STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM
Hearing Panel No. Two

In Re: PRB File No. 2000.217

DECISION NO. 21

This matter came before hearing Panel No. Two, comprising Michael Filipiak, Douglas Richards, and Lawrin Crispe, at Springfield, Vermont, on July 3rd 2001. Present at the hearing was Michael Filipiak and Douglas Richards. Present by telephone was Lawrin Crispe, John C. Holler, Esq. and Beth DeBernardi, Deputy Disciplinary Counsel. The matter for consideration was a Hearing on Sanctions, as noticed by Hearing Order dated June 28th 2001.

Filed and received by members of the Panel was Stipulation of Facts, Joint Recommendation as to Conclusion of Law and Joint Recommendation as to Sanction, with Memorandum.

Beth DeBernardi, Deputy Disciplinary Counsel and John C. Holler, Esq. each made oral arguments.

FACTS

The following facts are found as stipulated by the parties:

1. The Respondent is an attorney licensed to practice law in the State of Vermont.
2. The Respondent was admitted to practice law in the State of Vermont in 1987.
3. Complainant is an attorney in Washington, D.C.
4. In December of 1997, the Complainant became involved in a foreclosure proceeding that was pending in the Rutland Superior Court.
5. The foreclosure action had been filed by the Vermont National Bank (hereinafter "VNB") against the owners of a condominium at the Killington Ski Area and the Fleet Bank (hereinafter "Fleet").
6. VNB held a first mortgage on the condo and Fleet held a second mortgage.
7. The owner of the condominium was a friend of the Complainant's.
8. The Complainant agreed to purchase VNB's interest in the condominium.
9. After purchasing VNB's interest in the condominium, the Complainant intended to be substituted for VNB as a party in the foreclosure proceeding.
10. The Complainant's aim was to foreclose all claims on the property so that he could receive clear title and sell the condominium.
11. In December of 1997, the Complainant retained the Respondent to complete the following legal work: (a) to substitute the Complainant for VNB as a party in the foreclosure proceeding; and (b) to foreclose all junior claims on the condominium so that Complainant would have clear title to the property.

12. The Respondent knew that the Complainant wanted to clear the title in order to sell the condominium as soon as possible.

13. By letter dated March 29, 1999, the Complainant asked the Respondent for an update on the case.

14. By letter faxed on April 19, 1999, the Respondent stated to the Complainant that he would complete the foreclosure within a few days.

15. At the time, the Respondent had yet to substitute the Complainant for VNB in the foreclosure case.

16. In April of 1999, the Respondent started working on the foreclosure and asked a broker involved in the transaction for paperwork that he intended to file with a motion to shorten the redemption period.

17. The paperwork did not arrive as soon as the Respondent had anticipated.

18. The Respondent failed to follow-up on his request for the paperwork.

19. Subsequent to asking the broker for the paperwork, the Respondent did no further work for the Complainant.

20. By letter dated June 23, 1999, the Complainant wrote to the other attorneys in the Respondent's firm and asked why he had not heard anything from the Respondent.

21. In July of 1999, the Complainant found a person who agreed to buy the condominium.

22. The Complainant was unable to sell the property because he did not have clear title due to the unresolved foreclosure proceeding.

23. In July of 1999, another attorney in the Respondent's firm took over the file and eventually completed the work that the Complainant had retained the Respondent to do.

24. The foreclosure proceeding became final in December 1999.

25. Less than a week later, the Complainant sold the condominium to the buyer he had located in July of 1999.

26. In the two years it took to complete the foreclosure and the sale of the property, the Complainant incurred expenses related to owning the condo.

27. The Respondent did not promptly attend to the Complainant's matter because he had not received a $1,000 fee that he felt the Complainant had agreed to provide to him. The Complainant does not believe that he agreed to provide a $1,000 retainer. Rather, he believes that the Respondent agreed to perform the work for a $1,000 flat fee.

28. The Complainant and the Respondent's firm reached a financial settlement that compensated the Complainant for the attorney's fees he incurred as a result of the Respondent's neglect.

CONCLUSION OF LAW AND DISCUSSION ON SANCTION

Panel No. Two makes the following Conclusions of Law:

1. The misconduct at issue in this case took place prior to September 3, 1999 and as such the Code of Professional Responsibility applies.

2. The Code of Professional Responsibility prohibits an attorney from neglecting a legal matter entrusted to him DR 6-101(A)(3). The respondent violated DR 6-101(A)(3) by neglecting the transaction entrusted to him by the Complainant. Hearing Panel No. Two is not persuaded that a public reprimand is warranted, nor appropriate applying the ABA Standards for Imposing Lawyer Sanctions in this case. We find little, if any,

damage to the Complainant who is himself a practicing lawyer with a large and sophisticated Washington, D. C. law firm. We believe there is equal probability that much of the delay was as a result of a misunderstood fee arrangement. We find no evidence of malice or willful misconduct on the part of the Respondent. While Respondent's conduct cannot be condoned, we believe a private admonition is more appropriate under the circumstances.

It is the Decision of the Hearing Panel No. Two, based upon the forgoing, that the sanctions to be imposed in this matter is as follows: A private admonition.

Dated at Springfield, in the County of Windsor and State of Vermont, this 23rd day of July 2001.

HEARING PANEL NO. TWO
/s/
_____
Lawrin P. Crispe

/s/
_____
Michael Filipiak

/s/
_____
Douglas Richards