DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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April 22, 2021

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of William J. Munier**
Docket No. DRB 20-320
District Docket No. XIV-2019-0580E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (three-month suspension or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board granted the motion and determined to impose a three-month suspension for respondent's violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) and (c) (failure to communicate with a client); RPC 1.5(a) (unreasonable fee); RPC 1.15(a) (failure to safeguard funds); RPC 1.16(d) (failure to protect a client's interests upon termination of representation); 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)(2) (assisting another in the unauthorized practice of law); 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); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

By way of background, the Federal Trade Commission (FTC) is an agency with the mission 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. The FTC is authorized by law to adopt industry-wide trade regulation rules and, as such, issued a final rule at 16 C.F.R. Part 322, entitled "Mortgage Assistance Relief Services" (MARS).

The FTC's rule on advanced fees, at section 322.5, prohibits mortgage relief companies from collecting any fees until: (1) they have provided consumers with a written offer from their lender; (2) they have provided consumers with a written document from the lender describing the changes to the mortgage that would result if the consumer were to accept the offer; and (3) the consumer decides the offer is acceptable. 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; they are licensed in the state where the consumer or the dwelling is located; and they are complying with state laws and regulations governing attorney conduct related to the rule. Section 322.7 of MARS also exempts attorneys who deposit, in a client 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 client trust accounts.

Respondent's firm was a mortgage relief company as defined by the MARS rule and did not qualify for the exception provided by Section 322.7 of MARS. Further, in New Jersey, respondent did not meet the exemption provided by Section 322.7 of MARS, based on 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.

Respondent was principally engaged in debt adjustment because his practice was almost exclusively in the area of mortgage modification. Hence, he neither fell into the category of exemption provided in N.J.S.A. 17:16-1G(c)(2)(a), nor was exempt from licensure as a debt adjuster.

Beginning in 2010, respondent was affiliated with a for-profit loan modification company called Standard Holdings Management, LLC (SHM). Andres D. Garcia, Sr., the owner and chief executive officer (CEO) of SHM, was 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 these advertisements.

Once a client seeking a loan modification 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 would then transfer the file to SHM. Thereafter, SHM would process the paperwork for a loan modification on behalf of the client. Clients paid respondent an initial fee when signing the retainer agreement and received a fee schedule outlining monthly installment payments, also to be paid to respondent. Respondent received the payments before he obtained a written offer from the lender, and before the client either accepted or denied 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 the lender and to follow up 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 and then another $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. Respondent acknowledged, however, 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 through its solicitation activities on behalf of respondent.

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. If the offer was acceptable to the client, the client would sign it, and respondent would return the agreement to the lender.

Respondent never independently verified whether SHM was licensed to perform loan modifications in New Jersey, as required by the New Jersey debt adjuster statute.

On February 20, 2017, Eduardo Jimenez and his wife retained respondent to pursue a mortgage modification for their home in Lodi, New Jersey. The fee agreement established a $2,500 non-refundable fee, a rate of $450 per hour for attorney time, and a rate of $250 per hour for paralegal time. The payment structure required a $1,500 payment to be made upon execution of the fee agreement, and $750 payments per month, until the matter settled. On April 26, 2017, the lender filed a complaint for foreclosure on the Jimenezes' home.

On June 15, 2017, in connection with the foreclosure complaint, the clients entered into a second fee agreement with respondent which added that "[t]he firm agrees to prepare defenses for foreclosure docket #F-011197-17" and "will draft and file all answers or motions necessary upon your approval." This agreement also required a $950 payment upon execution and $950 per month until the matter was settled. Several weeks later, on July 24, 2017, respondent filed an answer to the foreclosure complaint on behalf of the Jimenezes.

Thereafter, on February 17, 2018, the lender filed a motion for summary judgment against the Jimenezes, which respondent failed to oppose. Consequently, on March 16, 2018, the lender's motion was granted. Despite repeated phone calls and visits to respondent's office, the Jimenezes were never informed that the lender had moved for summary judgment or that the motion had been granted. Eventually, after contacting the clerk's office on his own, the clients learned not only that the motion had been filed and granted, but also that it had gone unopposed. On May 1, 2018, the Jimenezes sent respondent a letter terminating the representation. Thereafter, subsequent counsel

for the Jimenezes was able to prevent the foreclosure and to negotiate a loan modification with the lender.

Over the course of the representation, from February 20, 2017 through May 1, 2018, the Jimenezes made payments to respondent totaling $13,250.[1] In accord with the first fee agreement, the clients paid respondent $1,500 on February 20, 2017, upon its execution, and $750 every month thereafter through May 16, 2017. Upon execution of the second fee agreement, the Jimenezes increased their monthly payments to $950 each month until their final payment, on May 16, 2018. One exception to the otherwise consistent $950 payments occurred on January 4, 2018, when the Jimenezes paid respondent $2,850. There is no explanation in the record regarding why an extra $1,900 was paid.

During the OAE's investigation of the Jimenez matter, respondent submitted two documents in support of his fees that show most of the work being done by Samantha Seda, a nonlawyer and SHM Legal Coordinator to the CEO, Garcia. Respondent had no control over Seda. The records reflect that, on December 6, 2017, respondent met with the Jimenezes to explain the process to obtain a mortgage modification and show no legal work performed by respondent on any date thereafter. Respondent never applied for a loan modification on behalf of the Jimenezes.

Based on the foregoing facts, respondent admitted having violated RPC 1.1(a) and RPC 1.3 by failing to apply for a loan modification on behalf of the Jimenezes. Respondent further admitted to having violated RPC 1.4(b) and (c) by failing to inform the Jimenezes about the motion for summary judgment.

As detailed above, respondent was subject to an earlier investigation by the OAE, which led to his eventual suspension for one year. Respondent acknowledged that, on November 28, 2017, during his second interview with the OAE in connection with the prior investigation, he was put on notice that his conduct violated MARS; and he was warned to familiarize himself with MARS and to "come into compliance." The previous investigation overlapped temporally with respondent's representation of the Jimenezes. Despite the explicit warnings from the OAE, respondent continued to charge and receive fees from the Jimenezes after that date. Respondent admitted that, after his November 28, 2017 interview, he received three checks from the Jimenezes, on January 4, February 19, and March 16, 2018, respectively, totaling $4,750.

Also during his November 28, 2017 interview with the OAE, respondent was directed to come into compliance with Opinion No. 716 of the Advisory Committee on Professional Ethics (ACPE), with respect to his affiliation with SHM and the provision of loan modification services. Nonetheless, respondent did not end that affiliation until two years later, when SHM dissolved. As a result of his continued misconduct, respondent admitted to having violated RPC 5.3(a), RPC 5.4(a) and (b), and RPC 5.5(a)(2).

[1] Subsequently, effective October 29, 2020, the Court again temporarily suspended respondent, for his failure to comply with a fee arbitration determination in connection with the Jimenez client matter. In re Munier, 244 N.J. 273 (2020). As of the date of the stipulation, that award remained unpaid.

Respondent further admitted that his collection of $13,250 of legal fees from the Jimenezes, prior to the clients accepting a mortgage modification plan from their lender, was in violation of Section 322.5 of MARS and RPC 1.15(a), RPC 1.5(a), and RPC 8.4(c). He also admitted that, in so doing, he acted as a debt adjuster without a license to do so, in contravention of N.J.S.A. 17:16G-1(c)(2) and N.J.S.A. 2C:21-19, and thereby violated RPC 8.4(b).

The New Jersey debt adjuster statute requires a license to conduct mortgage modifications. Respondent never independently verified that SHM was licensed to perform loan modifications. Respondent, thus, failed to supervise the conduct of the non-legal business SHM and the nonlawyer, Garcia, both of which 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 of a for-profit loan modification company, whether the attorney be considered 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. The Joint Opinion also make clear that, when an attorney shares, with a for-profit loan modification company, a fee charged to a homeowner for loan modification services, as respondent did here, 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 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).

The Joint Opinion 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). This RPC violation was uncharged and, therefore, was not considered by the Board.

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). A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. See 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 or found guilty of a criminal offense).

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.

In further violation of MARS, Velahos did not provide clients with a written offer from their lender, describing the changes to the mortgage that would result, and which the consumer 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 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.

The Board determined that, although Velahos' infractions ordinarily would result in a reprimand or a censure when considered on their own, the appropriate quantum of discipline was a six-month suspension, based on the fact that he had received a censure for similar conduct in the past; the fact that he committed much of his conduct, knowing not only that, in some cases, it was illegal, but also that, in almost all instances, it was unethical; and the significant pattern of misrepresentations made to clients. Id. at 9.

In respondent's prior disciplinary matter, pursuant to the precedent of Velahos, the Board determined that a censure was the appropriate baseline of discipline for respondent's misconduct involving at least four clients and the illegal advance fees of $23,129. In the Matter of William J. Munier, DRB 19-207 (January 15, 2020) (slip op. at 43).

Respondent, however, had engaged in additional, serious misconduct. Specifically, respondent 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. Ibid.

Further, respondent had 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 their behalf. He regularly failed to communicate with his clients and all but abandoned them. Ibid. 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. Id. at 43-44. A very similar pattern is present here in connection with the Jimenez matter.

Based on respondent's pattern of neglecting matters, the Board enhanced the quantum of discipline to a three-month suspension. Id. at 45. The Board further enhanced to discipline to a one-year suspension based on respondent's failure to answer the complaint followed by his filing of a motion to vacate the resulting default, which the Board granted, and then failing thereafter to file a verified answer and allowing the matter to proceed by a way of default a second time. Ibid.

Respondent's misconduct in the instant matter was not as egregious as that of Velahos – 117 clients – or even that of his own misconduct in his previous matter, which encompassed six client matters and proceeded by way of default. Therefore, a censure is still the baseline discipline for respondent's misconduct. As always, progressive discipline was a consideration for the Board, especially considering respondent's misconduct is identical to that which he had previously committed.

Here, however, the Board was confronted with a respondent who not only committed the same misconduct for which he received prior discipline but was also warned to bring his practices into compliance with State and Federal law and failed to do so. Worse, he continued his affiliation with SHM for another two years beyond his 2017 interview with the OAE. He was more than aware of his misconduct but proceeded anyway. This brazen misconduct justified a further significant enhancement of discipline.

In mitigation, respondent explained that, during the time relevant to this matter, he was dealing with the prolonged illness of his wife, who was suffering from a severe form of breast cancer and eventually passed away, on April 14, 2019. Respondent also submitted letters attesting to his community involvement and pro bono legal activities through his church and Legal Services of New Jersey.

Accordingly, the Board determined to impose a three-month suspension to be served consecutively to his previous discipline, imposed in connection with DRB 19-207.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 13, 2020 (redacted).

2. Notice of motion for discipline by consent, dated October 13, 2020 (confidential).

3. Stipulation of discipline by consent, dated October 14, 2020 (redacted).

4. Stipulation of discipline by consent, dated October 14, 2020 (confidential).

5. Affidavit of consent, dated September 21, 2020.

6. Ethics history, dated April 22, 2021.

Very truly yours,

Johanna Barba Jones
Chief Counsel

JBJ/trj
Enclosures

c: (w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (e-mail and interoffice mail)
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