

125 PRB

[Filed 9/24/09]

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In Re: PRB File No. 2009.148

Decision No. 125

The parties filed a Stipulation of Facts and Joint Recommendations as to Conclusions of Law and Sanctions. Respondent also waived certain procedural rights, including the right to an evidentiary hearing. The Hearing Panel accepts the stipulated facts and the recommendations and orders that Respondent be admonished by Disciplinary Counsel for neglecting a client's case and for failing to keep his client reasonably informed in violation of Rules 1.3 and 1.4 of the Vermont Rules of Professional Conduct.

**Facts**

This case arises out of a failure to deal appropriately with property tax adjustment issues arising after a real estate sale. In May of 2007, Complainant decided to sell her condo without a

realtor. She contacted Respondent's office and asked him to provide legal assistance. He agreed, and sent her a purchase and sale agreement for her use. By mid-May, Complainant had found a buyer and they entered into a contract. Complainant contacted Respondent and told him that the closing would be on May 31, 2007, and he assured her that he could meet that deadline. On May 17, 2007, the Buyer's attorney faxed a request to Respondent for any tax adjustment worksheet on the property.[\[1\]](#)

Respondent provided Buyer's attorney the deed, property transfer return, smoke detector certificate, mortgage payout amount, and his bill on May 30, 2007. He did not provide information on his client's property tax adjustment, nor did he discuss the issue with his client or with the Buyer's attorney.

The sale closed on May 31, 2007. The sale was handled by Buyer's attorney. Respondent did not attend the closing, nor did his client request him to do so. It is not uncommon for a seller to attend a closing without an attorney.

In July of 2007, the State sent Complainant's property adjustment check in the amount of \$1584.00 directly to the Town. That amount was deducted from the property tax bill for the condo for the tax year July 1, 2007, through June 30, 2008. Thus, the Buyer received the benefit of the property tax adjustment, and Complainant received no benefit.

Complainant did not learn that the tax adjustment had not been accounted for at closing until she was preparing her tax return in the spring of 2008. On April 20, 2008, Complainant wrote to Buyer's attorney asking her to remit a check for \$1584.00. The attorney declined to do so. In June, Complainant spoke with the Buyer's attorney, who informed her that she had not

received the credit at closing because her office had not received any request for credit from Respondent.

In late-June of 2007, Complainant's husband mailed Respondent information about the problem and asked that he get in touch with Complainant. Respondent did not answer the letter. On July 2, 2008, Buyer's attorney sent a letter to Respondent, informing him of the situation. On July 15, 2008, Complainant called Respondent and they spoke for nine minutes. Complainant explained the tax adjustment issue. Respondent told her that he was in the process of moving his office and that he would need time to retrieve her file and review it.

Between August of 2008 and November 24, 2008, Complainant called Respondent four times and left messages. In the final message, Complainant informed Respondent that the Buyer was in the process of selling the condo, and that Complainant was worried that she would not be able to recoup her money after the sale. Respondent did not answer any of those messages.

On December 2, 2008, Complainant called Respondent and left a message with his secretary. Respondent did not return the call. On Friday, January 9, 2009, Complainant called Respondent and he answered the phone. Complainant explained the fact that the condo was being sold and Respondent agreed to write to Buyer's attorney seeking payment of the money. He agreed to send the letter out on the following Monday, with a copy to Complainant.

Complainant did not receive a copy of any such letter, and on January 23, 2009, called Respondent's office and spoke to his secretary and asked for a copy of the letter and a return phone call. She did not hear from Respondent, nor did he respond to four additional calls that Complainant placed to his office in February of 2009. Late in February of 2009, Complainant

learned from the realtor handling the sale that the closing had occurred in late-January, and that the Buyer had moved to Nevada. Complainant called Respondent to so inform him.

Respondent did not write the letter to Buyer's attorney in January as he had promised to Complainant, nor did he take any further steps to follow-up on the situation.

During the nine month period that Complainant sought Respondent's help, she continued to believe that he would help her and, thus, she did not take other steps on her own or with another attorney to attempt to recoup the property tax adjustment. By the time that Complainant realized that Respondent was not going to assist her, the Buyer had moved to Nevada.

There was the potential for injury as a result of Complainant's action (or lack thereof), in that Complainant's chances for recouping the tax adjustment were diminished by the Buyer's subsequent sale of the property and move to Nevada. However, it is unknown whether Complainant would have actually recouped any money had action been taken promptly. Complainant's only other injury was her frustration over unrequited efforts to communicate with Respondent for a period of months.

In mitigation, Respondent has no prior disciplinary record, has cooperated with the disciplinary proceedings, had no selfish or dishonest motive, and has expressed remorse. In aggravation, Respondent was admitted to practice in 1975, and thus has substantial experience in the practice of law.

## **Conclusions of Law**

The parties jointly recommended that the Panel find that Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct. Rule 1.3 requires that an attorney act with reasonable diligence and promptness in representing a client. Complainant contacted Respondent numerous times between June of 2008 and February of 2009 to seek his help. Respondent provided none of the requested assistance, and thus violated Rule 1.3.

Rule 1.4 requires that an attorney keep a client reasonably informed about the status of a matter and promptly comply with requests for information. Respondent did not return Complainant's repeated calls, and did not sufficiently explain the situation to Complainant so that she could make an informed decision on how to proceed. His lack of action in that regard violates Rule 1.4.

## **Sanction**

In reaching our decision to accept the joint recommendation for admonition by disciplinary counsel, we have looked at the ABA Standards for Imposing Lawyer Sanctions and Vermont case law.

### ABA Standards for Imposing Lawyer Sanctions

The Vermont Supreme Court has long approved the use of the ABA Standards in determining the appropriate sanction. "When sanctioning attorney misconduct, we have adopted the ABA Standards for Imposing Lawyer Discipline [*sic*] which requires us to weigh the duty

violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors." ( In re Andres, 177 Vt. 511, 857 A.2d 803) (2004). Under the schema of the ABA Sanctions, we must first arrive at a presumptive sanction and then determine whether the existence of aggravating or mitigating factors warrant a different sanction.

In this matter, the presumptive sanction could possibly be as severe as a public reprimand. Section 4.43 provides that: "[r]eprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury." In this case the only alleged injury, Complainant's frustration, was relatively minor. There are insufficient facts to determine if Complainant suffered any actual injury.

Having considered this potentially presumptive sanction, we now look to aggravating and mitigating factors. There is only one aggravating factor, Respondent's substantial experience in the practice of law. *ABA Standards §9.22(i)*. There are several mitigating factors. Respondent has no prior disciplinary record, *ABA Standards §9.32(a)*; has cooperated with the disciplinary proceedings, *ABA Standards §9.32(e)*; had no selfish or dishonest motive, *ABA Standards §9.32(a)*; and has expressed remorse, *ABA Standards §9.32(l)*.

In weighing these factors, the facts of this case, as well as relevant precedent, we conclude that the mitigating factors are such that a private admonition is appropriate.

Vermont Case Law

In PRB Decision No. 107 (2008), the respondent failed to promptly obtain a mortgage discharge for his client after closing. It was several years before the discharge was obtained. There were a number of mitigating factors and the Panel imposed admonition.

In PRB Decision No. 94 (2006), an attorney was admonished for failure to return fourteen phone calls over a period of four months. In this case the attorney did the work, but failed to communicate with the client.

In PRB Decision No 68 (2004), the respondent was admonished for failure to deal with issues arising out of a real estate closing. In this case, however, there was no actual financial injury and respondent negated any potential injury (by voluntarily paying Complainant \$1000.00 out of his own pocket, which satisfied Complainant.) Arguably, the facts in the present case are more serious than some of those prior Hearing Panel decisions. On the other hand, reprimand is also consistent with the ABA Standards, even absent consideration of the mitigating factors. After due consideration of the mitigation factors, and giving some weight to the fact that Disciplinary Counsel joins in the recommendation for admonition, we hereby accept the recommendation.

### **Order**

For the foregoing reasons, Respondent shall be admonished by Disciplinary Counsel for violation of Rules 1.3 and 1.4 of the Vermont Rules of Professional Conduct.

Hearing Panel No. 6

/s/

Dated: \_\_\_\_\_

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Alison Bell, Esq., Chairperson

/s/

Dated : \_\_\_\_\_

\_\_\_\_\_  
Eric A. Johnson, Esq.

/s/

Dated: \_\_\_\_\_

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Lisa Ventriss

107006

**FILED SEPTEMBER 24, 2009**

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[\[1\]](#) Before 2007, the State sent property tax adjustment checks directly to the applicant, but beginning in 2007, payments were sent to the town clerks. This practice created some uncertainty among real estate practitioners, as to the best way to apportion such payments at closing, and the bar had not yet developed a standard practice. The practice of the Buyer's attorney was to ask the Seller's attorney if the Seller was seeking a credit for an adjustment payment expected after closing so that the amount could be credited to the Seller on the closing statement.