

107 PRB

[Filed 26-Feb-2008]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No 2007.242

Decision No: 107

Respondent is charged with failing to promptly obtain a mortgage discharge after a real estate closing in violation of Rule 1.3 of the Vermont Rules of Professional Conduct. The parties have filed a stipulation of facts as well as recommended conclusions of law and sanctions. Respondent has also waived certain procedural rights including the right to an evidentiary hearing. We accept the stipulated facts and the recommendations and order that Respondent be admonished by Disciplinary Counsel for violation of Rule 1.3.

Facts

Respondent represented complainant who was the buyer in a real estate purchase which closed in July of 2000. Respondent had searched the title prior to closing and found a private mortgage on the property dating back to 1986. The sellers' attorney advised that there was no balance due and that seller's attorney would obtain a discharge but she had not done so by the time of the closing. The parties agreed to go forward with the closing and the sellers' attorney agreed to continue working to obtain the discharge.

Respondent held onto complainant's deed after it was recorded. He planned to check the land records at a later date to confirm the recording of the discharge and then to send the deed and other documents to his client.

Respondent checked the land records in November of 2000. He did not find the discharge and wrote to the seller's attorney to inquire about the status. The sellers' attorney did not respond to the letter, and Respondent followed up with one or two phone calls in 2001. In these conversations the sellers' attorney said that she would obtain the discharge as soon as she could.

It was not until 2002 that complainant contacted Respondent about the property. Complainant did not recall the discharge issue but wanted to obtain her documents. They discussed the necessity for the discharge, and Respondent stated that he would deal with it. Respondent again contacted the sellers' attorney who again stated that she would obtain the discharge.

In January of 2003 Respondent checked the land records and found no discharge. Again he contacted seller's attorney, and again she agreed to obtain the discharge.

At some point in 2004 complainant contacted Respondent for an update. Respondent told her that no discharge had been recorded, and that he would work to resolve the problem.

In October of 2004 Respondent check the land records, found no discharge, and in January of 2005 again wrote to seller's attorney. He followed up with a phone call and learned that the seller's attorney was having difficulty locating the lenders. Respondent made an effort to find them via the internet but was unsuccessful.

In January 2006 Respondent sent complainant her warranty deed, noting that he had not been able to obtain the discharge. In the letter he outlined her options and asked her to contact him to discuss how to proceed.

At some point in 2006, complainant decided to buy property in Washington State. Her plan was to finance this purchase by borrowing money against the Vermont property. Complainant recalls contacting Respondent's office in 2006 at which time she spoke to someone other than Respondent.

Complainant looked at property in Washington and talked to the Claremont Savings Bank about obtaining a loan secured by the Vermont property. The bank declined to make the loan because complainant did not have clear title to the Vermont property. Complainant continued to look for property in Washington and in the spring of 2007 located property she wanted to buy. In early May of 2007 she contacted Respondent and told him of her plans to move. Respondent advised that he could file a petition with the probate court to have the prior mortgage discharged and offered to do so at no charge. Complainant authorized him to proceed. On May 29, 2007, Respondent filed the petition with the probate court. Two days later the court issued an order appointing a trustee to discharge the mortgage, and on June 5, 2007, the trustee discharged the mortgage, thus correcting the title defect.

In August of 2007 complainant was able to obtain approval for a loan secured by the Vermont property and plans to relocate to Washington State in the spring of 2008.

We do not know whether complainant's plans to relocate were delayed by the failure to obtain the discharge, and thus while there was the potential for injury, the only actual injury was her frustration at the long delay.

There are a number of mitigating factors present. Respondent has no prior disciplinary record; he has cooperated with Disciplinary Counsel, he had no selfish or dishonest motive and has expressed remorse. In aggravation, Respondent was admitted to the Vermont bar in 1992, and thus has substantial experience in the practice of law.

Conclusions of Law

Rule 1.3 of the Vermont Rules of Professional Conduct provides that a lawyer "shall act with reasonable diligence and promptness in representing a client." The time between the closing and obtaining and recording the discharge was just shy of seven years. While it was clearly the responsibility of the sellers' attorney to obtain the discharge, it was for the benefit of Respondent's client and ultimately his responsibility. When he finally filed the petition with the probate court it took less than two weeks to accomplish the matter. Such a long delay for such an uncomplicated task violates Rule 1.3.

Sanction

The recommended sanction of admonition by Disciplinary Counsel is consistent with Vermont law and the ABA Standards for Imposing Lawyer Discipline.

Administrative Order 9 of the Vermont Supreme Court provides:

Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and where there is little likelihood of repetition by the lawyer, should an admonition be imposed.

The facts fit within this framework. There was little injury to the client and nothing to suggest that this conduct would be repeated. It is also consistent with prior decisions of this board in which admonition was imposed: *In re PRB Decision No. 68* (2004), delay in resolving a lien issue in a real estate transaction, *In re PRB Decision No. 60*, (2003), lack of diligence in a collection matter, and *In re PRB Decision No. 57* (2003), delay in resolving a permit issue after a real estate closing.

This decision is also consistent with the ABA Standards for Imposing Lawyer Discipline. Section 4.43 of the ABA Standards suggest that "[r]eprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence and promptness in representing a client, and causes injury or potential injury to a client." Section 4.44 suggests that "[a]dmonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury." Under both recommendations we are looking at negligent conduct, the difference being the nature and extent of the actual or potential injury. There was little actual injury here, only complainant's frustration. There was, however, the potential for injury had the complainant's inability to use the Vermont property as loan collateral prevented the purchase in Washington State.

Even if we were to find that the presumptive sanction in this matter was reprimand, the mitigating factors would serve to reduce it to admonition. Respondent has no disciplinary

record, *ABA Standards*, §9.32(a), he had no selfish or dishonest motive, *ABA Standards*, §9.32(b), he has fully cooperated with Disciplinary Counsel, *ABA Standards*, §9.32(e), and has expressed remorse for the delay, *ABA Standards*, §9.32(l). The one aggravating factor, substantial practice experience, *ABA Standards*, §9.22(i), is not sufficient to lead us to reprimand on these facts.

For the foregoing reasons we accept the parties recommended discipline.

Order

Respondent shall be admonished by Disciplinary Counsel for violation of Rule 1.3 of the Vermont Rules of Professional Conduct.

Dated: **February 26, 2008**

Hearing Panel No. 8

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Eileen Blackwood, Esq., Chair

Peter Bluhm, Esq.

Tim Volk

