Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-207
District Docket Nos. XIV-2019-0024E;
XIV-2019-0025E; XIV-2019-0026E;
XIV-2019-0027E; XIV-2019-0028E; and
XIV-2019-0029E

In the Matter of

William J. Munier

An Attorney at Law

Decision

Decided: January 15, 2020

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). The formal ethics complaint charged respondent with violations of RPC 1.1(a) (gross neglect) (four counts); RPC 1.1(b) (pattern of neglect); RPC 1.4(a) (failure to fully inform a prospective client of how, when, and where the client may

communicate with the lawyer); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information) (five counts); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) (two counts); RPC 1.5(a) (unreasonable fee) (six counts); RPC 1.5(e) (impermissible fee sharing); RPC 1.15(a) (failure to safeguard funds) (six counts); RPC 1.16(a)(1) (failure to withdraw from the representation if the representation will result in violation of the Rules of Professional Conduct or other law) (four counts); RPC 1.16(d) (failure to protect a client's interests upon termination of representation) (two counts); RPC 5.3(a) (failure to supervise nonlawyer employees); RPC 5.4(a) (fee sharing with nonlawyer); RPC 5.4(b) (prohibited partnership with nonlawyer); RPC 5.5(a)(1) (unauthorized practice of law) (four counts); RPC 5.5(a)(2) (assisting another in the unauthorized practice of law); RPC 7.2(c) (a lawyer shall not give something of value to a person for recommending the lawyer's services); RPC 7.3(d) (a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client); RPC 8.4(b) (commission of a criminal act that reflects

adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) (six counts); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (six counts); and RPC 8.5(a) (a lawyer admitted in New Jersey is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs).[1]

This matter previously was before us, during our January 17, 2019 session, when we granted respondent's motion to vacate a prior default, based on the serious nature of respondent's wife's medical condition. The matter has returned to us, unchanged, and again, by way of default. Respondent has again filed a motion to vacate default. For the reasons set forth below, we determine to deny respondent's motion to vacate the default and to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 1991. He has no disciplinary history.

Service of process was proper in this matter. On January 18, 2019, we remanded the matter; directed respondent to file a verified answer to the complaint by February 1, 2019; and cautioned that, if he failed to meet the

[1] RPC 8.5(a) provides a jurisdictional basis for imposing discipline on New Jersey attorneys who commit misconduct outside of New Jersey. Accordingly, it is not a Rule subject to being violated.

February 1, 2019 deadline, the matter could be re-certified to us for the imposition of discipline.

On February 4, 2019, the OAE notified us that it had not yet received respondent's answer.

On February 19, 2019, respondent wrote to the Office of Board Counsel (OBC), asserting that his wife's health was deteriorating further and that the entirety of his time is focused on her care. To that end, respondent noted that he has two lawyers, a paralegal, and a legal assistant to help manage his practice while he is unable to be present at his office. Additionally, he works on his personal computer from the hospital. Finally, respondent asserted that he was unable to travel to a storage facility to locate the files required for a proper response to the complaint.

In response, by letter dated February 25, 2019, the OBC informed respondent and the OAE that we would treat respondent's February 19, 2019 letter as a request for an extension of time. Because that request offered no timeframe for respondent to file his answer, the OBC requested that respondent, by March 4, 2019, specify a date by which he would file his answer to the complaint. On March 5, 2019, respondent replied, again requesting an extension of time based on his wife's deteriorating condition, without specifying a

timeframe by which he could submit an answer to the complaint. He simply asked, "the court not to enter any order that prevents me from answering in the near future."

By letter dated March 20, 2019, the OBC expressed empathy for the serious state of respondent's wife's medical condition and his ongoing participation in her healthcare. The letter noted, however, that his ethics matter could not be extended indefinitely. Therefore, the OBC notified respondent that his answer to the ethics complaint must be filed by June 3, 2019, thus providing him more than two months to do so. Having heard no response, on May 20, 2019, the OBC sent another letter to respondent reminding him that his complaint must be filed by June 3, 2019.

On June 5, 2019, respondent notified the OBC that his wife had passed away. He also expressed appreciation for the latitude he had been given. Respondent then requested an additional "few weeks" to get into his storage facility to "collect the proof that I need to satisfy both yourself and the OAE."

By letter dated June 11, 2019, the OBC informed respondent that his request for another extension of time was denied. In so doing, the OBC pointed out that respondent continued to claim a need, but an inability, to retrieve records from a storage facility. Yet, he also admitted his reliance on staff to

operate his law practice during this same period and his ability to work remotely on his personal computer. Nonetheless, respondent failed to provide a reason for failing to retrieve the files from storage and draft his answer by working remotely, as he apparently had done in other matters in the four months since the original deadline of February 1, 2019. Respondent was informed that the matter would proceed, as a default, and that he would be notified of our decision in due course.

We now turn to the allegations of the complaint.

The Federal Trade Commission (FTC) is an agency of the United States Federal Government. The FTC's mission is to prevent business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish its mission without unduly burdening legitimate business activity. Authorized by law to adopt industry-wide trade regulation rules, the FTC issued a final rule at 16 C.F.R. Part 322, entitled "Mortgage Assistance Relief Services" (MARS).

Section 322.5 of MARS prohibits mortgage relief companies from collecting any fees until they have provided consumers with a written offer from their lender, and the consumer decides to accept the offer. On receipt of the

offer, the client may reject it and is under no obligation to pay the mortgage relief company. Section 322.7 of MARS specifically exempts attorneys from the advanced fee rule if they are engaged in the private practice of law; are licensed in the state where the consumer or the dwelling is located; and are complying with state laws and regulations governing attorney conduct. Section 322.7 of MARS also exempts attorneys who deposit, in an attorney trust account, funds received from the consumer prior to performing legal services and who also comply with all state laws and regulations, including licensing regulations, applicable to trust accounts.

Respondent's firm was a mortgage relief company, as defined by the MARS rule, and did not qualify for the exemptions provided by Section 322.7 of MARS. Further, in respect of New Jersey's laws, respondent did not meet the exemption provided by Section 322.7 of MARS, given New Jersey's debt adjuster statute, N.J.S.A. 17:16G-1(c)(2), which states: "[t]he following persons shall not be deemed debt adjusters: (a) an attorney-at-law of the State who is **not** principally engaged as a debt adjuster..." (emphasis added). A debt adjuster is a person who acts or offers to act for consideration as an intermediary between a debtor and his creditors for the purposes of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor. The New Jersey debt

adjuster statute requires a license to conduct mortgage modifications. Acting without a debt adjuster license in New Jersey is a fourth-degree crime, in violation of N.J.S.A. 2C:21-19.

On March 19, 2017, at an OAE demand interview, respondent asserted that mortgage loan modifications comprised ninety percent of his law practice. Respondent was principally engaged in debt adjustment because his practice was almost exclusively in the area of mortgage modification. Hence, he neither falls into the category of exemption provided in N.J.S.A. 17:16-1G(c)(2)(a), nor is exempt from licensure as a debt adjuster. Additionally, respondent represented several clients from Georgia and New York, where he is not a licensed attorney. At his demand interview, respondent estimated that, after 2012, fifty percent of his loan modification clients were from outside of New Jersey. Therefore, respondent cannot meet the exemption criteria, pursuant to Section 322.7 of MARS, in the States of Georgia and New York, because he is not licensed as an attorney in those jurisdictions.

In 2010, respondent became affiliated with a for-profit loan modification company called Standard Holdings Management, LLC (SHM). Andres D. Garcia, Sr., the owner and chief executive officer of SHM, is not licensed to practice law in New Jersey. Respondent and SHM, along with its six to eight

employees, shared the same office. SHM paid the salaries of a secretary and a paralegal to assist respondent. SHM also solicited clients for loan modification services through newspaper and radio advertisements, using respondent's name. Respondent had no control over the content of those advertisements.

In Georgia, SHM contracted with Innovative Marketing Alliance/Quality Financial Solutions (Innovative) to solicit clients for loan modifications. Clients in Georgia initially met with a representative of Innovative and signed an agreement stating that they were retaining respondent to handle a loan modification. Innovative then forwarded the agreement to respondent.

In New York, clients would initially meet with an attorney licensed to practice in New York and sign an agreement retaining respondent. The New York attorney would forward the signed retainer agreement to respondent, who paid the New York attorney a flat "referral" fee of $500 to $1,000 for each New York loan modification client referred to him. The New York clients were unaware of the referral fees that respondent paid to the New York attorney. Respondent was fully aware that homeowners residing in New York and Georgia had been solicited, through advertising, to retain him for loan modification services and that, in his absence, the prospective clients had met with Innovative

or the New York attorneys, who obtained the client's signatures on retainer agreements before sending the signed agreements to him.

Once a loan modification client retained respondent, he would direct the client to complete a form providing preliminary information, such as the client's income and expenses, the amount of his or her current mortgage payments, whether the mortgage was in default, and the name of the lender. He then transferred the file to SHM, who then would process the paperwork to apply for a loan modification for the client. Clients paid respondent an initial fee upon signing the retainer agreement, and received a fee schedule outlining monthly installment payments to be paid to respondent. Respondent received those payments before he obtained a written offer from the lender, and, consequently, before the client had an opportunity to accept or reject the loan modification. The initial payment was for the purpose of reviewing the client's circumstances and creating the file, while the subsequent payments were for SHM to submit the documentation to, and to negotiate with, the lender.

Respondent's business arrangement with SHM and Garcia required respondent to share with SHM a percentage of the legal fees that he collected from his clients. Respondent typically would remit to SHM the initial $750 that the client paid him, along with $250 to $500 per month to process the

application. On a typical loan modification file, respondent would retain twenty-five percent of the total fee that the client paid and remit the balance to SHM. At his demand interview, respondent told the OAE that the split with SHM was a "ballpark" figure and that SHM's percentage was higher for months with a higher volume of loan modification work. Thus, SHM would receive a higher payment, based on the number of clients it obtained for respondent through its solicitation activities.

After a file was transferred to SHM, respondent would not get involved again until the client "dropped out" of the process with the lender and further legal action was needed, such as filing an answer to a foreclosure complaint or reviewing a client's loan modification offer to determine whether it was fair, equitable, and affordable to the client. Upon acceptance, the client would sign the offer, and respondent would return the agreement to the lender. However, none of the files for the six client matters named in the ethics complaint against respondent included an application for a loan modification submitted to the client's lender.

During his demand interview, respondent stated that, from the beginning of their professional relationship, Garcia represented that SHM was licensed to

perform loan modification services. Respondent admitted that he never independently verified that fact, but "took [Garcia's] word for it."

The Eric Cervantes Matter

Eric and Imelda Cervantes (the Cervanteses) are residents of Georgia. Respondent conducted mortgage modifications from his law office in Fort Lee, New Jersey, but is not a licensed attorney or debt adjuster in the State of Georgia. Ga. The Georgia Debt Adjustment Act (Code Ann. § 18-5-3.1 (a)(1) (2018)) regulates debt adjustment, requiring debt adjustment providers to obtain, from an independent third party certified public accountant, an annual audit of all the debt adjusters accounts in which the funds of debtors are deposited and from which payments are made to creditors on behalf of debtors. Ga. Code Ann. § 18-5-3.1(a)(2) requires debt adjustment providers to obtain and maintain, at all times, insurance coverage in certain amounts to protect against employee dishonesty, depositor's forgery, and computer fraud. Ga. Code Ann. § 18-5-4(a) and § 18-5-4(b)(1) provide that a violation is a misdemeanor, punishable by a civil fine of not less than $50,000.

Respondent represented the Cervanteses in a mortgage modification for their property in Norcross, Georgia. Respondent neither obtained the required

annual audit prepared by an independent third party certified public accountant nor maintained the required insurance. In May 2014, while in Norcross, Georgia, the Cervanteses heard an Innovative radio advertisement for loan modification services. They contacted Innovative, scheduled an appointment at its office in Woodstock, Georgia, and on June 7, 2014, met with a representative of Innovative and executed a retainer agreement with respondent to pursue a loan modification for their Norcross property. Mr. Cervantes signed the retainer agreement, but never received a copy of the agreement signed by respondent.

During the June 7, 2014 meeting with Innovative, the Cervanteses were instructed to write a check for $795, payable to "Innovative Marketing Alliance," as Innovative's compensation for preparing a report for the client, referred to as a home report, which is an analysis of the client's current loan, to determine whether the client qualifies for a government program. Once Innovative determined whether the client would qualify, it would refer the client to respondent for the loan modification services.

The Cervanteses were instructed, in writing, to make all payments for loan modification services to respondent at his New Jersey office address. Respondent charged the Cervanteses a fee of $2,750 to represent them in the loan modification. Mr. Cervantes signed a form authorizing respondent's office

to withdraw four payments, totaling $2,750, from their checking account, including a $10 convenience fee for each payment. The Cervanteses, thus, paid to respondent and Innovative a total of $3,545 ($795 + $2,750).

The Cervanteses were provided with a toll-free telephone number to contact respondent, which they called several times, and believed, each time, that they were speaking with respondent's staff. They never spoke with respondent. At some point, they asked for a specific time to reach respondent, and were told to call between certain hours "because that is when they handled the Georgia cases." Respondent admitted that he never met Mr. Cervantes in person and did not recall speaking with him by telephone.

By letter dated December 24, 2014, Wells Fargo Home Mortgage (Wells Fargo) informed the Cervanteses that, because respondent failed to confirm that he represented them, Wells Fargo had removed respondent as the representative on their account. Upon receipt of this letter, Mrs. Cervantes called the provided telephone number and spoke with Jennifer Gervacio, an SHM employee, who instructed her to send the letter to her office by facsimile, and assured Mrs. Cervantes that the issue would be addressed. Mrs. Cervantes' subsequent telephone calls went unanswered. Respondent never submitted an application

for a loan modification on the Cervanteses' behalf, and Wells Fargo never offered them a loan modification.

On September 1, 2015, the Cervanteses filed for fee arbitration against respondent. The committee ordered respondent to refund the full $3,545 fee, which respondent paid on August 2, 2016.

The Victor Rodriguez Matter

On November 4, 2014, Victor Rodriguez retained respondent to represent him in a loan modification for Rodriguez's property in Bogota, New Jersey. Rodriguez signed a "Client Payment Schedule," setting forth a fee of $5,750. To begin the loan modification process, he made an initial payment of $2,500 to respondent, ultimately paying respondent a total of $4,000.

Two weeks after his initial meeting with respondent, Rodriguez called respondent's office and spoke with Samantha Seda, SHM Legal Coordinator to CEO Garcia. Seda told Rodriguez that SHM had not received an answer from Rodriguez's lender, Nationstar. Rodriguez continued to call respondent's office every two weeks, but always received the same answer.

On January 29, 2015, Rodriguez received a foreclosure complaint from Nationstar. He contacted respondent's office to attempt to schedule a meeting,

to no avail. On February 4, 2015, Rodriguez went to respondent's office seeking advice about Nationstar's foreclosure complaint. Rodriguez met with Seda, who stated that, to obtain assistance with the complaint, he would have to sign another agreement. Rodriguez explained that he already had paid respondent $4,000, but was told in an e-mail from Seda later that day that the foreclosure complaint had not been included in his original agreement, and that he would need to sign a separate foreclosure defense agreement with "the attorney."

Subsequently, Rodriguez contacted Nationstar, who informed him that Nationstar never received a loan modification application from respondent. On March 17, 2015, Rodriguez retained another attorney to complete the loan modification application, which Nationstar approved on May 29, 2015.

On July 22, 2015, Rodriguez filed for fee arbitration against respondent. On April 10, 2017, respondent refunded Rodriguez $4,000, as directed by the fee arbitration committee.

The Herbert Gonzalez Matter

In response to an advertisement on a radio station in New York for respondent's loan modification services, Herbert Gonzalez sought a loan modification on his property in Amityville, New York. On April 25, 2015,

Gonzalez went to the office of an attorney in New York, met with that attorney's paralegal, and signed a retainer agreement with respondent. Respondent paid the New York attorney a referral fee for the Gonzalez matter. Respondent admitted to the OAE that the New York attorney had done little more than an initial evaluation before sending the file to respondent, who is not licensed to practice law in the State of New York.

Gonzalez retained respondent to file a motion to vacate a foreclosure and to apply for a loan modification. Gonzalez was promised success on both matters.

Respondent referred the matter to SHM to process the loan modification paperwork with Bank of America, Gonzalez's lender. On May 5, 2015, Gonzalez paid respondent an initial payment of $3,500, plus $4,500 upon receipt of monthly invoices from respondent's office. Gonzalez, thus, paid respondent a total of $8,000, representing payment in full for both the loan modification and foreclosure defense matters.

Respondent neither filed an appearance nor took any action to vacate the judgment. Further, he never applied for a loan modification in behalf of Gonzalez. Whenever Gonzalez contacted respondent's office for a status update, he was told that respondent's staff was working on his file. From time to time,

Gonzalez was asked to provide additional documents, which he did in a timely manner.

At some point, when he received written communication from the court indicating that he was proceeding pro se, Gonzalez learned that respondent had not entered his appearance in Gonzalez's foreclosure matter. Gonzalez immediately contacted respondent, who claimed that he had not received that document from the court. Thereafter, despite many attempts, Gonzalez had no further communication with respondent.

Because respondent performed no work on his behalf, Gonzalez retained subsequent counsel. On November 2, 2015, Gonzalez filed for fee arbitration against respondent. The Committee required respondent to refund the entire fee of $8,000 to Gonzalez, which respondent did, on February 7, 2017.

The Jose Rivera Matter

Based on a friend's recommendation, Jose Rivera contacted Innovative to assist with a loan modification for his property located in Forest Park, Georgia. On April 30, 2014, Rivera met with an Innovative representative in Georgia. The same day, Rivera signed respondent's "Agreement for Services," retaining

him for loan modification services. Additionally, Rivera paid $795 to Innovative for a home report.

During Rivera's meeting with Innovative, a fee schedule was prepared, requiring Rivera to pay respondent $700 per month. From May 20 through July 20, 2014, Rivera paid respondent $2,100, for a total of $3,545 paid to both Innovative and respondent. Rivera repeatedly called respondent's office to determine the status of his loan modification. He received neither information nor a return telephone call. Respondent never submitted an application for loan modification in Rivera's behalf.

According to SHM's notes in his file, at some point, Rivera contacted SHM's office and expressed dissatisfaction with respondent's services. SHM's notes stated that staff attempted to contact Rivera, but were unsuccessful, because respondent had not obtained Rivera's direct telephone number, and the telephone number on file with SHM belonged to someone else. Finally, on June 9, 2015, the lender informed Rivera that his request for assistance under its Loss Mitigation Program had been terminated because his mortgage loan and hardship did not qualify.

On December 28, 2015, Rivera filed for fee arbitration against respondent. The Committee required respondent to refund the full $3,545 to Rivera, which respondent did, on July 15, 2016.

The Gladys Cartagena Matter

On March 12, 2015, the Federal National Mortgage Association (Fannie Mae) filed a foreclosure complaint against Gladys Cartagena. On October 3, 2015, Cartagena retained respondent to obtain a loan modification with the loan servicer, Seterus, and to defend the foreclosure litigation in respect of her property in Union, New Jersey. The retainer agreement stated that "time devoted by paralegals to client matters is charged at $250 per hour and senior paralegals such as Andres Garcia (Garcia) is [sic] charged at $400 per hour." As previously noted, Garcia was the owner and CEO of SHM, not a paralegal. The complaint alleged that, through his retainer agreement, respondent misrepresented that Garcia was a paralegal.

The fee agreement required Cartagena to pay respondent $5,000 upon execution of the agreement, which she paid on October 7, 2015. In addition, according to the fee agreement, Cartagena was to pay respondent $1,250 every

month, starting October 15, 2015. She made four such payments to respondent, totaling $5,000, from November 2015 through February 2016.

Even though respondent was representing Cartagena in both the foreclosure action and the loan modification, he never entered an appearance in the foreclosure litigation. SHM was in contact with Seterus in an attempt to enter into a loan modification, but Fannie Mae filed a request for default against Cartagena, which was granted on May 13, 2016. On October 13, 2016, following Fannie Mae's motion for final judgment by default, the court entered an uncontested judgment against Cartagena in favor of Fannie Mae.

On November 3, 2016, respondent filed a motion to vacate the default and dismiss the foreclosure action on Cartagena's behalf. On December 1, 2016, the motion was denied because it was "beyond the authority of the Office of Foreclosure and was improperly returnable before the Office of Foreclosure. Relief sought must be made in Motion returnable before the vicinage."

In December 2016, Cartagena visited respondent's office, which was vacant. Cartagena learned from a nearby tenant that respondent's office had moved. Cartagena tried calling respondent's office, but her telephone calls were not answered. Despite respondent's claim that he had informed all his clients,

by sending post cards, that his office was moving, he had no proof of mailing a post card to Cartagena.

On February 7, 2017, SHM Legal Coordinator Seda sent a letter asking Cartagena to provide respondent's office with several documents to apply to the lender to delay the sheriff's sale scheduled for March 8, 2017. The February 7, 2017 letter was on respondent's letterhead and listed Seda as Legal Coordinator for respondent's law office. When Cartagena learned of the scheduled sheriff's sale, she decided to retain another attorney.

During his March 20, 2017 demand interview, respondent described Seda as his paralegal and client liaison. The OAE requested that respondent make Seda available for an interview during its investigation, but he declined to do so, claiming that she was an employee of SHM, and was not on his payroll. Respondent also provided the OAE with Seda's SHM business card, which stated that Seda is the Legal Coordinator to the CEO (Garcia).

The Julia Rosales Matter

On September 13, 2012, Deutsche Bank dismissed its previously filed foreclosure complaint against Julia Rosales. Nevertheless, Rosales remained in default of her mortgage loan, which was serviced by Nationstar. Rosales was

also in default of a second loan with Real Time Resolutions, Inc. (Real Time), which also was pursuing debt collection.

Rosales, a resident of New York, heard respondent's radio advertisement and contacted respondent's office to assist her with a possible loan modification. Rosales met with respondent and Seda at their Fort Lee, New Jersey office to discuss her matter. Rosales also met with Garcia at some point. She was told that respondent and Garcia were experts and was given assurances that respondent had dealt with these types of matters for years.

A few weeks after Rosales' initial meeting with respondent, Seda prepared the retainer agreement. On March 5, 2014, Rosales retained respondent to represent her in a loan modification/settlement for her property in Valley Stream, New York. She was unaware that respondent was not licensed to practice law in New York. In 2014, Rosales made five payments to respondent, plus one payment in March 2015, totaling $5,000.

In July 2014, Deutsche Bank provided notice of its intent to file another foreclosure complaint against Rosales. Because this was a new foreclosure action, respondent required Rosales to enter into a new retainer agreement, which she did on July 2, 2014. Rosales met with respondent on February 25, 2015, at which time he asked about her income, and determined that a successful

loan modification package could not be submitted to Nationstar. On September 16, 2015, respondent calculated that, because the initial summons and complaint had been filed in January 2010, the limitations period would run in January 2016. Respondent and Rosales agreed to discuss the matter again in February 2016, after the statute of limitations had expired.

On March 31, 2016, respondent met with Rosales to discuss a potential motion to dismiss, based on the statute of limitations defense. Rosales requested that the motion be filed within a month. Respondent indicated that, before he would prepare and file the motion, Rosales would be required to pay an additional cost, which he estimated to be $1,000. Rosales did not remit the additional funds to respondent, who took no further action on behalf of Rosales.

Motion to Vacate Default

On December 19, 2018, respondent filed a motion to vacate the default, which we determined to grant, during our January 17, 2019 session. As explained above, the matter now returns to us, unchanged, and again by way of default. On August 23, 2019, respondent filed another motion to vacate the default (MVD). For the reasons set forth below, we determine to deny the MVD.

Respondent must meet a two-pronged test to successfully vacate a default. First, respondent must offer a reasonable explanation for his failure to answer the ethics complaint. Second, respondent must assert meritorious defenses to the underlying charges.

As to the first prong of the test, respondent puts forth a compelling and heartbreaking explanation of the catastrophic health situation faced for the last two years by Jean, his wife of thirty-seven years. For over two years, he has assisted Jean in her battle against Triple Negative Breast Cancer, a particularly aggressive and deadly form of cancer. Unfortunately, despite traveling throughout and even outside the country seeking treatment and a cure, in November 2018, they learned that the cancer had spread to Jean's liver and lungs. Sadly, Jean lost her battle this past spring.

On its face, the extreme medical status of respondent's wife and his responsibilities pertaining thereto presented a reasonable explanation for his failure to answer the disciplinary complaint in the first instance, and based on those circumstances, we granted his first MVD. Thereafter, respondent was required to file a verified answer to the complaint by February 1, 2019. After February 1, 2019, respondent sent three letters to the OBC, requesting extensions of time to file his answer. The OBC granted respondent two

extensions, until June 3, 2019, for a total of more than four months, an unprecedented amount of time. Respondent failed to submit an answer and based on the foregoing, he can no longer satisfy the first prong of the test.

In his February 19, 2019 letter requesting an extension of time to file his answer to the complaint, respondent asserted that two lawyers, a paralegal, and a legal assistant help manage his practice while he is out of the office and that he is unable to go to a storage facility to locate files required to properly respond to the complaint. On March 5, 2019, in asking for an additional extension, respondent repeated that his files are in storage and not in his office. Finally, on June 5, 2019, in his last request for an extension that was ultimately denied, respondent informed the OBC of his wife's passing and once again stated that he has maintained his practice through his laptop computer and phone, with the help of his associates.

Now, however, respondent walks back these claims, stating that "[w]hile I did tell you that I was maintaining my practice from a chair in the hospital room, I did not mean to have you think I was meeting with clients or going to court." What respondent ignores is that he had two attorneys, a paralegal, and a legal assistant available to go to his storage facility at any time during the four

months of extension time he received, in addition to the entire amount of time after the complaint was originally filed on June 5, 2018.

Moreover, respondent now claims that 175 boxes of legal files, along with the rest of the contents of his storage unit, were auctioned off due to his failure to pay rent. In support, respondent attached a letter from Garcia, who claimed that he and his employee, Seda, were confused in the belief that the other had been paying the rent on the storage unit, which resulted in a missed payment in December 2018. Garcia claimed that he learned of the missed payment in February 2019, and that, by that time, the storage company already had put a lien on the unit. According to Garcia, by March 2019, the company had auctioned off the contents of respondent's storage unit. Finally, Garcia noted that he has since learned that the purchaser of the unit's contents sold the furniture and equipment, donated the law books to a library, and disposed of the items that were of no value to him.

In his motion, respondent claimed that he was in the process of negotiating the repurchase of these contents from the buyer and that he will learn, by August 23, 2019, whether he can reacquire his files. Respondent's statement in this regard seems incongruous with Garcia's statement.

Finally, as noted above, Garcia is the owner and chief executive officer of SHM and is not licensed to practice law in New Jersey. Respondent and SHM, along with its six to eight employees, shared an office. SHM paid the salaries of a secretary and a paralegal to assist respondent. SHM also solicited clients for loan modification services through newspaper and radio advertisements using respondent's name. Now, we have learned that Garcia and respondent shared a storage unit. The relationship between Garcia and respondent is such that respondent's failure to ask Garcia to remove his client files from their shared storage unit and deliver them to his law office for review by his staff is inexplicable. This failure counterbalances respondent's claimed inability to spare time to go to the unit and retrieve his files.

Based on the foregoing, respondent has failed to satisfy the first prong of the test, and he still fails to satisfy the second prong. In his first MVD, dated December 19, 2018, respondent conceded that he was unable to provide meritorious defenses because he had been unable to gather the documentation in support of those defenses. His around the clock care for his wife did not allow him time to go through "almost 1,000 files in order to prepare a proper defense to these charges." In his most recent letter, respondent refers to 175 boxes of legal files.

Now, eight months later, after two extensions of time and a second motion to vacate the default, respondent has failed to make any attempt, either personally or through a surrogate, to retrieve the files from storage. With or without these files, in his two motions, and with the benefit of an additional five months, respondent has failed to offer any semblance of a defense, meritorious or otherwise. Therefore, based on his failure to satisfy either prong of the test, we determined to deny the most recent MVD.

Finally, by letter dated September 19, 2019, respondent claimed to have repaid all of the clients involved in these matters. Further, he again denied that he had stated that he had been practicing law from the hospital during his wife's illness. He also questioned how the OAE had determined that loan modifications constituted ninety percent of his law practice. Further, respondent alleged that the matters involved here represent grievances filed by disgruntled clients looking for a financial reward.

* * *

We find that the facts recited in the complaint support some of the charges of unethical conduct. Respondent's failure to file an answer to the complaint 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 in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

The New Jersey debt adjuster statute requires licensure to conduct mortgage modifications. Respondent never took any steps to verify that SHM was licensed to perform loan modifications. Respondent, thus, failed to adequately supervise the conduct of the non-legal business SHM and the nonlawyer, Garcia, he had employed to assist him in providing loan modification legal services. In so doing, respondent violated RPC 5.3(a).

In New Jersey, loan modification services constitute the practice of law. See Joint Opinion No. 716 of the Advisory Committee on Professional Ethics (ACPE) and Opinion No. 45 of the Committee on the Unauthorized Practice of Law, 197 N.J.L.J. 59 (July 6, 2009). In Opinion No. 716, the ACPE found that a New Jersey attorney may not provide legal advice to customers in connection with a for-profit loan modification company, whether the attorney is in-house counsel to the company, formally affiliated or in a partnership with the company, or separately retained by the company.

Respondent violated RPC 5.4(a) when he agreed to share with SHM the fees charged to the homeowners for loan modification services. Opinion No. 716

makes clear that, when an attorney shares a fee charged to a homeowner for loan modification services with a for-profit loan modification company, as respondent did, the attorney violates RPC 5.4(b). That RPC prohibits a lawyer from forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. Respondent's affiliation with Garcia and his for-profit loan modification company SHM was an impermissible partnership with a non-legal business or a nonlawyer, in violation of RPC 5.4(b). By extension, respondent assisted a non-legal business or nonlawyer in the unauthorized practice of law, in violation of RPC 5.5(a)(2).

Opinion No. 716 explicitly prohibits the payment of monies to a loan modification company that refers or recommends clients to an attorney. Further, the acceptance of legal fees, as here, where respondent divided the fee paid by a homeowner between the company and the attorney, is impermissible fee sharing. New Jersey does not permit a lawyer to give a referral fee or "anything of value" to a person to recommend or secure the lawyer's employment by a client or as a reward for having made the recommendation. Having done so, respondent violated RPC 7.3(d). Associated with these facts, the complaint alleges a violation of RPC 7.2(c). That RPC is very similar in nature to RPC 7.3(d), but it applies in the context of advertising. The complaint makes clear

that respondent had no control over the advertising by SHM. Hence, his misconduct in this regard is fully encompassed by the RPC 7.3(d) violation and, therefore, we determine to dismiss the RPC 7.2(c) charge.

Further, acting without a debt-adjuster's license in New Jersey, as respondent has, is a fourth-degree crime, in violation of N.J.S.A. 2C:21-19 and RPC 8.4(b).

In respect of his misconduct related to specific client matters, respondent's handling of the Cervantes matter fell below the level of adequate representation. Indeed, respondent grossly neglected the matter, as evidenced by the fact that Wells Fargo removed him as the attorney of record after it was unable to reach him, as well as the fact that respondent never submitted to Wells Fargo an application for a loan modification on behalf of his clients. Respondent's conduct in this regard violated RPC 1.1(a) and RPC 1.3.

Further, respondent failed to communicate at any level with the Cervanteses. Calls were left unreturned or unanswered and, despite assurances from his staff that the matter would be handled, respondent never spoke with the Cervanteses. His conduct in this regard violated RPC 1.4(b). He also failed to explain the matter to his clients to the extent reasonably necessary to permit

them to make informed decisions regarding the representation, in violation of RPC 1.4(c).

Further still, respondent collected fees of $2,750 from the Cervanteses, before they had accepted a mortgage modification from their lender. The collection of advance fees violates §322.5 of MARS and RPC 1.5(a), RPC 1.15(a), and RPC 8.4(c).

Additionally, respondent failed to decline the representation of the Cervanteses in Georgia, where he was not licensed as either an attorney or a debt adjuster, in violation of RPC 1.16(a)(1). Respondent's representation of the Cervanteses also constituted the unauthorized practice of law, in violation of RPC 5.5(a)(1) and RPC 8.4(b).

Moreover, by engaging in the collection of advance fees for loan modification services, respondent acted as a debt adjuster, and did so without a license. Georgia, similar to New Jersey, has a debt adjuster statute, Ga. Code Ann. § 18-5-4(a), which provides that a violation of that statute constitutes a misdemeanor. Thus, respondent also violated RPC 8.4(b). A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a

crime); and In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with a criminal offense).

In the Rodriguez matter, respondent's office repeatedly informed the client that the office was waiting to hear from the lender, Nationstar. Yet, Rodriguez, a New Jersey resident, received a foreclosure complaint from Nationstar. When the complaint was brought to the attention of respondent's office, Rodriguez was told he would need to sign another agreement, despite previously having paid respondent $4,000. Rodriguez then contacted Nationstar and learned that respondent had never submitted an application for a loan modification. Having done little to no work on behalf of Rodriguez, respondent violated RPC 1.1(a) and RPC 1.3.

Additionally, despite Rodriguez's efforts to contact respondent's office, the communication from respondent was insufficient. Respondent failed to keep Rodriguez reasonably informed about the status of his matter, in violation of RPC 1.4(b).

Further, respondent's collection of $4,000 of fees from Rodriguez, prior to the acceptance of a mortgage modification from his lender, violated §322.5 of MARS and RPC 1.5(a), RPC 1.15(a), and RPC 8.4(c). By engaging principally as a debt adjuster on behalf of Rodriguez, respondent acted in

contravention of N.J.S.A. 17:16G-l(c)(2), of N.J.S.A. 2C:21-19, a fourth-degree crime, and of RPC 8.4(b).

Gonzalez, a New York resident, retained respondent to file a motion to vacate a foreclosure and to file an application for a loan modification. Respondent failed to make any appearance or take any action to vacate the foreclosure and never filed an application for a loan modification, a violation of RPC 1.1(a) and RPC 1.3. Respondent also failed to keep Gonzalez reasonably informed about the status of his matter and eventually ceased all communications with him, in violation of RPC 1.4(b).

Further, respondent collected fees of $8,000 from Gonzalez, prior to his acceptance of a mortgage modification from his lender, which is a violation of Section 322.5 of MARS and RPC 1.5(a), RPC 1.15(a), and RPC 8.4(c). He also shared a portion of the fee he collected from Gonzalez with an attorney who was licensed in New York. Respondent admitted that the "referral" fee was not commensurate with the services that the New York lawyer provided, a violation of RPC 1.5(e).

Finally, respondent failed to decline the representation of Gonzalez in New York where he was not licensed as either an attorney or a debt adjuster, in violation of RPC 1.16(a)(1). Respondent's unauthorized practice of law violated

RPC 5.5(a)(1) and RPC 8.4(b). By acting as a debt adjuster on behalf of Gonzalez, respondent violated N.J.S.A. 17:16G-1(c)(2) and RPC 8.4(b).

Rivera, a resident of Georgia, retained respondent through Innovative to assist with an application for a loan modification. Rivera paid Innovative and respondent a total of $3,545 in fees. After signing the agreement for services, Rivera repeatedly contacted respondent's office for updates on the status of his loan modification, to no avail. Respondent never filed an application for a loan modification on behalf of Rivera. Despite having committed gross neglect and a lack of diligence in the Rivera matter, respondent was not charged with violations of RPC 1.1(a) or RPC 1.3. Nonetheless, respondent failed to keep Rivera reasonably informed about the status of his matter and to promptly comply with his reasonable requests for information, in violation of RPC 1.4(b).

Further, by collecting $2,750 in fees before Rivera had accepted a mortgage modification from his lender, respondent violated §322.5 of MARS and RPC 1.5(a), RPC 1.15(a), and RPC 8.4(c).

Finally, respondent failed to decline the representation of Rivera in Georgia, where he was not licensed as either an attorney or a debt adjuster, thereby violating RPC 1.16(a)(1). Respondent's representation of Rivera constituted the unauthorized practice of law in violation of RPC 5.5(a)(1) and

RPC 8.4(b). By acting as a debt adjuster on behalf of Rivera, respondent violated N.J.S.A. 17:16G-1(c)(2) and RPC 8.4(b).

Cartagena, a New Jersey resident, retained respondent to assist in pursuing a loan modification from her loan servicer, Seterus, and to prepare a defense and submit an answer to the foreclosure complaint filed against her. Although Cartagena paid respondent $10,000 in fees, he failed to enter an appearance in the foreclosure litigation. SHM attempted to enter a loan modification on behalf of Cartagena; however, Fannie Mae proceeded with the foreclosure, and eventually filed for, and was granted, a final judgment by default, because the matter proceeded uncontested. Respondent filed a motion to vacate the default and dismiss the foreclosure action; however, that motion was denied because it was not filed properly. By allowing Cartagena's matter to go uncontested, resulting in a judgment of foreclosure against her and then filing a motion to vacate that judgment in the wrong arena, respondent violated RPC 1.1(a) and RPC 1.3.

In December 2016, Cartagena attempted to visit respondent at his office. She found the office vacant and learned from another tenant that respondent's office had moved. She also attempted to call respondent, to no avail. Eventually, in February 2017, Cartagena received a letter on respondent's letterhead from

his "Legal Coordinator," Seda, requesting documents, in an attempt to delay the pending sheriff's sale on her property. However, when respondent moved his office, he failed to inform Cartagena, in violation of RPC 1.4(b). Respondent also failed to keep Cartagena reasonably informed about the status of her matter and failed to comply with her reasonable requests for information, a further violation of RPC 1.4(b). He failed to explain the matter to Cartagena to the extent reasonably necessary to permit her to make informed decisions regarding the representation, in violation of RPC 1.4(c).

Although the complaint also charged respondent with a violation of RPC 1.4(a), that Rule applies to prospective clients. Here, Cartagena was an existing client; therefore, respondent's failure to inform her of how, when, and where she could communicate with him is adequately captured by the RPC 1.4(b) charge. We, thus, determine to dismiss the RPC 1.4(a) charge.

Further still, respondent's collection of $10,000 in fees before Cartagena entered a loan modification was in violation of §322.5 of MARS and RPC 1.5(a), RPC 1.15(a), and RPC 8.4(c). Moreover, respondent did not refund to Cartagena the unearned portion of the retainer fee, a violation of RPC 1.16(d). By acting as a debt adjuster, respondent violated N.J.S.A. 17:16G-1(c)(2) and RPC 8.4(b).

Finally, respondent told the OAE that Seda was not his employee and presented her business card, which indicated that she was the Legal Coordinator to Garcia, the CEO of SHM. By misrepresenting Seda as "Legal Coordinator" to his law office in his February 2017 letter to Cartagena, respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c).

Rosales, a resident of New York, was in default on two loans. She met with respondent and Seda at respondent's Fort Lee, New Jersey office. She also met with Garcia. She was assured that respondent and Garcia were experts and had experience in loan modifications. She eventually retained respondent to represent her in a loan modification for her property in New York. Having previously dismissed its first action, Rosales' lender filed another foreclosure action, prompting respondent to require that Rosales enter into a new retainer agreement, which she did. In February 2015, almost a year after he was retained, respondent informed Rosales that a loan modification application would not be successful, based on her income. Later that year, in September, respondent recommended waiting for the limitations period to expire, in January 2016. As of March 2015, Rosales had paid respondent $5,000.

One year later, respondent and Rosales met and agreed to file, within a month, a motion to dismiss the foreclosure complaint, based on the expiration of the statute of limitations. Respondent requested an additional $1,000 to file that motion. Rosales did not pay the additional funds, and respondent took no further action.

Respondent's collection of $5,000 in fees before Rosales had accepted a mortgage modification from her lender was in violation of §322.5 of MARS and RPC 1.5(a), RPC 1.15(a), and RPC 8.4(c). He also shared a portion of the fee he collected from Rosales with an attorney who was licensed in New York, a violation of RPC 1.5(e).

Further, respondent failed to decline the representation of Rosales in New York, where he was not licensed as either an attorney or a debt adjuster, thereby violating RPC 1.16(a)(1). He also failed to refund to Rosales the unearned portion of her retainer, in violation of RPC 1.16(d). Respondent's representation of Rosales constituted the unauthorized practice of law in violation of RPC 5.5(a)(1) and RPC 8.4(b). By engaging as a debt adjuster, respondent also violated N.J.S.A. 17:16G-1(c)(2) and RPC 8.4(b).

Finally, respondent exhibited a pattern of neglect while representing Cervantes, Rodriguez, Gonzalez, and Cartagena, in violation of RPC 1.1(b).

In sum, respondent violated RPC 1.1(a) (four counts), RPC 1.1(b), RPC 1.4(b) (five counts), RPC 1.4(c) (two counts), RPC 1.5(e), RPC 1.15(a) (six counts), RPC 1.16(a)(1) (four counts), RPC 1.16(d) (two counts), RPC 5.3(a), RPC 5.4(a), RPC 5.4(b), RPC 5.5(a)(1) (four counts), RPC 5.5(a)(2), RPC 7.2(c), RPC 7.3(d), RPC 8.4(b) (six counts), and RPC 8.4(c) (six counts). We determine to dismiss the alleged violations of RPC 1.4(a), RPC 7.2(c), and RPC 8.5(a). The sole issue left for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

In In re Velahos, 225 N.J. 165 (2016), a consent matter, an attorney was suspended for six months for, among other violations, fraudulently collecting advanced fees while representing clients in mortgage modification matters, in violation of RPC 1.15(a) and RPC 8.4(c) and (d). Velahos was the principal of three companies subject to MARS regulations, and represented numerous out-of-state clients in jurisdictions in which he was not licensed as an attorney. In the Matter of Efthemois D. Velahos, DRB 15-409 (March 23, 2016) (slip op. at 4). Further, like respondent, Velahos did not meet the exemption provided by Section 322.7 of MARS because of New Jersey's debt adjuster statute, N.J.S.A. 17:16G-1(c)(2), which excludes from its definition of debt adjuster an attorney-at-law in New Jersey who is not principally engaged as a debt adjuster. Thus,

under that statute, a license to conduct mortgage modifications was required. Id. at 5.

Velahos, like respondent, was principally engaged as a debt adjuster, as his practice was primarily in mortgage loan modifications. Acting as a debt adjuster without a license is a fourth-degree crime in the State of New Jersey, in violation of N.J.S.A. 2C:21-19 and, thus, Velahos was found to have violated RPC 8.4(b). Id. at 5.

Velahos also violated MARS by failing to provide his clients with a written offer from their lender, which the client would have an opportunity to accept or decline prior to the payment of a fee. Despite that, like respondent, Velahos required and accepted advance legal fees. Specifically, over a period of two years, Velahos collected or attempted to collect a total of $216,946.92 in illegal advance fees from 117 clients, in violation of MARS. Eighty-six of those clients were New Jersey residents. Id. at 5. By taking advance fees, Velahos was found to have violated RPC 1.15(a) and RPC 8.4(c). In addition, Velahos was not authorized to practice in many of those states and, hence, was found to have violated RPC 5.5(a)(1). Id. at 6.

In all, Velahos was found to have violated RPC 1.15(a); RPC 1.15(d) and R.1:21-6; RPC 1.16(a)(1); RPC 5.3(a), (b), and (c)(1), (2), and (3); RPC

5.5(a)(1); RPC 7.1(a)(1) and (2); RPC 7.3(b)(5)(i), (ii), (iii), and (iv); RPC 7.4(a); RPC 7.5(e) and R. 1:21-1B(c); RPC 8.1(a); RPC 8.4(a), (b), (c), and (d); and R. 1:21-1B(a)(4). Id.

We determined that, although, in isolation, Velahos' infractions ordinarily would result in a reprimand or a censure, the appropriate quantum of discipline was a six-month suspension, based on his receipt of a censure for similar conduct in the past; his knowledge that much of his conduct was, not only illegal in some cases, but also in almost all instances, unethical; and his disturbing pattern of misrepresentations to clients. Id. at 9.

Here, pursuant to the precedent of Velahos, a censure is the appropriate baseline of discipline for respondent's misconduct, which, in this regard, extended to at least four clients and involved illegal advance fees of $23,129.

Respondent, however, engaged in additional, serious misconduct. Specifically, he participated in a fee sharing scheme with nonlawyers, engaging in the for-profit loan modification industry. He assisted those nonlawyers in the unauthorized practice of law, he assisted those nonlawyers in violating the Rules of Professional Conduct, and he, too, continued to practice in jurisdictions in which he knew he was not licensed.

Further, respondent displayed a pattern of neglecting his clients and caused them demonstrable harm as a result. He took advance fees for mortgage modification services and then did no work on his clients' behalf. He regularly failed to communicate with his clients and, generally, all but abandoned them. In some instances, the only communication his office had with the clients occurred when their matters escalated to foreclosure, and his staff attempted to obtain more money from the vulnerable homeowners by requiring that they sign a new retainer agreement.

For such a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect). Here, the neglect and the harm caused to the clients serve to enhance the otherwise appropriate discipline to a three-month suspension.

The first time we considered this matter, respondent had allowed it to proceed by way of default, despite initially engaging the OAE in the

investigation of the matter and requesting an extension of time to answer the complaint. He then filed a motion to vacate the default, which we granted. Thereafter, the OBC granted respondent significant extensions of time to answer the complaint. Despite an unprecedented four months of additional time, respondent requested yet another extension, again citing his need to retrieve files. This last request was denied, and the matter once again proceeded by way of default. Respondent's failure to answer the complaint serves to further enhance the discipline to a six-month suspension. "[A] respondent's default or failure to cooperate with the investigative authorities acts 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) (citations omitted).

In mitigation, respondent has no history of discipline. On balance, we determine that a one-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli voted for a two-year suspension. Member Boyer 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
Bruce W. Clark, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William J. Munier
Docket No. DRB 19-207

Decided: January 15, 2020

Disposition: One-Year Suspension

Members	One-Year Suspension	Two-Year Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer				X
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1

Ellen A. Brodsky
Chief Counsel