

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

- 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)