

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH DEPARTMENT

In re Crumb

50 A.D.3d 1310 (N.Y. App. Div. 4th Dep't 2008) · Decided April 11, 2008

SUMMARY

The New York Appellate Division, Fourth Department, granted a petitioner's motion for default judgment in an attorney disciplinary proceeding after the respondent failed to respond to charges or the motion. The court found that the respondent failed to cooperate with misconduct investigations and suspended him from practicing law until further order of the court.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Cardona, P.J.; Carpinello, J.; Rose, J.; Lahtinen, J.; Malone Jr., J.
JURISDICTION	New York
DECIDED	April 11, 2008
DISPOSITION	other
PROCEDURAL POSTURE	An attorney disciplinary proceeding in which the respondent failed to answer the petition of charges or oppose the petitioner's motion for default judgment. The Appellate Division granted the motion, deemed the charges admitted, found the respondent guilty of professional misconduct, and suspended him until further order.
PRECEDENTIAL VALUE	Published opinion; precedential New York Appellate Division decision

TOPICS

- default judgment
- default
- sanctions
- appellate procedure
- civil procedure

PRACTICE AREAS

- attorney discipline
- professional responsibility
- appellate procedure

QUESTIONS PRESENTED

1. Whether the respondent's failure to answer the disciplinary petition or oppose the motion for default judgment permitted the court to deem the charges admitted.

2. Whether the petitioner's affidavit proof and the admitted charges established professional misconduct.
3. Whether the respondent's failure to cooperate with a disciplinary investigation and failure to appear for an oral admonition warranted suspension until further order of the court.

HOLDINGS

1. A respondent who fails to answer a personally served disciplinary petition or oppose a motion for default judgment is deemed to have admitted the charges.
2. The respondent was guilty of the charged professional misconduct because the admitted charges and the petitioner's supporting proof established that he failed to cooperate with disciplinary investigations and failed to appear as directed for an oral admonition.
3. Failure to cooperate with a disciplinary investigation and failure to appear as directed for an oral admonition warranted suspension from the practice of law until further order of the court.

KEY QUOTATIONS

“The failure to do so constitutes misconduct in and of itself and will be met with the imposition of discipline by this Court” (1311)

FACTUAL BACKGROUND

The respondent, an attorney admitted to practice in 1981, maintained a law office in Binghamton, New York. He failed to cooperate with the petitioner's investigation of two inquiries and later failed to appear as directed for an oral admonition concerning that failure. He did not respond to the disciplinary petition or the motion for default judgment, although both were personally served.

PROCEDURAL HISTORY

The petitioner personally served the respondent with a petition of charges and a subsequent motion for default judgment. The respondent did not answer or otherwise respond. Based on the respondent's default and the petitioner's affidavit proof, the court granted the motion, found the charged misconduct established, and imposed an indefinite suspension.

DISPOSITION

other

CASES CITED

- Matter of Lucas, 32 A.D.3d 1150 (N.Y. App. Div. 2006)
- Matter of Feit, 156 A.D.2d 810, 811 (N.Y. App. Div. 1989)

OPINION

PER CURIAM.

Per Curiam. Respondent was admitted to practice by the Appellate Division, Fourth Department, in 1981. He maintains a law office in the City of Binghamton, Broome County. Respondent has not answered or otherwise replied to a petition of charges or to petitioner's subsequent motion for a default judgment, both of which were personally served upon him.

In support of its motion, petitioner has filed proof by affidavit of the facts constituting alleged misconduct. Under the circumstances, respondent is deemed to have admitted the charges and we grant petitioner's motion (see e.g. *Matter of Lucas*, 32 AD3d 1150 [2006]). Further, based on such admission and the proof submitted by petitioner, we find respondent guilty of the charged misconduct.

In violation of the attorney disciplinary rules as charged and specified in the petition (see Code of Professional Responsibility DR 1-102 [a] [5], [7] [22 NYCRR 1200.3 (a) (5), (7)]), respondent failed to cooperate with petitioner's investigation of two inquiries. He thereafter failed to appear as directed by petitioner to be orally admonished for his failure to cooperate (see 22 NYCRR 806.4 [c] [1]).

We conclude that respondent's misconduct warrants his suspension until further order of this Court. We again emphasize the Court's expectation that attorneys will provide complete cooperation with petitioner in its investigation of alleged misconduct.

The failure to do so constitutes misconduct in and of itself and will be met with the imposition of discipline by this Court (see *Matter of Feit*, 156 AD2d 810, 811 [1989]). Cardona, P.J., Carpinello, Rose, Lahtinen and Malone Jr., JJ., concur. Ordered that petitioner's motion for a default judgment is granted; and it is further ordered that respondent is found guilty of the professional misconduct set forth in the petition; and it is further ordered that respondent is suspended from the practice of law, effective 20 days from the date of this order, and until further order of this Court; and it is further ordered that, for the period of suspension, respondent is commanded to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another; respondent is hereby forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto; and it is further ordered that respondent shall comply with the provisions of the Court's rules regulating the conduct of suspended attorneys (see 22 NYCRR 806.9).