

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-085
District Docket No. XIV-2016-0600E

IN THE MATTER OF
CHRISTOPHER D. BOYMAN
AN ATTORNEY AT LAW

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Decision

Decided: August 22, 2018

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). A two-count complaint charged respondent with violations of RPC 5.5(a) and R. 1:20-20(b)(1)(11) (practicing law while suspended), RPC 8.1(b) (failure to cooperate with an ethics investigation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We determine to impose a three-year suspension.

Respondent was admitted to the New Jersey bar in 1987. In 2010, he was censured, on a certified record, for misconduct in

two matters. In one matter, he was found guilty of gross neglect, lack of diligence, and failure to communicate with his client. In the other matter, he was found guilty of gross neglect and lack of diligence in connection with two collection matters. He also entered into an improper business transaction with the client and failed to return the client's file. He failed to cooperate with disciplinary authorities in both matters. In re Boyman, 201 N.J. 203 (2010).

In 2012, respondent was temporarily suspended, effective February 6, 2012, for failure to pay the assessed administrative costs in connection with his censure matter. In re Boyman, 209 N.J. 2 (2012). He remains suspended to date.

On May 16, 2014, respondent received a second censure, also in a default, for his failure to file the R. 1:20-20 affidavit required of all suspended attorneys. In re Boyman, 217 N.J. 360 (2014).

Service of process was proper in this matter. On November 20, 2017, the OAE sent a copy of the complaint by certified and regular mail to respondent at his home address listed in the attorney registration records. According to the United States Postal Service tracking information, the certified mail was delivered on November 27, 2017. The regular mail was not returned.

On December 18, 2017, the OAE sent a second letter to respondent, to the same home address, also by regular and certified mail, informing him that, if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b).

On January 16, 2018, the certified mail was returned marked "Unclaimed." The regular mail was not returned.

The time within which respondent may answer the complaint has expired. As of February 26, 2018, respondent had not filed an answer. Thus, the matter was certified to us as a default.

We now turn to the facts alleged in the complaint.

As previously noted, the Court issued an Order temporarily suspending respondent from the practice of law. Respondent has remained suspended since February 6, 2012.

According to count one of the complaint, on September 29 and 30, 2016, Steven Rothberg, an attorney representing First American Title Insurance Company (FA) in a real estate transaction, informed the OAE that respondent had been participating in real estate transactions while suspended. FA's role in the matters included

handling the title insurance, title commitment, and the real estate closings.

On September 29, 2016, Rothberg sent respondent an e-mail informing him that he had learned from the OAE that respondent had been suspended, and never reinstated. Therefore, Rothberg continued, unless respondent could prove that he had been reinstated, Rothberg would be forced to notify the parties that the pending settlement of their real estate transaction could not proceed with respondent as counsel.

On September 30, 2016, respondent replied, "I have received your email and have a call in to the [OAE] to inquire about this matter. I would ask that you refrain from taking any action until I receive a response." Respondent's e-mail referred to himself as an attorney, and listed his e-mail address as "cdblaw@comcast.net."

On a date not specified in the complaint, FA's Senior Vice-President, Paige Shovlin, informed the OAE that respondent's involvement affected two of FA's transactions. Specifically, in respect of a \$3,519,277.51 commercial real estate loan to Aishwarya Realty, LLC (AR), on August 10, 2016, respondent had informed FA that he represented both AR and "Indo American, Inc." Respondent was subsequently removed from that transaction. Also, in a 2016 residential real estate matter, respondent claimed to represent

Robert Forst regarding a \$535,000 loan transaction. That transaction ultimately was canceled for respondent's involvement.

According to the complaint, respondent's interaction with FA entailed "placing an order, essentially saying who he was, who he was representing, that the client was taking out a loan, and requesting that FA provide his client with a title commitment."

Furthermore, on September 28, 2016, when pressed about his suspension, respondent told Shovlin that he was attempting to obtain "a copy of his reinstatement," presumably a reference to an Order of reinstatement.

Shovlin interpreted respondent's comment to mean that he had been reinstated. However, on September 29, 2016, Shovlin learned from ethics authorities that respondent was still suspended. Thereafter, FA informed respondent that, due to the suspension, he could not be involved in FA transactions.

After FA reviewed its records, Shovlin provided the OAE with documentation demonstrating that respondent had been involved in nineteen transactions with FA since his 2012 suspension, as follows:

CLIENT NAME	DATE	PURCHASE PRICE	EXHIBIT
Robert Forst	08/24/16	\$535,000.00	7a
Aishwarya Realty LLC	08/09/16	\$3,519,277.51	7b
Gregory and Melissa Dawson	07/12/16	\$291,000.00	7c
Devraj N. Aiyar	02/08/16	\$910,000.00	7d
Paramount Homes/Reed Road LLC	11/17/15	\$474,000.00	7e
C. Galasso and J. Meglio	10/26/15	\$425,000.00	7f
David and Irene Fritzing	09/21/15	\$330,000.00	7g
Christopher Montemarano	05/08/15	\$287,000.00	7h
847 Apache Road LLC	05/08/15	\$860,000.00	7i
10 Clifton Blvd Assoc. LLC	12/01/14	\$13,000,000.00	7j
Jessica and Joseph Mills	10/01/14	\$90,000.00	7k
RRATS 2012 Realty LLC	09/16/14	\$525,000.00	7l
Mirlaino Aristote	06/23/14	\$230,000.00	7m
Robert and Michelle Pulcioni	07/23/13	\$689,000.00	7n
Robert and Mary-Katelyn Forst	01/24/13	\$205,000.00	7o
Hilltop Parmley Partners LLC	12/04/12	Not Provided	7p
Antonio and Jill Cardoso	12/04/12	\$250,000.00	7q
Shawn McCoy	05/11/12	\$225,000.00	7r
M. and S. Williams	05/09/12	\$206,000.00	7s

Based on the above information, the complaint alleged that respondent practiced law while suspended for more than four years, from May 9, 2012 to August 24, 2016, in at least nineteen matters. The amount of the loan transactions exceeded \$23 million.

Rule 1:20-20(b)(1) states, in relevant part, that a suspended attorney shall not practice law in any form, either as principal, agent, servant, clerk or employee of another, and shall not appear as an attorney before any court, justice, judge, board, commission, division, or other public authority or agency.

Rule 1:20-20(b)(11) states, in relevant part, that a suspended attorney must give notice of the suspension to: (1) each

client; (2) each adverse party in any matter involving any clients; and (3) the assignment judge in respect of any action pending in any court in that vicinage, or the clerk of the appropriate appellate court or administrative agency in which a matter is pending.

According to count one, respondent's actions in respect of the FA matters violated RPC 5.5(a)(1), R. 1:20-20(b)(1) and (11), and RPC 8.4(c).

Count two of the complaint alleged that respondent failed to cooperate with the ethics investigation. Specifically, between October 17, 2016 and July 12, 2017, the OAE sent respondent seven letters and telephoned him three times, seeking his written reply to the grievance. Respondent received at least three of the OAE's letters, dated November 17, 2016, January 9, 2017, and January 26, 2017.

On June 27, 2017, OAE Assistant Ethics Counsel Timothy J. McNamara contacted respondent, who acknowledged having received the OAE's earlier letters requesting his written reply to the grievance. Respondent offered no reason for his failure to reply, but conceded to the OAE, "after learning that he was suspended he did not handle it the way he should have."

McNamara explained the grievance process to respondent, who replied that he understood and that he was consulting with an

attorney. McNamara then told respondent to expect another letter memorializing their telephone conversation and requesting his reply to the grievance.

By letters dated June 28 and July 12, 2017, the OAE renewed its earlier requests for respondent's written reply to the grievance, but respondent did not reply.

As of October 31, 2017, the date of the complaint, respondent had not replied to the grievance, an alleged violation of RPC 8.1(b) and R. 1:20-3(g)(3).

The facts recited in the complaint support some, but not all, of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Nevertheless, each charge must contain sufficient facts to support a finding of unethical conduct.

For more than four years, from May 2012 through at least August 2016, respondent represented the borrowers in nineteen, predominately commercial, real estate transactions involving FA as the title company. He did so, despite having been temporarily suspended since February 6, 2012, for failure to pay disciplinary costs in an earlier matter. Respondent's misconduct in this regard violated RPC 5.5 (a)(1) and R. 1:20-20(b)(1).

Respondent also misrepresented to FA that he had been reinstated to the practice of law. When Rothberg told respondent that, in order to participate in pending transactions, he must prove that he had been reinstated, respondent replied that he was "working on getting a copy of his reinstatement" from ethics authorities. That false statement reasonably led Shovlin to believe that respondent had been reinstated, and that he was awaiting a copy of the reinstatement Order. Respondent's conduct in this respect violated RPC 8.4(c).

Respondent's failure, however, to notify FA and other non-clients of his suspension did not violate R. 1:20-20(b)(11) because that subparagraph required respondent to give such notice only to his existing clients, to his adversaries in pending matters, and to the assignment judge/clerk of court in any pending matter. Moreover, the complaint contains no facts supporting respondent's failure to notify clients and others of the suspension. Finally, respondent's misconduct – practicing while suspended – has been adequately addressed by RPC 5.5(a)(1), above. Therefore, we dismiss the R. 1:20-20(b)(11) charge for lack of clear and convincing evidence.

In all, respondent practiced law while suspended, a violation of RPC 5.5(a) and R. 1:20-20(b)(1), made a misrepresentation to a

third party, a violation of RPC 8.4(c), and failed to cooperate with the ethics investigation, a violation of RPC 8.1(b).

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, and after the Court had temporarily suspended him, represented two clients in municipal court, and appeared in a municipal court on behalf of a third client; the attorney also failed to file the required R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors, including the attorney's diagnosis of a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to provide some financial support for himself; prior three-month suspension); In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and served as planning board solicitor for two municipalities;

prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Lisa, 158 N.J. 5 (1999) (one-year suspension, for attorney who appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (Wheeler I) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with disciplinary authorities);¹ In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three

¹ In that same Order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension, also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (Wheeler II) (three-year suspension for attorney who handled three matters without compensation, with the knowledge that he was suspended, held himself out as an attorney, and failed to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, a two-year consecutive suspension for practicing while suspended); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred in a default

case for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of these grievances; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy cases after he was suspended, did not notify them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions, without that attorney's consent, and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure action after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions,

and two six-month suspensions); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law in two of ten matters, while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter; in a total of nine predominately bankruptcy matters, the attorney was guilty of gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to set forth in writing the rate or basis of his fee; in the nine client matters, the attorney took legal fees and performed little or no work, before misrepresenting to the clients that he was pursuing their claims - violations of RPC 8.4(c), and abandonment of those clients; prior private reprimand and reprimand).

As seen in Brady, Bowman, and Lisa, the threshold discipline for respondent's practice of law while suspended is a one-year suspension.

Here, however, respondent allowed this matter to proceed by way of default. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler,

193 N.J. 332, 342 (2008). On that basis, a two-year suspension is warranted for respondent's practice of law while suspended.

Respondent also made a misrepresentation to an FA representative. Attorneys found guilty of misrepresentations to third parties have generally received reprimands. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding \$2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)) and In re Chatterjee, 217 N.J. 55 (2014) (attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; compelling mitigation). Here, the presence of the single misrepresentation is no doubt serious, but insufficient to drive the sanction upward from a two-year suspension.

In aggravation, however, respondent has prior discipline: a 2010 censure, also in a default, for misconduct in two client matters, including gross neglect, an improper business transaction with the client, failure to return the client's file, and failure to cooperate with disciplinary authorities; a May 2014 censure, in a second default, for failure to file the required R. 1:20-20 affidavit.

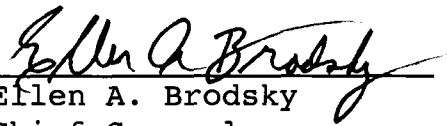
In further aggravation, respondent's misconduct took place unabated, for four years, in numerous, high value matters.

Due to the extent of respondent's improper practice of law, the presence of two prior censures, and the fact that this marks his third consecutive default, we determine to impose a three-year suspension for his demonstrated disinterest in his law license, and his apparent disdain for the attorney discipline system.

Members Gallipoli and Zmirich voted for disbarment.

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 Christopher D. Boyman
Docket No. DRB 18-085

Decided: August 22, 2018

Disposition: Three-year Suspension

Members	Three-year Suspension	Disbar	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman	X			
Joseph	X			
Rivera	X			
Singer	X			
Zmirich		X		
Total:	7	2	0	0


Ellen A. Brodsky
Chief Counsel