

[04-Jun-1993]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File 91.57

NOTICE OF DECISION
No. 53

This matter was submitted to the Board by stipulations of respondent and bar counsel. Upon consideration of these stipulations, the Board voted to impose a private admonition upon respondent for violating DR 5-105(C) and DR 6- 101(A) (12). Below are the Board's findings of fact, conclusions of law, and reasons for imposing discipline.

FACTS

1. Respondent was admitted to the Vermont Bar on September 17, 1985. Respondent opened his solo practice in 1988.

2. Respondent was approached in the late summer of 1989 by an acquaintance who told respondent that out of state friends of his were buying his neighbor's farm. The farm consisted of approximately 120 acres, a house and several out buildings. The acquaintance asked respondent to represent both the buyers and the seller.

3. Respondent was uneasy about representing both parties, however, he agreed to do so.

4. The acquaintance directed respondent to search the title and prepare a warranty deed, transfer tax mortgage deed, and promissory note. He suggested that respondent include the term "Life Estate" in the warranty deed.

5. The acquaintance is not an attorney, as Respondent well knew.

6. Prior to the closing, Respondent received a copy of the executed sales agreement. The agreement stated, "Seller to have use of the homestead (excluding barns) until mortgage is paid off."

7. One of the buyer's spoke with Respondent by telephone on September 18 regarding the title search, mortgage deed, promissory note, and the warranty deed. The buyer said during that conversation that he wanted the warranty deed to include a life time home provision on the dwelling for Respondent's acquaintance who originally had contacted respondent. Respondent does not recall that conversation, but does not contest the buyer's recollection of this event.

8. Respondent drafted a warranty deed which stated, "Grantor reserves a life estate in said granted premises." He sent a copy of the deed to each of the parties prior to the closing which occurred on September 25, 1989.

9. The buyers read the warranty deed and assumed that the term "Life Estate" gave the acquaintance use of the house only. They had no intention of conveying the acquaintance a life estate in the entire farm, nor had

they ever told Respondent that such was their intent.

10. At no time prior to, or during the closing, did respondent advise or discuss with either client the meaning of the term "life estate." The buyers did not know that by conveying a life estate they were conveying the exclusive use of the entire farm for the duration of the acquaintance's life.

11. At no time did Respondent disclose to his clients the possible effect of joint representation on the exercise of his independent professional judgment on behalf of each client.

12. In October, 1990, the tenant farmer who formerly paid rental fees to the acquaintance refused to pay the fees to the buyers. The tenant farmer decided the fees rightfully belonged to the acquaintance. The parties each hired new separate counsel to protect their interests. The buyers incurred an additional \$725 in legal fees to properly identify the limits of the life estate as they always intended to convey.

13. In August 1991, the buyers wrote to respondent and asked him to reimburse them for the \$725 in legal fees which they incurred as a result of his mistake. Respondent responded with a letter which stated:

"I was given no information as to how to draw up the life estate condition other than the wording in the Purchase and Sales Agreement. If any of the parties had wanted to define or restrict this interest in any way, they did not inform me. I cannot read peoples' minds; if you have specifications about how a particular document should be written, you should tell me during the drafting phase, not come back to me after the closing and tell me how it should be written.

14. Respondent's August 14, 1991 letter to the buyers was arrogant. Respondent now regrets his statements and the way in which he handled this matter.

15. After this complaint was filed, and upon the request of bar counsel, respondent reimbursed the buyers the \$725 they incurred in additional legal fees. He has also sent them a written apology.

16. Respondent was highly inexperienced in the practice of law at the time he undertook to represent the buyers. He had been a solo practitioner for only a year.

CONCLUSIONS OF LAW

The Board finds that respondent's conduct here violated DR 5-105(C) (failure to disclose to clients the possible effects of dual representation, and DR 6-101(A) (2) (handling a legal matter without preparation adequate in the circumstances).

SANCTION

The Board has imposed a private admonition, consistent with Standard

4.3 of the ABA. Mitigating factors present include absence of prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board, a cooperative attitude toward these, and remorse for his conduct. There are no aggravating factors present.

Dated at Montpelier this 4th day of June, 1993.

PROFESSIONAL CONDUCT BOARD

/s/

J. Eric Anderson, Chairman

/s/

Deborah S. Banse, Esq.

Rosalyn L. Hunneman

/s/

/s/

Anne K. Batten

Robert P. Keiner, Esq.

/s/

/s/

Joseph F. Cahill, Jr., Esq.

Donald Marsh

/s/

Nancy Corsones, Esq.

Karen Miller, Esq.

/s/

/s/

Christopher L. Davis, Esq.

Ruth Stokes

/s/

/s/

Paul S. Ferber, Esq.

Jane Woodruff, Esq.

/s/

/s/

Nancy Foster

Edward Zuccaro, Esq.