

66 PRB

[14-May-2004]

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2003.041

Arthur Heald, Esq.

Decision No. 66

On February 5, 2004, the parties filed a stipulation of facts as well as conclusions of law and recommendations on sanctions. The Respondent also waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the facts and recommendations and orders that the Respondent be publicly reprimanded for failure to deposit funds held in trust in a clearly identified trust or escrow account as required by Rule 1.15(a) and 1.15C(a) of the Vermont Rules of Professional Conduct.

## Facts

Respondent, Arthur Heald, is an attorney admitted to practice law in Vermont. In 2002, he represented Bennie Boyles in connection with the sale of property in St. Albans to Christopher Lazar. The closing was held on March 29, 2002. Lazar expressed concern that four acres of the property had been cut, but not cleared. Because of Lazar's concerns, the parties agreed that \$2,500 of the proceeds of the sale would be held in escrow. The parties reduced their escrow agreement to writing. Respondent agreed to hold the escrow funds, and the buyer's attorney gave Respondent a check made payable to him in the amount of \$2,500.

Respondent placed the check in his file where it remained until August of 2002, when he released the funds to his client by endorsing the check over to him.

Respondent has since closed his law practice and is retired.

Respondent has been disciplined in the past. He received an admonition in 1981. In re File No. 80.002, (Feb. 6, 1981). Later, he was suspended for five months as a result of his failure to file federal income tax returns. In re Heald, 140 Vt. 651 (1982). In 1994, he was admonished for neglecting his duties as the administrator of an estate. PCB Decision No. 65 (April 1, 1994). Shortly thereafter, he was publicly reprimanded

for neglecting an estate. In re Heald, 163 Vt. 640 (1995). In 2002, he was publicly reprimanded for neglecting a real estate closing and failing to cooperate with the subsequent disciplinary investigation. In re Heald, 173 Vt. 557 (2002). Finally, he was suspended for 60 days in 2003 as a result of his failure to cooperate with the disciplinary investigation of the complaint at issue in this case. In re Heald, PRB Decision No. 54 (May 5, 2003).

### Conclusions of Law

The rules governing an attorney's responsibility when holding funds in a fiduciary capacity are clear and specific. Such funds must be held in clearly identified trust or escrow accounts, with separate record keeping for each client. Rule 1.15. To do otherwise is to invite difficulties with clients and disciplinary action by the Professional Responsibility Board. It takes no discussion for us to conclude that keeping a check for escrowed funds in a file for a period of approximately five months does not meet the standards set out in Rules 1.15(a) and 1.15C(a).

The parties have stipulated to a public reprimand in this matter and the Panel approves the sanction but admits to some hesitation in so doing. In determining the appropriate sanction, it is well established that we may refer to the ABA Standards for Imposing Lawyer Sanctions for guidance. Sections 4.12 and 4.13 suggest suspension and reprimand respectively as the appropriate sanction where the attorney deals improperly with client funds.

In general, suspension is reserved for cases of intentional failure to deal properly with client property, and reprimand is reserved for cases involving negligence where there is injury or potential injury. There is no evidence presented as to Respondent's intent in his handling of the escrowed funds in this matter. Although the potential for injury was present had Respondent died or become incapacitated, no injury actually resulted from Respondent's violation of the Rules. Therefore, absent mitigating or aggravating factors, reprimand is the appropriate sanction.

However, the ABA Standards provide that once a provisional sanction has been reached, aggravating and mitigating factors should be considered in making the final decision on the appropriate sanction. Prior discipline is among the aggravating factors to be considered, ABA Standards § 9.22(a), and Respondent has considerable prior discipline. With the exception of the first matter, for which no facts are given, all of the prior disciplinary matters involve Respondent's failure to attend to the details of either his personal life or the practice of law. His neglect of clients, his failure to file income tax returns, his failure to cooperate with Disciplinary Counsel as well as the failure to deposit the escrow funds in a trust account are all part of a pattern which point to Respondent's underlying inability to pay attention to his fundamental responsibilities as a practicing attorney and as a citizen. The presence of prior discipline of this magnitude would generally lead us to impose a more severe sanction. However, based on the fact that Disciplinary Counsel recommends a reprimand and the fact that Respondent has closed his practice

and retired, we accept the stipulation.

Conclusion

Based upon the foregoing, Respondent, Arthur Heald, is hereby PUBLICLY REPRIMANDED for violation of Rules.15(a) and 1.15C(a) of the Vermont Rules of Professional Conduct.

Dated: MAY 14, 2004

Hearing Panel No. 3

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Paul Ferber, Esq.

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Robert M. Butterfield, Esq.

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George Coppenrath

FILED MAY 14, 2004