

PCB 74

[15-Jul-1994]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 94.52

NOTICE OF DECISION

DECISION NO. 74

This matter is before us by way of a stipulation presented by the parties.

The Board found that Respondent violated DR 6-101(A)(3) by neglecting the interests of his clients in a foreclosure action.

Respondent has been a member of the Vermont Bar for nearly twenty years and has no prior disciplinary record.

In early 1991, Clients, who lived out of state, retained Respondent because the buyer of their real estate had stopped making payments on the mortgage and had filed a bankruptcy petition.

Respondent filed a creditor's claim with the trustee in bankruptcy. In October of 1991, he filed a foreclosure action in superior court and succeeded in having the Defendant served in New Jersey. The Defendant did not file an answer. Meanwhile, the trustee in bankruptcy filed a notice of proposed abandonment of the subject property.

At this point, Respondent's attention to the foreclosure matter wavered. The court clerk wrote three letters of prompting to Respondent before Respondent finally filed a motion for a default judgment. Although the court initially granted the motion, it eventually dismissed the case because Respondent failed to file a proposed judgement order as directed.

Had Respondent secured the default judgement order at that time, it would have been of no benefit to his Clients. The property was a listed asset of Defendant in bankruptcy court and, therefore, belonged to the trustee until it was released.

In August 1992, the Town Attorney, in the course of preparing for a tax sale of the property, sent a notice of the proposed sale to the Clients as lienholders on the property. The Clients paid \$867.32 to the Town for the delinquent taxes, interest, penalties and attorney's fees, thus avoiding the tax sale.

At this time, the Clients learned that their foreclosure action had just been dismissed by the superior court because of Respondent's inaction. They wrote to Respondent, demanding an explanation.

Respondent did not answer this letter or return the Clients telephone calls.

The Clients retained new counsel who wrote to Respondent and asked what plans he had to rectify the problem. Respondent answered promptly, stating that he would resolve the foreclosure matter as soon as possible without further cost to the Clients. However, Respondent took no action.

Eventually, Respondent, at substitute counsel's request, filed a motion to withdraw. Substitute counsel had the case reopened and received the decree of foreclosure. Respondent voluntarily paid for the legal costs of this action, which amounted to just over \$1,000.

Respondent had no explanation as to why he neglected this particular matter at so many junctures in this case over a considerable period of time. The Board finds that he did not intend to injure his client or to fail to carry through on his commitments; his neglect seemed to have more to do with poor office management than with any bad faith on his part. Respondent has since adopted management practices which will preclude these sorts of problems in the future.

When this disciplinary complaint was filed, Respondent immediately acknowledged responsibility. He has been fully co-operative with Bar Counsel and sincerely regrets his inattention to the needs and expectations of his clients.

Given that there is little or no likelihood of a recurrence of this problem, given Respondent's long history of practice without even the filing of a

complaint against him, and given Respondent's efforts to rectify the consequences of his neglect, the Board will not recommend a public sanction. It is confident that the public can be adequately protected by issuance of only a private admonition.

The Board directs the Chair to send a private letter of admonition to Respondent.

Dated at Montpelier this 15 day of July, 1994.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

Donald Marsh

/s/

Joseph F. Cahill, Esq.

/s/

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

J. Garvan Murtha, Esq.

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

Nancy Foster

/s/

Ruth Stokes

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

/s/

Robert P. Keiner, Esq.

/s/

Edward Zuccaro, Esq.