SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 18-011 and
DRB 18-113
District Docket Nos. IX-2014-0001E,
IX-2014-0010E, and IX-2016-0002E

In The Matters Of	:
Marc Z. Palfy	:
An Attorney At Law	:

Decision

Argued: April 19, 2018 (DRB 18-011)

Decided: September 19, 2018

Peter Gordon Licata appeared on behalf of the District IX Ethics Committee.

Respondent waived appearance for oral argument.

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

These matters were before us by way of two different procedures. DRB 18-011 was before us on a recommendation for an indeterminate suspension,

filed by the District IX Ethics Committee (DEC). DRB 18-113 was before us by way of default filed by the DEC, pursuant to R. 1:20-4(f). We have consolidated these matters for disposition.

The complaint in DRB 18-011 charged respondent with violating RPC 1.1 (presumably (a) (gross neglect)) and (b) (pattern of neglect); RPC 1.4 (presumably (b), (failure to communicate with the client)); RPC 3.2 (failure to expedite litigation); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The complaint in DRB 18-113 charged respondent with violations of RPC 1.1(a); RPC 1.3 (lack of diligence); RPC 5.5(a)(1) (practicing while temporarily suspended) and (2) (assisting a nonlawyer in the unauthorized practice of law); RPC 8.4(c); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we recommend no further discipline.

Respondent was admitted to the New Jersey bar in 1999. He has an extensive disciplinary record, including a history of ineligibility to practice law for failure to pay the annual fee to the New Jersey Lawyers' Fund for Client Protection (the Fund). His periods of ineligibility were September 25, 2000 to February 11, 2002; September 24, 2007 to April 21, 2009; and September 27, 2010 to June 23, 2011.

Respondent was temporarily suspended twice for failure to comply with five fee arbitration determinations. In re Palfy, 212 N.J. 331 (2012) (effective October 26, 2012) and In re Palfy, 214 N.J. 110 (2013). He also was temporarily suspended for his failure to cooperate with disciplinary authorities. In re Palfy, 214 N.J. 105 (2013).

Subsequently, on November 20, 2014, respondent received a censure for recordkeeping violations and for failing to cooperate with disciplinary authorities. In re Palfy, 220 N.J. 32 (2014).

On March 26, 2015, respondent was suspended for three months for failing to file an affidavit of compliance, as required by R. 1:20-20, for failing to cooperate with disciplinary authorities, and for engaging in conduct prejudicial to the administration of justice. The Court ordered that respondent remain suspended until he complies with the fee arbitration determinations and pays the ordered sanctions. In re Palfy, 221 N.J. 208 (2015).

Finally, on July 22, 2016, respondent was suspended for three years for grossly mishandling eight client matters; knowingly practicing while ineligible; lack of candor toward a tribunal; failure to obey court orders; failure to maintain a bona fide office; misrepresentations to clients and to the court; and conduct prejudicial to the administration of justice. In each of the eight matters, respondent was hired to handle bankruptcy petitions on behalf of

his clients. He repeatedly allowed those petitions to be dismissed for failure to provide proper documents, succeeded in reinstating the petitions, and then allowed them to be dismissed again for the same deficiencies. In re Palfy, 225 N.J. 611 (2016).

We now turn to the facts of each matter.

DRB 18-011

On February 15, 2017, respondent received notice that the DEC hearing would occur on March 18, 2017. On February 22, 2017, he requested an adjournment, representing that he would be unable to attend the hearing because of medical difficulties and pending doctors' appointments. On March 3, 2017, the hearing panel chair received a letter from respondent's health care provider, confirming that respondent's medical appointment was scheduled for March 9, 2017 – nine days prior to the scheduled hearing. The panel determined to deny respondent's request for an adjournment. Respondent did not appear for the hearing.

The Leonardo Lengua Matter

On September 28, 2012, Leonardo Lengua retained respondent to defend him in a New York civil matter. The fee agreement provided for a $3,500

retainer. The record is unclear regarding the payment of that $3,500. The complaint alleges that Lengua paid respondent in three installments on September 27, October 5, and December 10, 2012, but lists only the dates of payments without corresponding amounts. In a letter to respondent, Lengua's subsequent counsel, Neely Moked, claims that Lengua paid respondent a total of $2,000.

Respondent accepted the representation, although he was not a licensed attorney in New York. During that representation, effective October 26, 2012, respondent was temporarily suspended from the practice of law in New Jersey.

Lengua did not appear at the ethics hearing. Instead, Moked testified about the events, based on information she had received from Lengua. Specifically, on September 28, 2012, during the initial consultation, respondent provided Lengua with a draft answer and affirmative defenses with counterclaims, but with an incorrect case caption. At some point, respondent also provided Lengua with a cover letter, dated December 27, 2012, with the correct case caption. That letter purported to enclose an answer, affirmative defenses, and counterclaims.[1] Respondent signed the letter and included the

[1] It is unclear from the record when this letter was drafted or how and when Lengua came into possession of it.

moniker, "Esq." The record contains no indication of any other work respondent may have performed for Lengua.

Relying on his accountant for assistance, Lengua eventually filed a pro se answer to the complaint against him in New York. Lengua failed to plead potential affirmative defenses available to him. Subsequently, the plaintiff filed a summary judgment motion. At that time, in February 2013, Lengua retained Moked to replace respondent.

Moked further testified that, after hiring respondent, Lengua had difficulty contacting him. Lengua also expressed his frustration that he had paid respondent a large amount of money, but had no communication with him.

Moked attempted to assist Lengua in his defense of the summary judgment motion; however, the plaintiff was eventually awarded approximately $50,000. Moked also attempted to contact respondent herself, in an effort to recover the monies Lengua had paid him. Upon reviewing respondent's papers, provided to her by Lengua, Moked became concerned that they were "sloppy" and that respondent "didn't know what he was doing." She attempted to contact respondent several times, via letters and telephone calls, to no avail.

The complaint charged respondent with violations of RPC 1.1(a) and (b), RPC 1.4(b), RPC 3.2, and RPC 8.4(c).

The Aurora Marte Matter

On September 19, 2012, Aurora Marte met with respondent at his Freehold, New Jersey office. Initially, she sought assistance with a potential mortgage modification. Respondent suggested filing a bankruptcy petition instead. The initial consultation was the only time Marte met with respondent in person.

On September 16, October 4, and October 11, 2012, Marte made payments totaling $3,760 to respondent for his services. Thereafter, respondent failed to inform her that, effective October 26, 2012, he was suspended from the practice of law in New Jersey.

Respondent eventually drafted a bankruptcy petition for Marte, which he mailed to her, along with a checklist of other documents she needed to compile for the petition.[2] Marte signed the petition, which was dated December 18,

[2] Marte's testimony is unclear on this particular point. She first explained that she signed the petition in respondent's office and that he mailed the checklist to her separately. She noted, however, that respondent was not at the office when she signed; rather, a public notary was there. Upon further questioning, however, she said the petition was mailed to her home.

2012; however, she never returned it or any of the requested documents to respondent.[3] Instead, she decided to avail herself of a government program, through which she pursued a mortgage modification on her own.

Once Marte decided to pursue a mortgage modification, she asked respondent for a refund of her fee. Respondent replied that he would refund some, but not all of her money, because he had already filed the petition with the court. Respondent neither issued that refund nor filed the petition on Marte's behalf. Eventually, on March 19, 2013, she learned that his phone had been disconnected.

In all, Marte met with respondent only once, for forty minutes. After that, she attempted to meet with him again, to no avail. Marte spoke with respondent on the telephone on four or five occasions, but those calls lasted no more than two or three minutes each. Marte testified that respondent never informed her that he had been temporarily suspended.

The complaint alleged that respondent violated RPC 1.1(a) and (b), RPC 1.4 (presumably (b)), RPC 3.2, and RPC 8.4(c).

* * *

[3] The date that Marte actually signed the petition is not clear. She testified only that the petition was dated December 18, 2012.

The DEC determined that, due to respondent's failure to defend him, Lengua was caused to file an answer to the complaint, pro se, in which certain admissions were made causing a substantial negative impact on his legal matter.

Hence, the DEC found that respondent's misrepresentations and failure to file appropriate pleadings on Lengua's behalf constituted gross neglect, in violation of RPC 1.1 (presumably (a)) and RPC 3.2 (presumably failure to expedite). It further determined that respondent's failure to keep his client adequately and accurately informed, along with his deceit, constituted a violation of RPC 1.4 (presumably (b)) and RPC 8.4(c).

Additionally, the DEC determined that, in December 2012, respondent met with Marte, provided her with a draft bankruptcy petition, and requested that she provide additional documents. Thereafter, Marte was unable to obtain respondent's current business address, or meet with him in order to provide the requested documentation that he advised was necessary to file the bankruptcy petition.

The DEC determined that respondent's misrepresentation that he had filed a petition in Marte's behalf and his failure to do so constituted gross neglect, in violation of RPC 1.1 (presumably (a)) and RPC 3.2 (presumably failure to expedite). Further, respondent's failure to keep his client adequately

and accurately informed, along with his deceit, constituted violations of RPC 1.4 (presumably (b)) and RPC 8.4(c).

Finally, the DEC found that respondent's conduct in both matters, demonstrated a pattern of neglect in violation of RPC 1.1 (presumably (b)).

The DEC recommended an indeterminate suspension, followed by an eighteen-month proctorship, if respondent were reinstated.

DRB 18-113

Service of process was proper in this matter. On June 10, 2017, the DEC sent a copy of the complaint to respondent, in accordance with R. 1:20-4(d) and R. 1:20-7(h), by both regular and certified mail, return receipt requested, at P.O. Box 21, Cream Ridge, New Jersey. On March 2, 2016, respondent had asked the DEC to use this mailing address. The certified mail was returned signed; however, the signature is illegible. The regular envelope was not returned. In November 2017, the DEC sent a "hearing panel report" to respondent at his home address as listed with the Office of Attorney Ethics (OAE). It was returned with a note indicating that respondent had not lived at that address for over two years.

The time within which respondent may answer has expired. As of March 13, 2018, the date of the certification of the record, no answer had been filed by or on behalf of respondent.

The complaint alleged the following facts. On August 22, 2012, grievant, Thomas P. Anderson, retained respondent in connection with the Estate of his aunt, Beatrice Zdancewic (the Estate). According to the grievance, Anderson hired respondent, a friend he had known since they attended college together, to pursue a "missing gift" of $100,000 from his aunt's estate. As stated above, the Court temporarily suspended respondent, effective October 26, 2012.

Through January 2013, Anderson regularly contacted respondent regarding his matter. Respondent provided some information and guidance, but only after Anderson initiated the communication.

In January 2013, respondent called Bernard Weinstein, counsel for the Estate, and presented himself as counsel for Anderson. At respondent's behest, Anderson "participate[d] in the call as an unidentified silent party." During this time, between January 2013 and February 2013, respondent also sent Anderson several e-mails, evidencing his continued representation of him in the Estate matter.

Sometime in March 2013, Anderson met with Rosemarie Simon, Esq., who informed him that "a statute of limitations for challenging wills had recently passed." On March 18, 2013, Anderson retained Irwin Tubman, Esq. Through the end of 2013, Tubman pursued a claim on behalf of Anderson, alleging that the executor of the Estate had committed fraud.

On October 9, 2013, Tubman drafted a complaint and delivered it to Anderson for his review. Anderson made corrections to the draft and returned it to Tubman. However, Tubman never replied to Anderson, so he completed the complaint himself and, on February 11, 2014, filed it pro se.

According to the ethics complaint, notwithstanding that Anderson was represented by other counsel, respondent continued to contact Anderson monthly, offering to accompany him to court, in exchange for payment on an hourly basis. The grievance, however, clarifies that it was Anderson who suggested that respondent, for an hourly fee, accompany Anderson to court. Anderson's grievance indicates that, in response to his request, respondent "did not say yes or no, but rather indicated 'sure'."

Nonetheless, on February 24, 2014, Anderson retained new counsel for assistance with a "complicated legal brief." According to Anderson, respondent continued to reach out to him on a "weekly/monthly" basis to check in on him and the progress of the matter. Anderson also indicated that,

at some point, he reached out to respondent seeking his assistance, but learned at that time that respondent's telephone had been disconnected.

Anderson believed that respondent could be a favorable witness on his behalf regarding communications respondent had with Weinstein. Anderson admitted that, when he asked respondent to be a witness on his behalf, he was aware of respondent's suspension. However, Anderson thought it best not to confront respondent at that time regarding either his status or his prior misconduct in handling the matter. Ultimately, Anderson settled the matter, in October 2014, on the morning of trial.

The complaint alleged that respondent failed to properly represent Anderson by his "lack of progress and failure to advise his client of an applicable statute of limitations . . ." in violation of RPC 1.1(a) and RPC 8.4(d).

The complaint further charged that respondent's failure to contact his client and keep him adequately and accurately informed regarding the status of his matter constituted a violation of RPC 1.3. Further, it alleged that respondent's continued practice of law after his temporary suspension, on October 26, 2012, constituted a violation of RPC 5.5(a)(1) and (2).

Finally, the complaint alleged that respondent's "misrepresentation to both his client and opposing counsel, and his decision to allow his

client to participate as an unidentified silent party on a phone call" constituted a violation of RPC 8.4(c).

* * *

Following a de novo review of the record in DRB 18-011, we determined that the record lacks clear and convincing evidence to support most of the DEC's findings. It appears that the DEC based many of its factual findings on the allegations of the complaint, rather than the evidence presented at the hearing.

Specifically, in the Lengua matter, the DEC determined that Lengua filed a pro se answer to the complaint against him, making admissions that negatively affected his case. The disciplinary complaint, too, alleged that Lengua admitted liability in his answer. Moked, however, testified only that Lengua had failed to present all of the defenses available to him – not that he had made global admissions that negatively affected his case.

Similarly, in Marte, and apparently on the basis of the allegations of the complaint, the DEC found that Marte had been unable to obtain respondent's current business address, or meet with him in order to provide the documents respondent requested to file the bankruptcy petition. Marte, however, never testified that she did not have respondent's business address. Rather, she testified that she chose not to send the requested documents, and terminated

the representation on her own accord. Furthermore, she spoke with respondent on the phone to do so.

In the Lengua matter, at their initial meeting, respondent drafted an answer, along with affirmative defenses and counterclaims, on behalf of his client. The record does not explain why these documents were not filed, or why Lengua chose to disregard them and draft his own answer. Without more, the record lacks clear and convincing evidence as to how respondent grossly neglected the matter. Consequently, we determined to dismiss the alleged violation of RPC 1.1(a).

Similarly, we determined to dismiss the alleged violation of RPC 1.4(b). Lengua did not appear at the hearing. Instead, his attorney, Moked, testified that Lengua told her that he had difficulty contacting respondent. The record is bereft of any information as to when, how, or how often, Lengua tried to do so.[4]

[4] Moked testified that she, too, eventually tried to contact respondent, to no avail. Although this testimony might support a finding that respondent failed to protect his client's interests upon termination of the representation, the complaint did not charge a violation of RPC 1.16(d). Moreover, Moked's testimony does not support a finding of a failure to communicate with the client.

Further, the record does not support a finding that respondent's efforts to advance the litigation were unreasonable. Although respondent drafted responsive pleadings that were never filed, we do not know why the pleadings were not filed or whether that failure affected the pace of the pending litigation. Thus, we determined to dismiss the alleged violation of RPC 3.2.

Finally, the complaint did not allege that respondent violated RPC 5.5(a)(1) by practicing in New York where he is not licensed, or by practicing in New Jersey while suspended. Rather, it alleged only that respondent violated RPC 8.4(c) by failing to have informed Lengua of these facts. However, the record does not support a finding that respondent practiced in New York without a license. He neither made appearances nor filed documents in New York. Moreoever, because Lengua did not testify, the record does not reveal what respondent told him at their initial meeting regarding his ability to practice in New York. It is possible that respondent took Lengua's case with the intention and understanding that he would seek pro hac vice admission in New York. Thus, the record does not support a finding that respondent made a misrepresentation, either affirmatively or by omission, about his ability to represent Lengua in New York court.

Similarly, the record does not support the conclusion that respondent was guilty of a misrepresentation by his alleged failure to inform Lengua of his

suspended status during a period of the representation. As noted, Lengua did not testify as to respondent's conduct in this respect. It appears that Lengua "switched" counsel at some point during the course of his New York matter. Thus, we find it reasonable to conclude that respondent may have considered himself "discharged," perhaps obviating the need to notify Lengua of his suspended status. We recognize that there is some conjecture here, but the DEC's finding of a violation of RPC 8.4(c) on this basis is equally speculative and certainly not supportable to a clear and convincing standard. Thus, for all of these reasons, we determined to dismiss the alleged violation of RPC 8.4(c).

In the Marte matter, respondent drafted a bankruptcy petition that Marte eventually signed. He also provided to her a checklist of documents he needed from her, in order to file the petition. On her own, Marte decided not to return the documents to respondent but, rather, to terminate the representation. These facts do not support a finding that respondent grossly neglected Marte's matter. Therefore, we dismiss the alleged violation of RPC 1.1(a).

After Marte decided to terminate the representation, she asked respondent for a refund of her fee. Respondent agreed to issue only a partial refund, because he claimed to have already filed the petition on her behalf. After that, Marte was unable to reach respondent, again despite many attempts. Eventually, she learned that his phone had been disconnected. By that point,

however, Marte had terminated the representation. Thus, respondent had no duty to communicate with her regarding the status of her matter – the representation had been terminated by the client. We, therefore, dismiss the charged violation of RPC 1.4(b). Respondent did, however, have a duty to return the unearned portion of Marte's retainer and, had RPC 1.16(d) been charged, his failure to do so would constitute a violation of that Rule.

We also dismiss, as inapplicable, the alleged violation of RPC 3.2 as it relates to Marte. This Rule requires an attorney to make reasonable efforts to expedite litigation. However, because Marte decided to take a difference route, the petition was never filed. Thus, no litigation existed to expedite.

Finally, respondent agreed to give Marte only a partial refund because he claimed that he already had filed the petition. Yet, he was well aware that he had not filed a pleading on her behalf. By his misrepresentation in that respect, respondent violated RPC 8.4(c). However, we dismiss the allegation that he also violated RPC 8.4(c) by failing to inform Marte that he had been temporarily suspended. Although Marte testified that respondent never informed her of his temporary suspension, the record lacks a clear timeline of when she terminated the representation and last spoke with him regarding a refund.

In sum, we determined to dismiss all of the alleged violations in the Lengua matter. In the Marte matter, however, we determine that respondent violated RPC 8.4(c). Nevertheless, we recommend no further discipline.

The DEC recommended an indeterminate suspension, presumably, based on the principles of progressive discipline and the fact that respondent's next level of discipline would otherwise be disbarment. We agree that disbarment is not warranted based on the facts of this matter, but we also do not consider an indeterminate suspension to be appropriate. Rather, as noted, respondent received a three-year suspension for mishandling eight client matters. The period for that conduct — September 2009 to October 2012 — is very close, temporally, to the conduct here — September 2012 to December 2012. Had we considered these matters along with the previous matter, we would have imposed the same level of discipline.

Therefore, because the period for this misconduct overlaps that of the misconduct in respondent's previous matter, and because it is the same type of misconduct, we determine that no further discipline is required.

* * *

Similarly, in DRB 18-113, the facts alleged in the complaint do not support most of the charges of unethical conduct. Although, pursuant to R. 1:20-4(f)(1), 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, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

The procedural timeline of this matter is somewhat confusing. The certification of the record indicates that the complaint was served on respondent on June 10, 2017. Exhibit A to the certification, however, indicates that the actual date of that mailing was June 10, 2016. Indeed, the certification asserts that, on March 2, 2016, respondent had provided the DEC with the address to which the mailing was subsequently sent. After that mailing, no further communication was sent to respondent regarding this matter until November 2017, over a year later, when an unidentified hearing transcript, presumably unrelated to this matter, was sent to respondent. That was returned, however, to the DEC. Four months later, on March 13, 2018, the DEC certified this record to us.

Meanwhile, on February 15, 2017, the DEC notified respondent of the hearing in DRB 18-011, discussed above. The DEC sent this notification to respondent at an address in Cream Ridge, New Jersey. On February 22, 2017, respondent requested an adjournment of that hearing, for medical reasons. In support, he provided a letter from his doctor, sent to respondent at an address

in Phoenixville, Pennsylvania. The adjournment request was denied. We point this out simply to highlight the fact that the DEC was able to communicate with respondent concerning DRB 18-011, yet seems to have had trouble communicating with him in this matter, DRB 18-113. Moreover, the traditional second mailing in a default matter (the "five day letter") was not sent in this matter, although that mailing is not required by the Rules.

That notwithstanding, we considered service to be proper, based on the first mailing. It is respondent's responsibility to provide a proper mailing address in connection with his law license. See R. 1:20-1(c). He specifically asked the DEC to send mail to the post office box listed above, and the certified mail sent to that address was received and a signature was obtained.

As to the merits, however, we determined to dismiss the majority of the allegations in the complaint and to impose no further discipline for the single violation supported by the facts.

Specifically, the complaint alleged that respondent grossly neglected Anderson's matter relating to his claims against the Estate. Anderson retained respondent in August 2012, and subsequent counsel in March 2013, but the record is devoid of any facts to establish that respondent could have moved the matter along any faster, or that he could have done a better job on behalf of his

client. Indeed, several subsequent attorneys later, the matter was eventually resolved, in October 2014, two years after respondent was initially retained.

The complaint also alleged that respondent neglected the matter by failing to inform Anderson about an applicable statute of limitations. Here, too, the record lacks specific information. It does not explain which statute of limitations applied, whether it was missed, or whether it had any negative consequences for Anderson. Thus, based on the lack of essential information, we determined to dismiss the alleged violation of RPC 1.1(a).

The complaint further alleged that respondent lacked diligence by failing to contact his client or to keep him adequately informed as to the status of his matter. This allegation should have been charged as a violation of RPC 1.4(b), rather than RPC 1.3. Nevertheless, the record contains evidence of a good deal of communication between respondent and Anderson. Even after he retained new counsel, Anderson was in communication with respondent, who initiated many of these communications. Thus, we determined to dismiss the alleged violation of RPC 1.3.

Additionally, the complaint alleges that respondent made misrepresentations to Anderson and opposing counsel, but is unclear as to the nature of those misrepresentations. The complaint refers to respondent's "misrepresentation as a licensed attorney to both his client and opposing

counsel." However, the complaint is devoid of any facts in respect of that allegation. If the reference is to a failure on respondent's part to inform Anderson and opposing counsel of his suspended status, there are no facts recited in the complaint to support such a failure.

The complaint also alleged that respondent violated RPC 8.4(c) by "his decision to allow his client to participate as an unidentified silent party on a phone call." Although this conduct may be unsavory and could rise to the level of an ethics violation, the complaint lacks any additional information regarding the call and its circumstances. For these reasons, we determined to dismiss the alleged violation of RPC 8.4(c).

The complaint further alleges that respondent violated RPC 8.4(d) in connection with respondent's alleged failure to inform Anderson about the statute of limitations. However, no facts are alleged to explain whether or how this failure impacted the administration of justice or the courts. Thus, we determined to dismiss the alleged violation of RPC 8.4(d).

Finally, the complaint alleges sufficient facts to support a finding that respondent practiced law while temporarily suspended, in violation of RPC 5.5(a)(1). Effective October 26, 2012, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination. Through February 2013, respondent represented Anderson. He sent Anderson

e-mails regarding the matter and contacted counsel for the Estate, introducing himself as Anderson's attorney. The record does not, however, contain any facts to support a finding that respondent assisted a nonlawyer in the unauthorized practice of law. Therefore, we determined to dismiss the alleged violation of RPC 5.5(a)(2).

In sum, in DRB 18-113, we find that respondent violated RPC 5.5(a)(1). We dismissed the alleged violations of RPC 1.1(a), RPC 1.3, RPC 5.5(a)(2), RPC 8.4(c), and RPC 8.4(d) for lack of clear and convincing evidence. The only issue remaining is the appropriate discipline for respondent's misconduct.

As noted, respondent previously received a three-year suspension for mishandling eight client matters from September 2009 through October 2012. We have determined to issue no further discipline in DRB 18-011 because the misconduct in that matter was very close temporally to the conduct for which respondent received a three-year suspension — September 2012 to December 2012. Had those matters been considered together, the discipline would have remained the same.

Similarly, respondent's conduct in this default matter falls along the same timeline – August 2012 to March 2013 – and is of the same substance. It is true, however, that in DRB 18-011, respondent was not charged with having practiced while temporarily suspended. Nevertheless, had this matter been

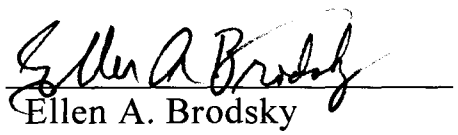
considered along with the previous two matters, even if the bulk of the allegations here had been proven by clear and convincing evidence, the discipline would have remained a three-year suspension. This is true even after considering that, the instant matter is before us by way of default, which would normally operate as an aggravating factor warranting enhanced discipline. See, In re Kivler, 193 N.J. 332, 342 (2008) ("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").

Therefore, based on the foregoing, we recommend no further discipline for both DRB 18-011 and DRB 18-113.

Members Boyer, Hoberman and Joseph 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Marc Z. Palfy
Docket No. DRB 18-011 and 18-18-113

Argued: April 19, 2018 (18-011)

Decided: September 19, 2018

Disposition: No Additional Discipline

Members	No Additional Discipline	Did Not Participate
Frost	X	
Boyer		X
Clark	X	
Gallipoli	X	
Hoberman		X
Joseph		X
Rivera	X	
Singer	X	
Zmirich	X	
Total:	6	3

Ellen A. Brodsky
Chief Counsel