

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-040  
District Docket No. VIII-2017-0064E

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In the Matter of :  
 :  
Christopher Roy Higgins :  
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An Attorney at Law :  
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:

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Decision

Decided: August 13, 2019

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 District VIII Ethics Committee (DEC) pursuant to R. 1:20-4(f). The amended complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4, presumably (a) (failure to inform a prospective client of how, when, and where the client may communicate with the lawyer), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information), RPC 7.5(e) (impermissible use of firm name or letterhead), RPC 8.1(b) and R. 1:20-3(g)(3)

(failure to cooperate with disciplinary authorities), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). For the reasons expressed below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2012. He was temporarily suspended, effective September 21, 2018, for failure to cooperate with the Office of Attorney Ethics. In re Higgins, 235 N.J. 214 (2018). He was reinstated on May 10, 2019. In re Higgins, 237 N.J. 585 (2019).

On November 29, 2018, we voted to impose a reprimand for respondent's violations of RPC 1.4(b) and RPC 8.1(b). We determined that enhanced discipline was warranted because respondent had permitted the matter to proceed as a default. In the Matter of Christopher Roy Higgins, DRB 18-195 (November 29, 2018). The matter is pending with the Court.

On March 21, 2019, we voted to impose a censure, in another default, for respondent's additional violations of RPC 1.4(b) and RPC 8.1(b). Not only did he fail to provide a written reply to the grievance, but he also refused to meet with the DEC investigator, stating that he had "no time" for ethics investigations. In the Matter of Christopher Roy Higgins, DRB 18-326 (March 21, 2019). That decision also is pending with the Court.

Service of process was proper in this matter. On July 6, 2018, the DEC sent copies of the ethics complaint by regular and certified mail to respondent's office address in Woodbridge, New Jersey. The regular mail was not returned. The certified mail was delivered on July 9, 2018. The signature of the recipient is "Damato."

Respondent did not file an answer within the required time. Therefore, the DEC amended the complaint to include a violation of RPC 8.1(b). On August 15, 2018, the DEC sent a letter to the same address, by regular and certified mail, enclosing the amended complaint, and notifying respondent that, if he did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline. Notwithstanding the amendment to the complaint to add a charge of a violation of RPC 8.1(b), the letter further informed respondent that the complaint would be deemed amended to include a willful violation of RPC 8.1(b).

The regular mail was not returned. The certified mail receipt indicates delivery on August 17, 2019. The signature of the recipient is illegible.

As of December 18, 2018, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified the matter to us as a default.

The amended complaint alleges that it is unclear where respondent practices law. His letterhead lists a post office box address in Parlin, New Jersey. His website states that he is "conveniently located in Central New Jersey," that his law office is located in Parlin, and that he serves clients in "approximately twenty" counties. Nowhere does he list a specific location offering accessibility to clients.

In January 2017, Kelli Ann Bonomo retained respondent to represent her in a mortgage modification with Countrywide Insurance Company. Respondent never provided her with his office address. Each time she inquired whether they could meet there, he declined, and gave excuses, such as telling her that his office was closed. Respondent did not provide Bonomo with a written retainer agreement, even though he told her he would do so.<sup>1</sup> He maintained contact with Bonomo via text messages, never by mail.

Bonomo paid respondent a flat \$2,000 fee, by check. He deposited the check on January 23, 2017.

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<sup>1</sup> The complaint did not allege a violation of RPC 1.5(b), which requires a writing, setting forth the basis or rate of the fee, if the attorney did not regularly represent the client. The complaint does not specify whether respondent had regularly represented Bonomo.

Respondent failed to submit the mortgage modification documents to the mortgage company or to perform any services on Bonomo's behalf. He misrepresented to her that he had sent the documents to the mortgage company, but the mortgage company confirmed that it had not received any documentation from respondent. Respondent's failure to act resulted in the scheduling of an August 16, 2017 foreclosure sale on Bonomo's home. Thereafter, Bonomo appeared pro se on an emergent application for a stay of the sheriff's sale.

Although respondent performed no services, he returned neither Bonomo's fee nor her documents.

The complaint alleged that respondent (1) failed to cooperate with the DEC investigator by failing to comply with his request for a written reply to the grievance, and respondent "specifically refused to meet with [the investigator] to discuss the matter," thereby violating R. 1:20-3(g)(3) and RPC 8.1(b); (2) failed to designate one or more fixed physical locations where clients' files and the attorney's files and records may be inspected on short notice by duly authorized regulatory authorities, violating R. 1:21-1 and RPC 1.4, presumably (a); (3) failed to act diligently and promptly in representing Bonomo and failed to appear in court to protect her interests, in violation of RPC 1.3; and (4) failed to keep Bonomo reasonably informed about the status of her matter and

promptly comply with reasonable requests for information "and, in fact" refused to provide information to Bonomo, in violation of RPC 1.4, presumably (b).

The complaint further alleged that respondent violated RPC 8.4(c) and (d), reciting only the language of these Rules. Finally, without reciting any specific facts, the complaint also alleged that respondent violated RPC 7.5(e).

We find that the facts recited in the complaint support only some of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred.

The complaint charged respondent with violating RPC 1.4(a) and R. 1:21-1(a)(1). The latter Rule provides:

[a]n attorney need not maintain a fixed physical location for the practice of law, but must structure his or her practice in such a manner as to assure, as set forth in RPC 1.4, prompt and reliable communication with and accessibility by clients, other counsel, and judicial and administrative tribunals before which the attorney may practice, provided that an attorney must designate one or more fixed physical locations where client files and the attorney's business and financial records may be inspected on short notice by duly authorized regulatory authorities, where mail or hand-deliveries may be made and promptly received, and where process may be served on the attorney for all actions, including

disciplinary actions, that may arise out of the practice of law and activities related thereto.

RPC 1.4(a) states that a lawyer "shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer." Because Bonomo was not a prospective client, section (a) of this rule is inapplicable, and, therefore, we dismiss the RPC 1.4(a) charge. Likewise, the complaint alleged no facts to support the charge that respondent failed to communicate with Bonomo, failed to update her on the status of her matter, or failed to reply to her reasonable requests for information. Therefore, we also dismiss the RPC 1.4(b) charge.

As to RPC 7.5(e), this section precludes the use of language in a firm name that is not accurately descriptive of the firm, such as the use of "and associates" when there are none. Moreover, the use of a trade name is permissible if "the terms are accurate, descriptive, and informative, but not misleading, comparative, or suggestive of the ability to obtain results." Here, the complaint alleged only that respondent's stationery and website do not list an address where clients may meet with him, and his website states that he serves clients in approximately twenty counties in New Jersey. These facts do not support the allegation that respondent's law firm name is not accurate. We, therefore, dismiss the RPC 7.5(e) charge, as well.

Respondent's failure to take any action on Bonomo's behalf resulted in the scheduling of a sheriff's sale of her property. Bonomo, thereafter, appeared pro se on an emergent application to stop the sheriff's sale. Based on these alleged facts, respondent is guilty of violating RPC 1.3. He also lied to Bonomo about having sent the mortgage modification documents to the mortgage company, which is a violation of RPC 8.4(c). The complaint alleged no facts, however, to support a violation of RPC 8.4(d). Thus, we dismiss this charge.

Finally, respondent failed to cooperate with disciplinary authorities, by failing to provide a reply to the grievance, specifically refusing to meet with the investigator, and permitting this matter to proceed as a default, willful violations of RPC 8.1(b).

In sum, we find violations of RPC 1.3, RPC 8.1(b), and RPC 8.4(c), and dismiss the RPC 1.4(a) and (b), RPC 7.5(e), and RPC 8.4(d) charges.

A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still result if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or to ensure its reinstatement thereafter, violations of RPC 1.1(a) and



RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace, knowing that the complaint had been dismissed, and that the client should expect a monetary award in the near future were false, thereby violating RPC 8.4(c)); In re Falkenstein, 220 N.J. 110 (2014) (attorney did not comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; he also failed to inform the client that he had not complied with the client's request, choosing instead to lead the client to believe that he had filed an appeal and concocting false stories to support his lies, a violation of RPC 8.4(c); because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)); In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's unblemished thirty-four years at the bar were outweighed by his inaction, which left the client with no legal recourse); and In re Lowden, 219 N.J. 129 (2014) (for nine years, the attorney

led her client to believe that she had filed a motion on his behalf and was awaiting a determination, a violation of RPC 8.4(c); the attorney also was guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to provide a written fee agreement, violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.5(b); the attorney also failed to reply to the DEC investigator's repeated requests for a written reply to the grievance and a copy of her file and billing records, a violation of RPC 8.1(b); in aggravation, we considered the nine-year period that the attorney had allowed her client to believe that she was pursuing the matter on his behalf, in addition to the serious harm caused by her inaction, that is, the entry of a \$70,000 judgment against him; these aggravating factors were outweighed by the attorney's impeccable professional record of twenty-three years and her quick acknowledgment of wrongdoing, which militated against greater discipline).

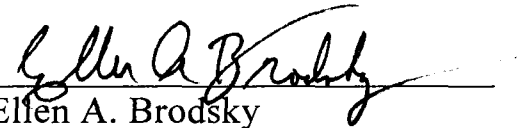
Here, respondent's conduct is more serious than that of the attorney in Lowden - not only did he fail to reply to the grievance, he refused to meet with the investigator, and permitted this matter to proceed as a default, his third. Unlike the attorney in Lowden, respondent does not have an unblemished ethics history. He has two matters pending with the Court, in which we voted to impose a reprimand and a censure. Clearly, respondent has not learned from his mistakes and he continues to ignore the ethics system. Under the principle of progressive

discipline, and based on the default nature of these proceedings, enhanced discipline is warranted. "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). For the foregoing reasons we determine to impose a three-month suspension.

Member Zmirich voted to impose a six-month suspension. Member Gallipoli voted to impose a one-year suspension.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board  
Bruce W. Clark, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

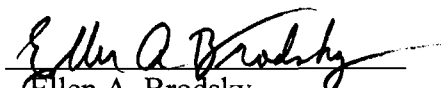
SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Christopher Roy Higgins  
Docket No. DRB 19-040

Decided: August 13, 2019

Disposition: Three-Month Suspension

| <i>Members</i> | Three-Month<br>Suspension | Six-Month<br>Suspension | One-Year<br>Suspension | Recused | Did Not<br>Participate |
|----------------|---------------------------|-------------------------|------------------------|---------|------------------------|
| Clark          | X                         |                         |                        |         |                        |
| Gallipoli      |                           |                         | X                      |         |                        |
| Boyer          | X                         |                         |                        |         |                        |
| Hoberman       | X                         |                         |                        |         |                        |
| Joseph         | X                         |                         |                        |         |                        |
| Petrou         | X                         |                         |                        |         |                        |
| Rivera         | X                         |                         |                        |         |                        |
| Singer         | X                         |                         |                        |         |                        |
| Zmirich        |                           | X                       |                        |         |                        |
| Total:         | 7                         | 1                       | 1                      | 0       | 0                      |

  
Ellen A. Brodsky  
Chief Counsel