

PCB 5

[12-Oct-1990]

STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

In Re: PCB File No. 89.52

NOTICE OF DECISION

PCB No. 5

Procedural History

This matter came on for hearing before a hearing panel of the Professional Conduct Board consisting of Christopher L. Davis, Esq , Chair, Leslie Black, Esq. and Edith Patenaude, on June 12, 1990. Present at the hearing were Bar Counsel, Wendy S. Collins, Esq. and the Respondent appearing pro se. The following Findings, Conclusion and Decision has been approved by the Board.

FINDINGS OF FACT

1. During late 1988 and early 1989 the Complainants attempted to assist their son regarding their son's delinquent car loan.

2. The Complainants attempted to negotiate a resolution with the son's creditor, Marine Midland Bank, as their son could not afford the car payments and Complainants did not have the money to assist him.

3. The Complainants were unsuccessful in resolving the matter with The Marine Midland Bank and decided that they needed legal assistance, believing it might be appropriate for their son to declare bankruptcy. The Complainants' son authorized the Complainants to act on his behalf in resolving his situation with The Marine Midland Bank.

4. The Complainants consulted the Yellow Pages and learned that the Respondent handled bankruptcy cases so they scheduled an appointment to see the Respondent.

5. On February 28, 1989, the Respondent met with the Complainants in his office.

6. The Complainants discussed with the Respondent the situation involving their son and the Marine Midland Bank and inquired about the advisability of their son filing for bankruptcy.

7. At the February 28, 1989 meeting no fee arrangement was discussed however the Complainants and the Respondent acknowledged that an attorney/client relationship was established. The Respondent offered to send a letter to The Marine Midland Bank offering to sell the vehicle in question at a private sale and to see if the Marine Midland Bank would accept the net proceeds of the private sale as payment in full of the

outstanding debt.

8. The Respondent did make one or two telephone calls to Marine Midland Bank in an effort to arrange a private sale of the vehicle but nothing came of these efforts. The Respondent never did write a letter to the Bank regarding the proposal that he had suggested to the Complainants.

9. Following the February 28, 1989 meeting, the Complainants made three more payments to The Marine Midland Bank. In May 1989 they discontinued further payments to The Marine Midland Bank as they could not afford the payments.

10. Subsequent to the February 28, 1989 meeting, one of the Complainants called the Respondent's office several times to speak to the Respondent was unable to do so, so she asked that he be called back.

11. The Respondent did made some attempts to return the telephone calls of the Complainants but was unable to reach either of them. The Respondent did not attempt to reach the Complainants through a letter, or have someone from his office try to contact the Complainants by phone.

12. On May 24, 1989, one of the Complainants wrote to the Respondent asking the Respondent to contact the Complainants and expressing dissatisfaction with the Complainants' inability to communicate with the Respondent.

13. The Respondent did not respond to the Complainants' May 24, 1989

letter either by phone or by letter.

14. Although Respondent asserted that he did not abandon the Complainants' case he did acknowledge that he neglected the matter.

15. When the Complainants received no response to the May 24, 1989 letter they wrote a letter to the Professional Conduct Board outlining the problems that the Complainants had had with the Respondent and requesting assistance. The Chair of the Professional Conduct Board, Eric Anderson, Esq , responded to the Complainants in a letter dated June 16, 1989 in which, among other things, he suggested that they correspond again with the Respondent and indicate that they were considering filing a complaint with the Professional Conduct Board unless a response to their inquiries was received from the Respondent.

16. The Complainants sent a copy of the June 16, 1989 letter to the Respondent. Respondent received the letter but did not understand that it had been sent by the Complainants. He thought the letter came from the Professional Conduct Board and took no action in response to the letter.

17. In July or August 1989, The Marine Midland Bank repossessed the subject vehicle without notice to the Complainants.

18. The vehicle was sold at an auction and after all costs were deducted \$2,484.50 was credited to the account of the Complainants' son leaving a balance of approximately \$3,715.00.

19. At the time of the repossession, the Complainants believed the vehicle to be worth approximately \$6,000.00 if sold at a private sale. The auction price was \$3,150.00.

20. The Retail Installment Contract for the motor vehicle was signed only by the Complainant's son and not by them.

21. The Respondent acknowledged that he neglected to respond to the Complainants' letter of May 24, 1989 and that he failed to deal with the Complainants in an appropriate manner. (See PCB Exhibit No. 7.)

#### CONCLUSIONS OF LAW

1. The Respondent violated Disciplinary Rule 6-101(A)(3) in that he neglected a legal matter entrusted to him by the Complainants.

2. While the Complainants did not suffer a direct loss as a result of the negligence of the Respondent (except to the extent that they voluntarily made three payments to The Marine Midland Bank), their son did suffer a loss in that his vehicle was repossessed and sold at an auction for a price less than that which would probably have been obtained in a private sale.

3. In considering an appropriate sanction, the Board is concerned with the failure of the Respondent to communicate with the Complainants even after receiving a response from the Chair to the Complainants (PCB Exhibit No.4) which letter was forwarded to the Respondent and clearly

indicated that a ground for a complaint to the Professional Conduct Board is the failure of an attorney to attend to a legal matter entrusted to him.

4. The Board is also concerned that the Respondent's negligence led to the subsequent repossession of a vehicle owned by the Complainants' son and to the sale of that vehicle at an auction price less than the vehicle's fair market value, leaving a deficiency greater than that which probably would have occurred had there been a private sale of the vehicle.

5. Section 4.43 of the Standards for Imposing Lawyer's Sanctions, American Bar Association Center for Professional Responsibility, states that where the neglect of an attorney causes little or no prejudice to a client, the appropriate sanction is a private admonition. However, under those Standards where the neglect does cause injury to a client, a public reprimand is the preferred sanction.

6. The Board finds that there have been no prior findings of misconduct against the Respondent during his years of practice in the State of Vermont.

7. The Board also finds that since the complaint in this matter the Respondent has established procedures in his office to assure that cases are duly followed up and that clients are contacted by letter where the Respondent is unable to reach them by phone.

9. In the past it has been the experience of the Board that, despite the aforementioned Standards, an admonition and not a public reprimand, has generally the sanction imposed for offenses of a like nature.

9. In view of the foregoing, the Board feels that an admonition as permitted under Rule 7(A)(5) is an appropriate sanction under these circumstances. However, in the future the Board will be inclined to use the aforementioned Standards in circumstances as existed here and impose a public reprimand.

NOTICE OF DECISION

The Board hereby finds that with regard to the above-entitled matter, the Respondent has violated PCB DR6-IOI(A)(3) in that he neglected a legal matter entrusted to him. Consequently, an admonition pursuant to PCB Rule 7(A)(5) shall issue from this Board.

Dated at Montpelier, Vermont, this 12th day of October, 1990.

/s/

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Christopher L. Davis

/s/

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Edith Patenaude

/s/

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Richard Brock

/s/

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Joseph Cahill, Jr.

/s/

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Joel W. Page

/s/

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Karen Miller

/s/

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Hamilton Davis

/s/

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Deborah S. McCoy

/s/

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Anne K. Batten

/s/

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Donald Marsh

/s/

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Edward Zuccaro, Esq.

/s/

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J. Eric Anderson, Esq.