be paid off (1T34³).

On June 20, 1986, respondent took two certified checks to the seller's attorney to pay off the mortgages (R-5, R-6 in evidence). He testified that, at the time of the closing, he drew two checks for the payment of the earlier mortgage, as well as a title insurance policy check and a recording fee check, but that those

³1T denotes the transcript of the February 6, 1989 District Ethics Committee hearing. These exhibits are correctly marked with a February 15, 1989 date; the transcript is incorrectly dated February 6, 1989, but the hearing actually occurred February 15, 1989.

checks were lost in the mail. In support of this contention, he submitted a page of his account ledger that showed four voided checks for March 27, 1986 (R-4 in evidence). About the time he paid off the mortgage, respondent also paid a judgment on the accumulated interest, which had been filed by the seller (1T136).

Another year passed without further communication between grievant and respondent. However, at the end of that year, when grievant did not receive his homestead rebate check for purchasing a new home, grievant came to realize that the deed for his property had not been recorded. Grievant sent a letter to respondent on June 25, 1987, after unsuccessfully attempting to reach him by phone, requesting that the deed, the survey, and the title insurance policy documents be sent to him (P-1 in evidence). Another letter requesting these documents was sent on July 22, 1987 (P-4 in evidence). Finally, in September 1987, grievant paid another attorney to get a duplicate original deed, to pay the transfer tax to the clerk's office, and to send the registered deed to the title insurance company in order to have a title insurance policy issued. Grievant paid \$1,038.50 in taxes, premiums, and legal fees to the second attorney. Respondent admitted he did not handle this matter in a timely manner and reimbursed grievant for the \$1,038.50 at the committee hearing (1T122-1T123; J-1 in evidence).

The committee found respondent did not act with diligence in representing grievant, in violation of RPC 1.3; failed to keep his client reasonably informed, in violation of RPC 1.4; and failed

to record the property deed and to secure the necessary title insurance policy, in violation of RPC 1.1(a).

AMERICAN TITLE COMPANY (XII-87-20E)

From May 1986 through July 1986, respondent ordered ten title insurance policies from grievant, American Title Insurance Company. The closings requiring these policies were completed by July 1986. Respondent represented the buyers in two purchases, the sellers in one purchase, and the owners in seven mortgage refinancing matters. In these ten closings, respondent failed either to file documents such as the new mortgages, to cancel old mortgages, to provide the necessary documents to the title insurance company, or to pay for the title insurance policy. The specifics of each closing are outlined below:

1. On or about April 1986, Respondent ordered Title work and Title policy for real property located at 240 Bloomingdale Avenue, Cranford, New Jersey. The closing took place on June 25, 1986. Despite repeated requests from the Mortgagors, as well as the Grievant, as of February 1988, the Respondent failed to have the prior mortgage cancelled of record and failed to submit the Affidavit of Title and send a Settlement Statement to the title company, and failed to pay the monies due and owing for the work performed.

2. On or about April 1986, Grievant had sent a title insurance binder to Respondent for the real property located at 606 Academy Terrace, Linden, New Jersey for refinance of the property which the Respondent was retained to handle. Despite numerous communications from the Grievant, Respondent failed to have the prior mortgage cancelled of record and to forward to Grievant the Affidavit of Title, Settlement Statement and Survey. Respondent filed the new mortgage on February 3, 1988,

approximately eighteen (18) months after the date of the closing.

3. On or about May 22, 1986, Respondent received the title binder from Grievant of the refinance of real property located at 632 Monroe Avenue, Elizabeth, New Jersey. Subsequent to the closing in or about February 3, 1988, Respondent failed, despite repeated requests from Grievant to file the mortgage and failed to pay Grievant the monies due and owing for the title policy. Respondent also failed to insure that the necessary closing papers were filed with the appropriate entities after the closing.

4. On or about May 23, 1986, Grievant issued a title binder for the real property located at 31 Hillcrest Drive, Clark, New Jersey, for which Respondent was handling a refinance. Respondent failed to file the new mortgage, cancel the old mortgage, and forward the necessary closing documents to the Grievant. Respondent also failed to pay for the title insurance policy in a prompt and diligent manner.

5. On or about June 16, 1986, Grievant issued a title binder for the real property located at 5 Smith Lane, Clark, New Jersey, for which property Respondent was retained to handle a refinance. The closing took place on June 30, 1986. Respondent failed to record the new mortgage, cancel the old mortgage, forward the necessary Affidavit of Title, Settlement Statement and Survey to the title company, and failed to pay for the title policy in a timely fashion.

6. On or about June 12, 1986, Grievant issued a title binder to Respondent for the real property located [sic] 301 Madison Avenue, Roselle Park, New Jersey for refinancing of the subject property. Respondent failed to have a new mortgage recorded, and the old mortgage cancelled. The Respondent also failed to forward to the title insurance company the Affidavit of Title, Survey, and Settlement Statement, and failed to pay for the procurement of the title insurance policy.

7. On or about June 13, 1986, the Grievant also issued a title binder to Respondent for real property located at 18 Elmwood Place, Elizabeth, New Jersey, [sic] which he represented litigants in the purchase of said property. Respondent failed to forward the Affidavit of Title, Survey and Settlement Statement to American Title Company, and also failed to forward to Grievant, funds necessary to insure that the title insurance policy was in fact issued.

8. On or about June 9, 1986, Grievant also issued a title insurance policy to Respondent for refinance of real property located at 14 Locust Drive, Cranford, New Jersey, which closing took place on July 18, 1986. Respondent neglected to have the new mortgage recorded, the old mortgage cancelled of record, and failed to forward to Grievant the Affidavit of Title, Survey Settlement Statement, and the necessary monies to Grievant to insure that the title insurance policy would be issued.

9. On or about June 8, 1986, Respondent received a title binder from Grievant for real property located at 985 Carteret Avenue, Union, New Jersey, in which Respondent represented the sellers in a closing which took place on July 14, 1986. Respondent neglected to insure that the old mortgage was cancelled of record, and failed to provide the Affidavit of Title, Settlement Statement, Survey and the necessary monies to the Grievant to insure that the title policy would in fact be issued.

10. On or about October 16, 1986, Grievant issued a title binder to Respondent for real property located at 8 Ermouth Road, Cranford, New Jersey, for the refinance of said property. Respondent neglected to have the old mortgage cancelled of record, and he failed to forward to Grievant, the necessary closing documents i.e. Affidavit of Title, Survey, Settlement Statement, and the necessary escrow monies to insure that the title policy would be issued in a timely fashion.

[Panel Report at 3-5.]

In February 1988, grievant's attorney met with respondent, after repeated verbal attempts to obtain the closing documents had not succeeded (PAT-1 in evidence). On April 20, 1988, respondent paid grievant the fees owed of \$3,627.75 (PAT-5 in evidence). However, on June 13, 1988, six matters were still outstanding (PAT-7 in evidence). At the committee hearing of February 15, 1989, two mortgage cancellation recordings and supporting documents for one other property had still not been completed (1T99-T100).

Respondent testified about the circumstances occurring in July 1986. He stated that he had done over 1,000 real estate closings before July 1986, and that the problems of that summer were an aberration from his previous practice. His normal practice was to have his secretary follow up on the recording of the mortgages and the issuance of the title policy after a closing. In June 1986, his full-time secretary left because he was in the process of phasing out of private practice to work as general counsel to Union County College and as special counsel to the City of Elizabeth on a full-time basis. In July and August 1986, he had two inexperienced secretaries who did not follow through on closing paper work, as promised.

On September 1, 1986, after he had closed his office, he obtained a post office box, which he closed in April 1988. The mail after April 1988 was not forwarded to his home, as instructed, but collected at the post office (R-1 in evidence). Respondent

claims this mail mix-up meant he did not receive notices from American Title.

Finally, respondent's wife was having a very hard time emotionally, following the death of both her parents from cancer, and respondent had extra responsibilities at home during 1986 that he believes affected his work product (1T189-T191).

The committee considered these mitigating factors but did not find them sufficient to explain the delays from 1986 to 1989. Although charged in the complaint with gross neglect and pattern of neglect, the committee did not make a finding concerning these charges. The committee did, however, find respondent did not act with reasonable diligence, in violation of RPC 1.3, and that he failed to keep his client reasonably informed, in violation of RPC 1.4.

CONCLUSION AND RECOMMENDATION

Upon review of the full record, the Board is satisfied that the conclusions of the ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

Although the Board agrees with the findings of unethical conduct in the Harbuzinski and American Title matters, in the Jefferies matter the evidence does not support a finding of unethical conduct. Respondent paid the inheritance tax involved within two years of being retained to settle an estate. The time involved, although somewhat lengthy, is not outside the acceptable

range for estate matters. Furthermore, the actual client did not complain about the time involved. It is true that an attorney's professional obligation may reach parties who have reason to rely on him, even though they are not clients. In re Katz, 90 N.J. 272, 284 (1982), citing In re Lambert, 79 N.J. 74, 77 (1979). In this case, however, the niece received a voluntary distribution from her aunt in 1987, and she had no expectation of further remuneration. For these two reasons, a reasonable delay and a lack of obligation to the complaining party, the Board recommends that the Jefferies matter be dismissed.

In Harbuzinski, respondent did not pay off existing mortgages until three months after the closing, and he never filed the deed or obtained title insurance. After repeated attempts to communicate with respondent, grievant had to retain another attorney in order to obtain his deed and title insurance. An attorney has the obligation to keep his clients "completely and accurately informed of their legal matters." Matter of Stein, 97 N.J. 550, 563 (1984). Respondent did not provide the necessary information to grievant. He did not carry out the actions required of an attorney in a closing. Once retained, respondent owed his client a duty to pursue his interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985). Respondent's conduct constituted gross negligence, lack of due diligence, and failure to communicate, in violation of RPC 1.1(a), RPC 1.3 and RPC 1.4.

In the American Title matter, from February 1988 until September 1, 1988, grievant met with and wrote to respondent, urging completion of these matters, to no avail. Respondent failed to act diligently or inform his client of the necessary information, in violation of RPC 1.3 and RPC 1.4.

Additionally, the Board finds that respondent's inaction demonstrated gross neglect and a pattern of neglect in the ten closings contained in the American Title matter, as charged in the formal complaint. Eighteen months to two years after the closings, respondent still had not recorded mortgages, provided essential documents for the issuance of title insurance policies, or paid American Title \$3,627.75 for insurance premiums. This inaction over such a period of time constitutes gross negligence and evidences a pattern of neglect, in violation of RPC 1.1(a) and (b).

Given this clear and convincing evidence of respondent's unethical conduct, the appropriate quantum of discipline must be determined. The purpose of discipline is not the punishment of the offender, but rather the "protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978).

Attorneys who have been guilty of a pattern of neglect along with other ethics violations have, in many instances, been suspended from the practice of law. See, e.g., Matter of Cullen,

112 N.J. 13 (1988) (attorney who neglected two matters and admitted similar conduct in five matters received a six-month suspension); Matter of Smith, 101 N.J. 568 (1986) (attorney who failed to pursue settling of an estate received a three-month suspension); Matter of Templin, 101 N.J. 337 (1985) (attorney's pattern of negligence, failure to communicate, and failure to cooperate with the ethics committee warranted a one-year suspension).

In deciding if suspension is the correct discipline, the Board looks at surrounding circumstances. "The severity of the discipline must comport with the seriousness of the ethical infraction in light of all the relevant circumstances." In re Nigohosian, 86 N.J. 308, 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1986).


In mitigation, the Board considered that respondent was in the process of phasing out his private practice at the time of these closings and that there was family illness. While these personal circumstances may mitigate respondent's delay in the summer and fall of 1987, they do not explain or justify the subsequent delay. Although respondent was given ample opportunity by grievants to clear up these matters, he nevertheless continued to abdicate his responsibilities.

The Board considered, as aggravating factors, respondent's prior private reprimand in 1988 for neglect, and his failure to file formal answers to these ethics complaints, in violation of R. 1:20-3(i).

The need for public discipline is clear. Balancing the severity of the offense with mitigating and aggravating factors, the Board unanimously recommends that respondent receive a three-month suspension.

The Board further recommends that respondent be required to reimburse the ethics financial committee for appropriate administrative costs.

Date: _____

11/3/1990
Raymond R. Trombadore
Chair
Disciplinary Review Board