

19 PRB

[5-Jun-2001]

PROFESSIONAL RESPONSIBILITY BOARD

Hearing Panel No. Two

In Re: Arthur Heald, Esq.

PRB File Nos. 2000.197 & 2001.051

DECISION NO. 19

This matter was before Hearing Panel No. Two, comprising Michael Filipiak, Lawrin Crispe and Douglas Richards, at Springfield, Vermont, on May 10, 2001.

Present at the Hearing, in addition to the members of the Panel, were Arthur Heald, Esq., Peter F. Langrock, Esq. and Michael Kennedy, Disciplinary Counsel.

The matter for consideration was a Hearing On Sanctions, as noticed and by Amended Notice Of Sanctions Hearing, dated March 30, 2001.

Filed and received by members of the Panel was Disciplinary Counsel's Recommended Conclusions of Law, dated March 26, 2001 and Disciplinary Counsel's Sanction Recommendation, dated March 26, 2001.

There were no filings by or on behalf of the Respondent.

By agreement, and under oath, the Complainant, Lawrence Lewin, participated by telephone.

Michael Kennedy, Disciplinary Counsel, and Peter F. Langrock, Esq. made opening and closing statements.

Arthur Heald and Lawrence Lewin testified under oath.

Petition of Misconduct was filed by Disciplinary Counsel on or about January 8, 2001 and served by Certified Mail upon Respondent.

No Answer was filed.

Disciplinary Counsel's Motion To Deem Respondent Has Admitted Charges in Petition Of Misconduct, dated February 13, 2001, was granted by the Panel on February 20, 2001 and charges and allegations of the Petition were deemed admitted.

The following facts are found by Panel No. Two:

The Respondent is an attorney licensed to practice law in the State of Vermont.

Lawrence Lewin retained the Respondent to represent him in Real Estate transaction.

Mr. Lewin purchased property for \$100,000.00.

At the closing, the Respondent withheld \$10,000.00 from the purchase price in anticipation of the seller's tax liabilities.

At the closing, the Respondent agreed to remit the \$10,000.00 tax liability to the IRS.

Respondent did not remit the tax withholding on time.

When Respondent finally remitted the \$10,000.00 that had been withheld at the closing, he erroneously informed the IRS that he was doing so on behalf of Mr. Lewin rather than for the seller.

By notice dated February 7, 2000, the IRS informed Mr. Lewin that he was delinquent on a \$10,000.00 tax liability

arising from the Real Estate transaction in which he had been represented by the Respondent.

The delinquency was due to the Respondent's failure to remit the \$10,000.00 in a timely fashion.

The IRS assessed Mr. Lewin a delinquency penalty.

Mr. Lewin wrote several letters to Respondent in which he asked him to clear up the delinquency issue with the IRS.

The Respondent did not respond to Mr. Lewin's letters.

The Respondent did not take any steps to resolve Mr. Lewin's predicament.

The IRS continued to send delinquency notices to Mr. Lewin.

After failing to receive a response from the Respondent, Mr. Lewin paid the delinquency on his own. He paid approximately \$1,800.00.

Mr. Lewin commenced a small claims action against the Respondent.

In the small claims action, Mr. Lewin requested relief in an amount equal to the delinquency that the IRS would assess him.

The Franklin County Small Claims Court entered judgment against the Respondent in the amount of \$1,775.93. Of that, \$1,701.70 represented the damages and interest caused by the Respondent.

Upon receiving the Order, Mr. Lewin executed the judgment on the Respondent's bank account.

Upon executing the judgment, Mr. Lewin received approximately \$1,700.00, approximately \$100.00 less than he had paid to the IRS to satisfy the delinquency.

To prosecute the small claims action, Mr. Lewin incurred legal fees and expenses of nearly \$1,400.00.

Mr. Lewin filed an ethics complaint against the Respondent.

By letter dated July 18, 2000, Bar Counsel asked the Respondent to file an Answer to Mr. Lewin's Complaint.

By letter dated August 9, 2000, Disciplinary Counsel asked the Respondent to file an Answer to Mr. Lewin's Complaint.

By letter dated September 7, 2000, Disciplinary Counsel asked the Respondent to file an Answer to Mr. Lewin's Complaint.

To date, the Respondent has not provided the Office of Disciplinary Counsel with an Answer to Mr. Lewin's Complaint.

The Respondent in 1995 was publicly reprimanded for neglecting a probate case. In Re Heald, 163 Vt. 640 (1995)

In 1994 the Respondent was admonished after having been found to have neglected a client matter. In Re PCB File No. 93.14, PCB #65, 1 Vt.P.C.R. 118.

Panel No. Two makes the following Conclusions of Law:

Respondent has violated Rule 1.3 of the Vermont Rules of Professional Conduct in that a lawyer shall act with reasonable diligence and promptness in representing a client.

Respondent has violated Rule 1.4(a) of the Vermont Rules of Professional Conduct in that a lawyer shall keep a client reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

Respondent has violated Rule 8.4(d) of the Vermont Rules of Professional Conduct in that he engaged in conduct that is prejudicial to the administration of justice.

It is the Decision of Hearing Panel No. Two, based upon the foregoing, that the Sanctions to be imposed in this matter, as to Arthur Heald, are as follows:

Arthur Heald shall reimburse and pay to Lawrence Lewin the sum of \$1,500.00, as reimbursement for legal fees and expenses incurred by Mr. Lewin in this matter.

Arthur Heald's license to practice law in the State of Vermont shall be suspended for the period of sixty (60) days.

Dated at Springfield, in the County of Windsor and State of Vermont this 24th day of May, 2001.

HEARING PANEL NO. TWO

FILED JUNE 5, 2001

/s/

Douglas Richards, Chairman

/s/

Lawrin P. Crispe, Esq.

/s/

Michael Filipiak

In re Heald (2001-264)

[Filed 18-Jan-2002]

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-264

JANUARY TERM, 2002

In re Arthur Heald, Esq. } APPEALED FROM:
}
}
} Professional Responsibility Board
}
}
} DOCKET NOS. 2000-197 & 2001-051

In the above-entitled cause, the Clerk will enter:

Respondent Arthur Heald appeals from the recommendation of the Office of Disciplinary Counsel to suspend him from the practice of law for sixty days. Bar counsel and respondent have submitted a stipulation in which respondent agrees to a public reprimand and to pay Laurence Lewin the sum of \$1500 as reimbursement for legal fees and costs. In accordance with the stipulation, therefore, we reverse.

Arthur Heald is hereby publicly reprimanded for violations of Rule 1.3, 1.4(a), and 8.4(d) of the Vermont Rules of Professional Conduct.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice