

SUPREME COURT OF NEW JERSEY
DISTRICT XIII ETHICS COMMITTEE

DISTRICT XIII ETHICS COMMITTEE, :
: DOCKET NO: XIII-02-002E
Complainant, :
: vs. :
: DISCIPLINARY ACTION
ROBERT J. BERNOT, ESQ. :
: TRANSCRIPT OF DECISION
Respondent. :

LAURIE RUSH MASURET, ESQ.
75 Claremont Avenue
Bernardsville, New Jersey
Wednesday, February 5, 2003

BEFORE:

LAURIE RUSH MASURET, ESQ., Panel Chair
WILLIAM COURTNEY, ESQ., Attorney Member
RICHARD G. WALLACE, Public Member

APPEARANCES:

ROSANNE S. DE TORRES, ESQ., Presenter
MICHAEL A. CERONE, JR., ESQ. Representing The Respondent

Reported by:

FRANK J. BIELY, C.S.R.

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25B Vreeland Road
Suite 301
Florham Park, N.J. 07932
Tel: (973) 410-4040 Fax: (973) 410-1313

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MS. MASURET: Okay. We're going to put our decision with regard to the respondent's motion to dismiss which is made pursuant to Rule 1:20-5(c), subsection 2, and after considering the written evidence and the testimony, we are going to grant that motion, and we find that based upon the failure to comply with Rule 1:20-C subsection C -- 6(c)2b, which is a standard of clear and convincing evidence, that there has been no showing of misconduct on any of the four rules of professional conduct cited in the complaint.

Now, let me just go through these rules so that you understand what our ruling is and what the findings of fact were - or are I should say. There's been a violation of gross -- gross neglect cited, which is a violation of RPC 1.1a, and RPC 1.15b, and it's our conclusion after looking at the evidence and considering that there has been correspondence in this matter and attempts by Mr. Bernot to determine to whom the money should be paid that he did not neglect the funds. The funds are still in his account, and I do not think that that was really ever challenged. It was not the subject of the complaint. But Mr. Bernot had an obligation to his client to make sure that there were no liens on the house, and that was not really confirmed until July 2001 pursuant to the testimony of Mr. Abrams. Although there was a discharge of debtor, Mr. Abrams testified that until he obtained the order of the court in July of 2001, he himself could not say that there was no lien on the property, and I think that is

actually confirmed by the fact that the title policy -- the title policy wasn't issued until August of 2001.

There's then correspondence that was submitted, written by Mr. Bernot in August 2001 where he says that he intends to release the funds, and I also may say that Mr. Bernot never seemed to have had any interest in the money or he didn't have any -- I know motive is not an issue, but he never did anything to try to take the money himself. I don't think that was an issue in this case. But in these letters he says that he now needs to resolve the issue with the bankruptcy trustee, and he perceives that there may be some interest as a result of the bankruptcy proceedings.

Now, what's interesting is Mr. Abrams tried to get Mr. Bernot to release the money early on when he got the discharges, and he then testified that two years later, that's when the lien was really released. So there's not a lot of credibility in Mr. Abrams' testimony whereby he can advise Mr. Bernot that the money is exempt. I don't think that Mr. Bernot can rely on what Mr. Abrams said, and I also think -- and the panel thinks, I should say, that it was really Mr. Abrams' obligation to his client who is actually the grievant in this case, it's not Mr. Bernot's client, but Mazzetta was Abrams' client, and he on behalf of his client should have satisfied the obligations to get those moneys released.

Mr. Bernot perceived that there was still an interest by the trustee, and not being a bankruptcy attorney, he was then relying

on the source, the best source for that information, who would have been the trustee. He writes a letter to the trustee. The trustee responds on September 5, 2001, by letter, but only responds as to one of the Mazzettas, Mr. Mazzetta. It's been brought up that maybe only Mr. Mazzetta had an interest, but as Mr. Bernot would have a fiduciary obligation to his client, and then a responsibility once he became the escrow agent not to release money to which somebody else may have an interest, he then had an obligation actually to find out from the trustee whether there was any further responsibility on his part, which he attempted to do.

Now, Mr. Frost apparently closed his file, but only gave him a partial response, and there's correspondence all the way up to February 2, 2002, which -- which is actually simultaneous with when this investigation started, correspondence to Mr. Frost requesting guidance as to what he should do, should he release the money, should he file an interpleader. He was at a loss as to what to do, and the panel doesn't -- does not agree that there was any independent responsibility of Mr. Bernot to go forward and file a motion to get the order which Mr. Abrams did or to get another order from the bankruptcy court or anything of that nature.

So as a result of those facts, it does not appear that it's been established by clear and convincing evidence that there has either been gross neglect, a pattern of neglect, or the other rule was a lack of competence or failure of safekeeping on the part of

Mr. Bernot, so there's no misconduct in that regard on any of those three rules.

Now, with regard to the claim of a lack of cooperation, which is Rule 1:20, this is an unusual fact pattern, and the question comes in because Ms. DeTorres was put in a position of being investigator, and having been an adversary of Mr. Bernot, she was not in a good position, and neither was he, and so when he received correspondence from Ms. Marino indicating that Ms. DeTorres had a conflict, there's no reason not to believe that Mr. Bernot didn't perceive that there wasn't a conflict or believed that Mr. Welchman or somebody else was going to be assigned. So there was a legitimate belief on his behalf that he didn't need to respond to those letters.

The evidence indicates that there was conversations back and forth and that there was no response in writing, but it would seem unusual to respond to an adversary, especially with the Parker claim pending at that time, on an investigation in which your adversary is on the other side of it and also the investigator. It almost seems that the Office of Attorney Ethics should have cleared that up, and so that gives rise to a legitimate belief of Mr. Bernot on his part that he didn't need to respond to Ms. DeTorres. So I don't think that it's been proven by clear and convincing evidence that he just simply refused to cooperate in responding to the requests of Ms. DeTorres.

Is there anything that either of the other panelists would like to add that I've left out?

MR. COURTNEY: Well, I think some other - factors that added into our decision on the failure to cooperate is the fact that there was testimony that in addition to receiving the information from the secretary of the ethics committee that there was communications by the other attorney who was going to substitute in and instructing him not to take any action and he would contact him in the future. So that again led Mr. Bernot to believe that he didn't have to respond.

MS. MASURET: And that's our decision.

CERTIFICATE

I, FRANK BIELY, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a verbatim transcript of the testimony of the aforementioned first duly sworn by me.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which the deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

/s/ Frank Biely
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