

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-131
District Docket No. VA-2016-0008E

In The Matter of
William Enrique Agrait
An Attorney At Law

:
:
:
:
:
:
:
:
:
:
:
:

Decision

Argued: June 21, 2018

Decided: October 22, 2018

Rosemary J. Bruno appeared on behalf of the District VA Ethics Committee.

Clifford J. Weininger appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand filed by the District VA Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 1.1(a) (gross neglect); RPC 1.5(b) (failure to

set forth in writing the basis or rate of a fee); and RPC 1.7 (presumably, subsection (a), conflict of interest).

For the reasons detailed below, we determine to impose a three-month prospective suspension, with a condition.

Respondent earned admission to the New Jersey bar in 1984. He maintains an office for the practice of law in Newark.

In 1995, respondent received an admonition for negligent misappropriation of client funds (RPC 1.15(a)) in two matters and recordkeeping violations (RPC 1.15(d)). In re Agrait, 142 N.J. 427 (1995). In 2002, he received a reprimand for gross neglect (RPC 1.1(a)) and misrepresentation (RPC 8.4(c)) in a real estate matter. There, he failed to abide by a contractual requirement to hold a deposit in escrow and then certified, on the closing statement, that the deposit had been tendered. In re Agrait, 171 N.J. 1 (2002). In 2011, respondent received a censure for engaging in multiple conflicts of interest (RPC 1.7(a) and (b) and RPC 1.9(a)). In that case, he improperly represented both the buyer and the seller in a real estate transaction, and, subsequently, represented the seller in litigation against the buyer. In re Agrait, 207 N.J. 33 (2011).

In May 2013, Manhar Patel (Manhar) retained respondent to defend against a lawsuit filed in the Superior Court of New Jersey, Bergen County.

Calisto Bertin and Bertin Engineering Associates, Inc. filed the lawsuit against Manhar, Greentree Developers, LLC, BZ Cleaners Corp, Mantrib Corp, and Shiriji Developers, LLC. The crux of liability in the lawsuit was a \$60,000 loan that Manhar had obtained from Bertin, secured by promissory notes and a mortgage signed only by Manhar, which obligated Mantrib Corp, and real estate it owned, to the debt. Respondent had previously represented Manhar, in his personal capacity, and Greentree Developers and BZ Cleaners (corporate entities solely owned by Manhar), but not Mantrib Corp or Shiriji Developers. Respondent admitted that he made no inquiries in respect of the corporate ownership of either Mantrib Corp or Shiriji Developers. Mantrib Corp was owned by Manhar and Trib Patel (Trib), as equal partners.

On May 10, 2013, respondent and Manhar entered into a retainer agreement for respondent to provide legal services to Manhar, as the only identified client, whose address was listed as "c/o Greentree Developers, LLC." No retainer agreements were executed in respect of the other corporate defendants.

Respondent testified that he agreed to represent Manhar based on Manhar's representation that the case was essentially "settled" and that he admitted owing the debt, but claimed that an answer needed to be filed to give him leverage to negotiate. The retainer agreement, however, did not limit the

scope of the representation in any way, but, rather, stated that respondent would provide "litigation services" in respect of the lawsuit. Respondent also testified that he was operating under the incorrect assumption that Manhar solely owned both Mantrib Corp and Shiriji Developers, claiming to have been deceived by Manhar in that respect, despite his lack of independent investigation.

Respondent defended his failure to inquire about the ownership of those corporate entities, asserting that, "if you practice law, you rely on your clients. You can't check every single fact that your client tells you." Respondent further asserted a belief that Manhar had been trying to hide the existence of the lawsuit from his partner, Trib, who was unaware of the loan and resulting promissory notes and mortgage. Respondent, thus, claimed that he had no reason to recognize a conflict of interest in the representation of the defendants.

The plaintiff's complaint contained twenty-eight counts, based on five separate transactions. Mantrib Corp was primarily referenced, along with Manhar and BZ Cleaners, in respect of only one transaction, addressed by counts thirteen through seventeen of the complaint. Count twenty-eight also alleged fraud by "all defendants."

On June 5, 2013, respondent sent a proposed settlement agreement to plaintiff's counsel, offering a \$120,277 payment, in return for a release of all claims. The proposed settlement agreement stated that "[b]oth parties agree that co-defendant Mantrib Corp. shall be dismissed as a party since no facts exist which makes [sic] said corporation liable" in respect of the lawsuit. The plaintiffs rejected the proposed settlement.

Respondent claimed that the structure of the debt further reinforced his mistaken belief that Manhar solely owned the corporate defendants in the lawsuit. Respondent maintained that he did not discover Trib's ownership interest in Mantrib Corp until 2016, after the ethics grievance had been filed in behalf of Trib.

On June 7, 2013, respondent filed an answer to the complaint, in behalf of all of the named defendants. Respondent did not include, as a defense for Mantrib Corp, the assertion that the entity had no liability in the case, as had been advanced in the proposed settlement agreement. On March 4, 2014, mandatory arbitration resulted in a \$126,375 award to the plaintiffs. Respondent then filed a request for trial de novo, but that request was rejected by the Bergen County Clerk's Office, because respondent's answer had been stricken, on March 19, 2014, for failure to produce discovery.

Respondent blamed the failure to provide discovery on Manhar, claiming that he had been "pleading with him" to provide the discovery. By court order dated June 26, 2014, the answer was reinstated and trial de novo was granted, after respondent had provided outstanding discovery and paid \$500 in fees.

Thereafter, the plaintiffs filed a motion for summary judgment, but respondent claimed that Manhar was unwilling to pay any additional legal fees, and, thus, instructed him not to oppose the motion. According to respondent, Manhar accepted the fact that he had no defense to the lawsuit, as respondent had repeatedly advised him. Respondent did not document this purported decision by Manhar in any manner. On September 19, 2014, the plaintiffs' motion for summary judgment was granted. Respondent sent Manhar copies of the order and the final judgment in the case, which assessed a \$179,461.49 liability against all named defendants, jointly and severally.

On February 5, 2015, the plaintiffs' judgment was recorded as a lien against the real estate owned by Mantrib Corp. In early 2016, counsel who represented Trib in litigation against Manhar in respect of, among other matters, the \$179,461.49 judgment, contacted respondent. On May 10, 2016, in collaboration with Trib's counsel, respondent moved to vacate the judgment, claiming that there were inconsistencies in versions of a promissory note relied on by the plaintiffs in the lawsuit. Respondent's motion was based on Manhar's

certification, wherein he accused the plaintiffs of fraud, and Trib's certification, which stated that Mantrib Corp had not authorized any pledge of the corporation's assets to secure the loan from the plaintiffs, and that Manhar lacked the corporate authority to have unilaterally made such a pledge.

Moreover, Trib's certification asserted that Mantrib Corp had received no benefit from the plaintiffs to the lawsuit, and, thus, could not be held liable in respect of the action. Manhar alleged that the plaintiffs had tampered with the original note he had signed, adding Mantrib Corp as a debtor at a later date. Respondent's motion to vacate the judgment was denied. Ultimately, respondent learned that Manhar had lied to him and had submitted a false certification in respect of the motion to vacate the default; specifically, Manhar had signed two versions of the promissory note, including the one obligating Mantrib Corp and its real property to the \$60,000 loan.

Because of the lien on that real property, proceeds of the sale of that property, the sole asset of Mantrib Corp, could not be distributed to Trib and Manhar, but, instead, were placed in escrow, presumably to satisfy the judgment.

The DEC determined that the evidence supported the charges that respondent violated RPC 1.1(a), RPC 1.5(b), and RPC 1.7(a).

Specifically, the DEC found that, despite the fact that respondent had not previously represented either Mantrib Corp or Shiriji Developers, he admittedly failed to enter into written fee agreements with those entities, in violation of RPC 1.5(b).

Next, the DEC found that the defendants to the lawsuit, including Mantrib Corp, had conflicting interests, which respondent neither investigated nor recognized. By way of example, Mantrib Corp was equally owned by Manhar and Trib, and the DEC determined that there were "substantial and compelling legal and factual" defenses that could have been asserted in behalf of Mantrib Corp, which might have relieved that entity of liability in the lawsuit. The DEC noted that respondent "does not dispute that impermissible conflicts of interest existed," but simply maintained that he was unaware of such conflicts because his client, Manhar, neglected to inform him of their existence. The DEC found that respondent "failed to make even rudimentary inquiries of Manhar regarding" conflicts of interest in the case, as required by the RPCs. The DEC, thus, determined that respondent had violated RPC 1.7(a).

Finally, the DEC determined that respondent's approach to, and treatment of, the lawsuit constituted gross neglect. Respondent repeatedly opined that liability and damages were not at issue, but then wholly ignored the question of which defendant or defendants were responsible for paying the

damages. In that regard, the DEC concluded that "[r]espondent's wholesale abrogation of his obligations under RPC 1.7" adversely impacted the defendants in such a way as to constitute gross neglect of their interests, including the imposition of joint and several liability for the \$179,461.49 judgment on all defendants.

Following a review of precedent in respect of cases involving a conflict of interest, but without reference to respondent's ethics history, the DEC determined that "suspension would be too harsh of a punishment."

The DEC, thus, recommended that respondent receive a reprimand.

Following a de novo review, we are satisfied that the record clearly and convincingly establishes that respondent violated RPC 1.5(b) and RPC 1.7(a). For the reasons set forth below, we determine to dismiss the allegation that respondent violated RPC 1.1(a).

First, respondent admitted that he had failed to provide Mantrib Corp or Shiriji Developers, entities he previously had not represented, with a written retainer agreement. RPC 1.5(b) requires that, "when a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." Respondent, thus, violated RPC 1.5(b).

Next, and more egregiously, respondent failed to investigate or appreciate the conflicting interests of the defendants to the lawsuit. Rather, he blamed his client, Manhar, for not telling him that, by way of example, Trib had a fifty-percent interest in Mantrib Corp.

RPC 1.7(a)(1) prohibits a lawyer from representing a client if "the representation of one client will be directly adverse to another client." RPC 1.7(a)(2) prohibits a lawyer from representing a client if "there is a significant risk that the representation . . . will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer."

In order to represent multiple parties despite a concurrent conflict of interest, an attorney must comply with the requirements of RPC 1.7(b)(1), which states:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved

Here, respondent did not dispute that impermissible conflicts of interest existed; yet, he made no effort to comply with the informed consent

requirements, and improperly proceeded with the representation in behalf of Manhar and the additional defendants. As the DEC correctly pointed out, Trib, on behalf of Mantrib Corp, may have been able to assert "substantial and compelling" potential defenses to avoid any liability in the lawsuit. Respondent's steadfast assertions - that he was unaware of such conflicts - wholly ignore his affirmative obligation to investigate and avoid concurrent conflicts of interest. Respondent "failed to make even rudimentary inquiries of Manhar regarding" conflicts of interest in the case, as he was ethically bound to do, and, thus, violated RPC 1.7(a).

The DEC's determination that respondent's misconduct constituted gross neglect, however, is not sustainable. Clearly, respondent's violation of RPC 1.7(a) had adverse consequences on at least one party whom he could not represent without informed consent - Mantrib Corp - due to a conflict of interest. Given these facts, however, such adverse consequences do not form the basis for a finding of gross neglect. Rather, such consequences should be weighed, in aggravation, in determining the appropriate quantum of discipline in this case. Simply put, those adverse consequences are adequately addressed by the finding that respondent violated RPC 1.7(a).

In sum, we find that respondent violated RPC 1.5(b) and RPC 1.7(a). We now address the proper quantum of discipline for respondent's misconduct.

Conduct involving failure to prepare the writing required by RPC 1.5, even if accompanied by other, non-serious ethics offenses, typically results in an admonition. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney violated RPC 1.5(b) when he agreed to draft a will, living will, and power of attorney, and to process a disability claim for a new client, but failed to provide the client with a writing setting forth the basis or rate of his fee; thereafter, the attorney was lax in keeping his client and the client's sister informed about the matter, which resulted in the client's filing of the disability claim, a violation of RPC 1.3 and RPC 1.4(b); the attorney also practiced law while administratively ineligible to do so, a violation of RPC 5.5(a); finally, he failed to reply to the ethics investigator's three requests for information, a violation of RPC 8.1(b); we considered that, ultimately, the attorney had cooperated fully with the investigation by entering into a disciplinary stipulation, that he agreed to return the entire \$2,500 fee to help compensate the client for lost retroactive benefits, and that he had an otherwise unblemished record in his forty years at the bar); and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); he also failed to communicate with the client, choosing instead to communicate only with his prior counsel, a violation of RPC 1.4(b); in addition, at some

point, the attorney caused his client's complaint to be withdrawn, based not on a request from the client, but rather, on a statement from his prior lawyer that the client no longer wished to pursue the claim, a violation of RPC 1.2(a); in mitigation, we considered the attorney's pristine record in twenty-seven years at the bar, and several letters attesting to the attorney's good moral character).

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). If, however, an attorney's conflict of interest involves "egregious circumstances" or results in "serious economic injury to the clients involved," then greater discipline is warranted. Id. at 148. See e.g., In re Welaj, 170 N.J. 408 (2002) (three-month suspension for former Somerset County assistant prosecutor who engaged in conflicts of interest that adversely affected the administration of justice by representing more than 120 criminal defendants in that county, while his former law partner was the prosecutor in that county; he also engaged in several business ventures with the Somerset County prosecutor, knowing that it created an impermissible conflict of interest); In re Patel, 159 N.J. 527 (1999) (three-month suspension for attorney who engaged in multiple conflicts of interest, failed to maintain an attorney trust account, failed to maintain proper trust and business account records, and failed to provide his client with a closing statement after settling a

matter); In re Guidone, 139 N.J. 272, 277 (1994) (three-month suspension for attorney who deliberately concealed his involvement in a partnership that was purchasing property from the Lion's Club, while contemporaneously representing the club in the transaction); and In re Hurd, 69 N.J. 316 (1976) (three-month suspension for attorney who advised his client to transfer title to property to attorney's sister for twenty percent of the property's value).

Here, respondent's violation of RPC 1.7(a) resulted in serious economic injury to the clients involved – joint and several liability for a judgment of more than \$179,000. Pursuant to Berkowitz, and the disciplinary precedent that followed that decision, a sanction greater than a reprimand is warranted.

In further aggravation, this is respondent's fourth contact with the disciplinary system. In 1995, he received an admonition. In 2002, he received a reprimand. In 2011, only two years before the misconduct under scrutiny in this case, he was censured for engaging in conflicts of interest. He, thus, should have been particularly cognizant of his obligation to diligently identify conflicts, and has, thus, demonstrated an inability to learn from his past mistakes. Finally, respondent also violated RPC 1.5(b) in this case. On balance, in accordance both with the concept of progressive discipline and to protect the public, we determine to impose a three-month prospective suspension. We discern no mitigation that compels a lesser sanction.


In addition, to address respondent's repeated failures to recognize conflicts of interest, we require that, prior to reinstatement, he complete nine credit hours in ethics courses, in addition to the ethics credits necessary to comply with Continuing Legal Education requirements, and that he provide the OAE with proof of satisfaction of this condition.

Vice-Chair Clark and Members Boyer and Singer voted to impose a censure, with the same condition.

Member Hoberman 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

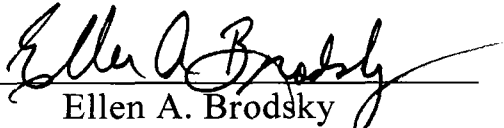
In the Matter of William Enrique Agrait
Docket No. DRB 18-131

Argued: June 21, 2018

Decided: October 22, 2018

Disposition: Three-month Suspension

<i>Members</i>	Three-month Suspension	Censure	Recused	Did Not Participate
Frost	X			
Clark		X		
Boyer		X		
Gallipoli	X			
Hoberman				X
Joseph	X			
Rivera	X			
Singer		X		
Zmirich	X			
Total:	5	3	0	1


Ellen A. Brodsky
Chief Counsel