

[13-Mar-1992]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: PCB File 90.23

NOTICE OF DECISION
PCB NO. 29

This matter was submitted by stipulation to the facts and conclusions of law. Respondent waived his procedural rights under Administrative Order

9, including the right to a hearing.

Upon consideration of the stipulated facts, the Board concludes that respondent violated DR 6-101(A) (3) (a lawyer shall not neglect a legal matter

entrusted to him); DR 7-101(A) (2) (failure to carry out a contract of employment); and Administrative Order 9 Rule 6D (failure to furnish information to or respond to a request from bar counsel without reasonable grounds for refusal to do so).

The Board's findings of facts in support of this conclusion and its decision as to the appropriate sanction to be imposed are as follows:

FACTS

1. Respondent was admitted to the Vermont Bar in 1984. With the of his 6 month clerkship and the exception of one year as an associate in a law firm, respondent has been a solo practitioner.

2. In September of 1988, respondent represented the seller in a real estate closing.

3. At the closing, respondent told those present that he would obtain

a Release/Discharge of the Agricultural and Forest Land Use Value Lien from

the Vermont Department of Taxes. opposing counsel gave respondent a check for some \$1,600 made payable to the Vermont Department of Taxes for the purpose of obtaining the release. Respondent did not obtain the release.

4. On December 14, 1988, opposing counsel wrote to respondent to remind him of his obligation to obtain the release.

5. On January 12, 1989, respondent filed with the Vermont Tax Department a Notice of Development or Discontinuance from Land Use Value Appraisal Program, a Copy of Notice of Assessment, and the check which had been given to respondent at the closing.

6. The Vermont Tax Department's Division of Property Valuation and Review could not process this material with the information provided. Accordingly, the Division's administrative assistant telephoned respondent on January 23, 1989. Respondent was not available. The administrative assistant left a message for respondent to return the call. Respondent did

not return the call.

7. On March 8, 1989, opposing counsel telephoned respondent and left a message for respondent to call him regarding this matter. Respondent did

not return opposing counsel's phone call.

8. On March 12, 1989, respondent's client wrote to respondent and asked him to take care of this matter as soon as possible.

9. On or about March 15, 1989, the administrative assistant for the Division of Property Valuation and Review wrote to respondent.

The

administrative assistant stated she had been unable to reach respondent by telephone. The administrative assistant requested the number of acres being

withdrawn and developed, stating that without the information, she was

unable to determine if the \$1,600 check was current. The administrative assistant returned the check and the withdrawal form to respondent.

Respondent did not answer this letter.

10. On March 31, 1989, opposing counsel wrote another letter to

respondent advising that his office had checked with the Town Clerk's office

and discovered there was no record of a Release/Discharge having been received. Opposing counsel asked respondent to take care of this matter

as soon as possible.

11. Upon receipt of this letter, respondent reviewed the file and discovered the correspondence from the administrative assistant.

Respondent

told his secretary to correct the application and resubmit it. Shortly thereafter, the secretary left respondent's employment to take maternity leave a month earlier than anticipated. The secretary did not resubmit the

application prior to her leaving. Respondent failed to follow up on this task.

12. On August 28, 1989, opposing counsel once again wrote to

respondent, noting that it had been approximately 11 months since the closing. Opposing counsel asked respondent to give the matter

"high priority."

13. Respondent did not answer this letter, although he did review the file and realized at that point that nothing had been done. Nevertheless, he still did not reprocess the application.

14. In September, respondent spoke with his client and assured him that the lien would be taken care of.

15. During September 1989, respondent reviewed the matter with the administrative assistant and requested a new application form on which to provide the necessary information. The new form arrived but respondent failed to file the form.

16. Also during the fall of 1989, the client placed a series of telephone calls to respondent inquiring as to the status of this matter.

17. Concurrently, respondent recognized that a severe decline in his economic circumstances would force him to either to relocate and reduce office staff commitments, in order to reduce overhead, or simply to close his law office and seek employment with another firm.

18. In December 1989, respondent began to close his practice in anticipation of joining another firm in March 1990.

19. In early February 1990, opposing counsel telephoned respondent and left a message for respondent to return the call. Respondent did not do

so .

20. On February 23, 1990, opposing counsel wrote to respondent,

recounted his past unanswered letters, and asked him what the problem was. Opposing counsel advised respondent that the situation would not improve with age. Respondent did not answer opposing counsel's letter.

21. On March 26, 1990, the client wrote to respondent citing his displeasure with respondent's unprofessional conduct. He also filed a complaint with this board.

22. In direct response to his client's filing of the complaint with the Vermont Bar Association, respondent submitted the revised Notice of Discontinuance to the Division of Property Valuation and Review. He did so on April 7, 1990.

23. On that same day, respondent also wrote to opposing counsel stating he had filed a Revised Notice of Discontinuance and noting that he was returning to opposing counsel the original check as it was no longer negotiable. Respondent asked opposing counsel to forward a new check to the Division of Property Valuation and Review.

24. Respondent wrote to his client the same day, acknowledging his letter of complaint. Respondent apologized for the extraordinary amount of time it took him to resolve the land use lien.

25. On June 14, 1990, respondent was notified by the Professional Conduct Board of the complaint filed against him. The Chair asked

respondent to provide a written response to the allegations by mailing that response to bar counsel within twenty (20) days.

26. Respondent filed his response within forty (40) days. Bar counsel reviewed the response and immediately wrote to respondent requesting respondent forward his original file in the matter.

27. Respondent received bar counsel's letter and reviewed the file in response to the request. Respondent determined that, apart from copies of correspondence already supplied to the Board with his answer, the file simply did not shed much light on the time period following the closing. Respondent did not send the file as requested, nor did he communicate with bar counsel.

28. Bar counsel's investigator wrote to respondent on September 10, 1991, again requesting production of the file. This time respondent complied promptly.

29. Respondent admitted that he did not comply with bar counsel's initial request for production of his file because he was angry about the complaint and because he concluded that the file did not contain relevant information. However, when bar counsel reviewed the file, bar counsel found that it contained new evidence of respondent's neglect.

30. Respondent admits that from the time of closing until September 1989, his efforts to obtain the Release of the Land Use Lien were inadequate and that this simple task was not given sufficient priority. Respondent also admits there is no excuse for failing to file the new application received in September 1989, until his client filed a complaint against him.

31. Respondent also admits he failed to reply to each repeated

telephone and written inquiry by opposing counsel, as well as his own client regarding the Release of the Land Use Lien. When inquiries were made, he responded by checking his file, or asking his secretary to check the file, but he failed to report that course of action back to opposing counsel. When he did communicate with his client, respondent advised his client of the status of the matter.

32. Respondent has very poor organizational skills and, at the time of his misconduct, had an inadequate system for tracking matters within his office. Respondent has since placed an appropriate management system in place.

SANCTIONS

As in PCB No. 90.54, the Board is very concerned about lawyers practicing law without sufficient business skills to organize their practice.

The proper filing of an application for Release from The Land Use program is a simple matter that should have been taken care of immediately after the closing. There is no excuse for the inordinate delay of 18 months

in performing this simple administrative task. Respondent is responsible for supervising his staff. He is responsible for his secretary neglecting

to follow through on his instructions. But for the presence of several mitigating factors, this long period of neglect would be grounds for imposition of a public sanction.

However, several mitigating factors are present including absence of a prior disciplinary record and inexperience in the administrative aspects of

the practice of law. The Board is also influenced by the fact that the client, while he was embarrassed and annoyed by respondent's neglect, did not

suffer any pecuniary damage due to this neglect.

The most important mitigating factor, however, is that respondent has taken stock of the way he was practicing law, and has made a diligent effort

to organize his practice so that he is more responsive to both clients and other members of the bar. Respondent has demonstrated to the Board's

satisfaction that he understands the importance of the need to communicate and that he now takes this responsibility seriously.

The Board is satisfied that the public will be adequately protected by the imposition of a mere private admonition and that no purpose will be served by recommending a more severe sanction.

Therefore, the Board has voted to impose a private admonition and has directed the chair to issue a letter of admonition to the respondent.

Dated at Barre, Vermont this 13th day of March 1992.

PROFESSIONAL CONDUCT BOARD

/s/

J. Eric Anderson, Chairman

/s/

Deborah S. Banse, Esq.

Hamilton Davis

/s/

Anne K. Batten

Nancy Foster

/s/

/s/

Leslie G. Black, Esq.

Shelley Hill, Esq.

/s/

Richard L. Brock, Esq.

Roselyn L. Hunneman

/s/

/s/

Joseph F. Cahill, Jr., Esq.

Donald Marsh

/s/

Nancy Corsones, Esq.

Karen Miller

/s/

Christopher L. Davis, Esq.

Edward Zuccaro, Esq.