

[Filed 28-Nov-2005]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Robert E. Farrar, Esq.
PRB File No 2005.203

Decision No. 82

Respondent is charged with neglect of his client's case after a judgment against him was affirmed by the Supreme Court, and with failure to keep his client informed about his options and his responsibilities, in violation of Rules 1.3 and 1.4(a) of the Vermont Rules of Professional Conduct. The parties filed a stipulation of facts and recommended conclusions of law. Respondent waived certain procedural rights including the right to an evidentiary hearing. The Hearing Panel accepts the stipulation and the recommendation and orders that Respondent be publicly reprimanded.

Facts

DH engaged Respondent to defend him in a trespass suit brought by his neighbors who alleged that DH had built a fence on their land and cut 13 trees. The case was tried in December of 2000 and judgment was entered in favor of the plaintiff. DH was ordered to remove the fence within ten days and to pay \$1300 for the cut trees. Respondent sent a copy of the opinion to DH. They had not discussed whether DH wanted to appeal, and Respondent filed a notice of appeal in order to preserve that option. Respondent later met with DH who instructed him to go forward with the appeal. Respondent wrote to DH about the merits of the appeal and filed a brief. The Court did not hold oral argument and in October of 2001, the Supreme Court affirmed the judgment of the lower court.

Respondent believes that he sent a copy of the opinion to DH, though DH does not recall receiving it. Respondent did not inform DH that he now needed to remove the fence and to pay the judgment. DH did not comply with the judgment, and in December plaintiffs moved for contempt. DH believes he sent a copy of the notice of the contempt hearing to Respondent. Respondent does not believe he received it. They did not discuss the motion or the upcoming hearing. DH attended the hearing. Respondent did not. The court found DH in contempt and set a sanction hearing for January 31, 2002. Respondent received notice of the hearing, but he did not inform DH of the hearing, nor did he attend himself.

DH first had knowledge that he had been held in contempt came from an article in his local paper. He asked his sister to contact Respondent. She did and was told that DH had lost his appeal, and that it was now time to pay the judgment. At some point, most likely in the beginning of February, Respondent wrote DH an undated letter informing him that he needed to pay the judgment and remove the fence. On February 5, 2002, DH paid the plaintiffs the \$1300. He did not remove the fence at that time, intending to wait for better weather.

On February 20, 2002, the Superior Court ordered that plaintiffs get estimates from two contractors for removal of the fence, that DH be responsible for the cost of removal, the cost of having a sheriff present during removal, and \$2000 for the plaintiffs' attorney fees. The court sent a copy of the order to Respondent, but he did not inform DH. In the spring of 2002, DH removed the fence. In June the court issued an order confirming that DH had removed the fence and paid the \$1300 for the trees. The order further conformed that DH owed the plaintiffs the \$2000 in attorneys fees and ordered DH to pay interest on both amounts.

Respondent did not send a copy of this order to DH. Two years later, in August of 2004, DH learned by chance that plaintiffs had placed a lien on his property. Rather than contacting Respondent, DH contacted the plaintiffs' attorney and on September 30, 2004, DH paid plaintiffs the sum of \$2966 which represented the total amount due under the court order. On September 22, 2004, DH filed suit against Respondent in small claims court seeking to recover the attorney's fees and interest he was required to pay. Respondent did not defend the action. The court entered judgment for DH and set a financial disclosure hearing for February 18, 2005. On February 11, 2005, Respondent sent DH a check for \$3170 which paid the judgment in full. DH then filed a complaint with the Office of Disciplinary Counsel.

DH suffered stress, anxiety, embarrassment and frustration when he learned from the local paper that he was in contempt, and that there was a lien on his property for interest and attorney fees owed to plaintiffs. Actual financial injury was avoided by the fact that Respondent paid the small claims judgment in full.

Respondent has more than thirty years experience in the practice of law and one prior disciplinary offense. He had no selfish or dishonest motive, has cooperated with Disciplinary Counsel and had expressed remorse.

Conclusions of Law

Respondent's failure to take any action on his client's behalf from the time of the denial of the appeal in October 2001, through the conclusion of the contempt proceedings in June of 2002 violates Rule 1.3 of the Vermont Rules of Professional Conduct which requires an attorney "to act with reasonable diligence and promptness." Respondent also failed to communicate with his client during a critical period of time. Whether or not he sent a copy of the Supreme Court decision to DH, it is clear that he did not inform DH of the implications of the decision, not did he communicate with his client during the contempt proceedings in the Superior Court. Such failures violate Rule 1.4(a) of the Vermont Rules of Professional Conduct which requires that "[a] lawyer shall keep a client reasonably informed about the status of a matter."

Sanction

We agree with the recommendation of the parties that public reprimand is the appropriate sanction in this matter. It is in line with the ABA Standards for Imposing Lawyer Sanctions, which the Supreme Court has approved as a guideline for determining the appropriate sanction in a disciplinary matter. In re Andres, Supreme Court Entry Order, July 6, 2004, citing In re Warren, 167 Vt. 259, 261 (1997).

Section 4.43 provides that "[r]eprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." ABA Standards, §4.43. Respondent violated his duty to his client to keep him reasonably informed and to act with diligence in the representation. Actual financial injury to DH from his exposure to a judgment for interest and attorney fees was avoided by the fact that Respondent paid the small claims judgment in full, but the potential for financial injury was present, and DH suffered anxiety, stress and frustration because of Respondent's failure to act.

There are both aggravating and mitigating factors present, but they are not of sufficient weight to cause us to deviate from the recommended sanction under Section 4.43.

Order

Respondent Robert E. Farrar is hereby PUBLICLY REPRIMANDED for violation of Rules 1.3 and 1.4(a) of the Vermont Rules of Professional Conduct.

Dated November 28, 2005

Hearing Panel No. 6

/s/

Judith Salamandra Corso, Esq.

/s/

James Gallagher, Esq.

/s/

Toby Young