STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Sigismund J Wysolmerski
PRB file number 2018 – 069

Respondent herein Sigismund J Wysolmerski respectfully files proposed findings of fact in this matter;

1. Representation of TL began in 2008 for purposes of entering into negotiations with the clients mortgage company, as he had been in default for some time.
2. TL, concomitantly entered into a mortgage modification to the offices of another Rutland attorney of which he had not informed respondent .
3. TL had also obtained payment for various matters related to irregularities in the inception of the mortgage through complaints with the United States Comptroller of the currency.
4. TL provided information and telephone numbers from his dealings with the original mortgage broker CF IC, to the respondent.
5. At one point, respondent in the presence of TL called the 800 number links to CF IC which was then answered by a purported representative of Westar mortgage who in the presence of TL identified themselves as being a Woodbridge Virginia company.
6. At some point following the issuance of the mortgage this company CF IC ceased doing business and it was represented to respondent and TL that Westar mortgage was the company that had acquired the business of CF IC.
7. Based on the information obtained in the presence of TL at that telephone call respondent had a good faith belief that the Westar mortgage located in Virginia was in fact the

successor to CF IC, insofar as they answered the telephone, and the person spoken to at that date and time identified themselves as being a Virginia company.

8. At that time the only Westar mortgage that had authority to do business in the state of Vermont by virtue of the lender license was the Woodbridge Virginia based company.
9. In December 2014 suit was filed naming J.P. Morgan Chase and Westar mortgage Inc. as defendants.
10. Ultimately, Westar mortgage Inc. was acquired by JG Wentworth home lending LLC, a Woodbridge Virginia company, as well as on J.P. Morgan Chase ended service or SPS (select portfolio servicing).
11. Service of process was made by virtue of the service on the Vermont Department of financial regulation.
12. Shortly thereafter general counsel for the defendant Westar contacted respondent and for the first time claimed that they were the wrong company and that the other West Star mortgage based in New Mexico which had never been licensed to do business in Vermont or anywhere on the East Coast as far as counsel could tell was the potential culprit.
13. Subsequently in a self-serving email counsel for Westar reiterated his claims and indicated through their counsel Jeremy Martin the claims that they had no record of Troy Luther.
14. Despite assertions to the contrary respondent only indicated that he would give Westar the usual courtesy of a brief delay in order to file an answer.
15. Westar ultimately never filed an answer

16. Respondent had a good faith belief that the West Star mortgage served and ultimately found in default with a judgment rendered against it was the correct party based on three factors,1 the identification of the Virginia company by its employee when the original CF IC telephone number was called;2 the history of financial irregularities by Westar mortgage Inc. in various states including consent orders final orders and resolutions by agreement some of which are illustrated at bar councils Exhibit 8: 3 the manner and tone of the telephone communication with Mr. Martin which was illustrated in his evasiveness during testimony at this hearing.
17. On August 20, 2015 in response to a motion for summary judgment as filed by defendant SPS respondent prepared an affidavit, and forwarded the same to Mr. Luther for his signature which he signed on or about August 18, 2015 and forwarded back to counsel. Ex RC
18. Respondent testified that subsequently he called Mr. Luther and requested telephonically that Mr. Luther swear to the contents of the affidavit. As such, bar counsel is failed to prove sufficiently the allegations of Count one the allegations of Count one.
19. Similarly, an affidavit was filed in response to motions by SPS one of the defendants in the underlying action October 27, 20 16.
20. In that instance respondent by virtue of emails to and from Troy Luther the first with the affidavit attached, the second in the chain received by respondent from Troy Luther stating that here is the signed document and the third forwarding to Troy Luther the completed set of documents after conversation, all represent documentary evidence refuting the allegations made by Troy Luther that he did not get the documents, that he

did not sign the documents, and that he did not know the contents of the documents or swear to them(exR-d)

21. In a similar manner, the documents were provided to TL by the respondent, a signed copy was returned via email, any conversation ensued where TL affirmed on his oath that the documents true and accurate.
22. In and around January 5, 2017, and affidavit was filed in the Vermont Superior Court in connection with plaintiffs (TL) motion for default judgment.
23. Respondent testified that he follow the same procedure with regard to these affidavits as he had with the prior two affidavits signed by Troy Luther and notarized remotely.
24. Mr. Luther was intimately involved in the calculation of and the prosecution of the default judgment claim and in fact appeared before Judge tour on at least two occasions while the matter was being adjudicated.
25. In October 2008, Mr. Luther, with the assistance of another attorney in Rutland signed loan modification documents, and as part and parcel of those loan modification documents a general release of all parties prior to the modification was signed in consideration for the bank, J.P. Morgan Chase canceling the default of the underlying mortgage.
26. Respondent, counsel for the plaintiff first became aware of those documents as result of Mr. Luther's deposition during the summer of 2016. Respondent further testified that he and Mr. Luther had a long and extensive conversation regarding the legal effect of his signing a release of the parties especially as it pertained to J.P. Morgan Chase and the current servicer of the loan SPS.

27. Respondent testified that he was not afforded an opportunity to discuss at the April 26, 2018 the basis for and the reasons he believed that West Star was in fact the proper party.
28. Respondent was not called as a witness at that hearing, although he was present as a result of his months old motion to withdraw which directly followed TL filing his complaint which is the basis of this action.
29. TL was not represented, chose to represent himself even though he had already retained counsel who had apparently assisted him with the complaint in this matter.
30. Respondent had no good reason to take the counsel of West Star mortgage at his word given the history of irregularities and discipline of the company, all of which were for loan irregularities generally regarded as predatory lending.
31. In January 2017 respondent had no good reason not to assume that the service was sufficient insofar was done pursuant to the Vermont rules of procedure and having had confirmation that the documents had been served on what he believed was a proper party.
32. Despite the assertion that the respondent did not correct record at the rule 60(b) motion hearing in July 2018, he was not called as a witness, was not afforded an opportunity to argue insofar as he was disqualified as counsel for TL as a result of this filing, and had no standing at that point to address the court with regard to anything.
33. TL represented that he was in fact representing himself and had specifically refused additional counsel even though he had retained counsel to to attempt claims against the respondent. (DC3P 6).
34. In June 2017 notice of appeal from the summary judgments in favor of SPS and J.P. Morgan Chase was filed.

35. In early August respondent did file an extension with the Supreme Court hoping to have the briefing deadline extended.
36. In early August counsel diligently sought for any president which would overcome the rationale in Judge Toor's order for summary judgment.
37. On at least three occasions in in July and the first part of August 2017 respondent conferred with TL indicating that there was lack of what he believed to be a justiciable issue in the matter.
38. During this period of time respondent's sister 10 years his junior was undergoing treatment for gallbladder liver and pancreatic cancer.
39. She had been diagnosed in September 2016 and respondent had spent each and every Thursday and Friday assisting her with her regimen of chemotherapy and its aftermath since late October 2016.
40. In early August 2017 it appeared that there might be an additional treatment available at the Yale New Haven'Smilow cancer center in New Haven Connecticut.
41. Respondent spent a significant amount of time traveling from Rutland to New Haven Connecticut to be available to and assist his sister with her illness.
42. Young New Haven was chosen because respondent's brother is a physician and professor of medicine at Yale school of medicine.
43. During the last week of August 2017 it was determined that sister Jane would not benefit any further from the additional treatments and time was short.
44. Respondent proceeded to make arrangements to have his sister transported home to Rutland Vermont where she wished to spend her last days.

45. Respondent sister succumbed September 13, 2017 at the Rutland Regional Medical Center.
46. In order for his sister to be transported to Rutland from New Haven respondent was forced into a battle with Blue Cross Blue Shield Jane's healthcare insurer since they refused to cover the necessary ambulance to transport her on the rationale that end-of-life care was available in New Haven Connecticut some four hours from her home.
47. Admittedly, respondent was distracted and inattentive to the wants and needs of TL in July August and September 2017.
48. Respondent did meet with TL last week of September 2017 and informed him that the appeal had been dismissed.
49. TL became very upset refused to accept and the reality that the appeal had been dismissed and immediately indicated that he thought respondent should be held responsible.
50. Respondent then informed him that he had errors and omissions insurance in place and if TL believed that respondent had done something untoward he should go seeking counsel for purposes of making a claim.
51. Contrary to TL's assertion that he left the meeting with respondent not understanding the appeal had been dismissed he was not only informed that the appeal was dismissed but that there was errors and omissions insurance.
52. TL also testified that he was told that there was errors and omissions insurance and that that had enraged him.

53. Contrary to TL's testimony at the hearing that he first sought counsel to deal with a potential foreclosure action, he immediately sought counsel to try and establish a malpractice claim against the respondent.

54. TL in fact was represented by that counsel in July 2018 when he appeared pro se at the rule 60 motion hearing at Vermont Superior Court.

55. Respondent testified that he believed that this was a ploy to establish a claim which might be cognizable, despite the fact of TL sighting releases back in 2008.

56. As such, disciplinary counsel has not proven to sufficiency the allegations of counts four and five of its complaint.

Dated at Rutland Vermont this 17th day of June 2019

Sigismund J Wysolmerski., Respondent

Merrick Grutchfield
Professional Responsibility Program
Office of the Court Administrator
109 State Street
Montpelier, Vermont 05609-0701

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Memorandum
Proposed Conclusions Of Law

1. The evidence fails to support violations of the following rules of professional conduct, 8.4 (C), 3.2 (a) (1) and 1.4 (a) (3).
2. The affidavits filed in August 2015, October 2016 and in January 2017 were filed with the full knowledge and approval of TL who signed the documents return them to respondent who took his oath over the phone.
3. Respondent did not file any misleading affidavits insofar as he had a good faith belief that the appropriate parties had been served and that he had proceeded against the appropriate party.
4. Respondent did in fact inform his client that the Supreme Court had dismissed the case, at the meeting he had with TL at his office in September.
5. Respondent concedes that he is had a prior disciplinary action.
6. Respondent acts were not dishonest, and were all times directed toward advancing the clients interests not his own.
7. As such, there can be no inference of a pattern of misrepresentation or multiple offenses within a single litigation matter.
8. The mitigating factors include absence of any dishonest or selfish motive, insofar as respondent was not dishonest in any way with TL, or the courts.

9. Respondent did have personal issues concerning the care for and death of his sister who became previously ill and ultimately succumbed in September 2017.
10. Respondent fully cooperated with disciplinary counsel, and made every effort to provide disciplinary counsel with documentation in an appropriate fashion
11. Respondent did in fact, acknowledge that as a result of his distraction with the care for and death of his family member as well as the multiple days of travel involved with regard to that issue, that he should have found other counsel for TL for purposes of the appeal.
12. It should be noted that any prior offenses occurred more than 20 years ago.

Sanctions:

13. Respondent agrees that the purpose of sanctions in these matters is to quote protect the public from persons unfit to serve his attorneys and to maintain public confidence in the bar" however, respondent disagrees with the bar counsel's conclusions that this matter warrants an 18 month suspension.
14. Respondent believes that he upheld his duty to the client, with the exception of failing to find him other counsel for the appeal, and he upheld his duty to find that her filings were timely correct accurate and fundamentally necessary to carrying out the job that client relied upon him to do.
15. Respondent disagrees that he was dishonest or violated his duties to TL during the conduct of the litigation or his duty to the legal profession.
16. Respondent points to the testimony at the hearing and indicates that his testimony is highly credible with regard to the affidavits and supported by the email evidence of documents that had been signed and returned to the respondent by TL.

17. There was no harm to TL. The conduct of the case and the ultimate summary judgments against two of the parties involved in the lending entity that originated the loan, are all subsumed by the release signed by TL as part of a loan modification package which he arranged through other counsel.

In this matter when considering an issue sanction, the panel should look to prior cases to compare sanctions and violations in those cases to the case before with the objective of perceiving consistency within the body of internally disciplinary law. In this case is in most there is no direct on point Vermont case. In Kentucky Bar Association v Malone2018-SC-00246KB(Ky Oct.9,2018 seems to indicate that the improper filing affidavits generally work public reprimand is sanctions., Specifically looking at the matter of in the matter of Swain 720 5S. E.2d 244 (GA. 2012) in which the attorney there was reprimanded publicly for notarizing the signature outside the presence of the signer.

In Cincinnati Bar Association versus Thomas 754 N. E.2d 1263 (Ohio 2001) a case in which a lawyer received telephone signature authority from the client but apparently misrepresented the signature is genuine a public reprimand was imposed. On the other end of the spectrum, at Lake County Bar Association v Speras 652 N.E. 2d 681(Ohio2018) the Ohio disciplinary authority to impose a six-month suspension on an attorney who filed an affidavit in court bearing forged signatures of the notary and containing false statements. In this matter, there were no false statements, nor were there any forged signatures and so therefore this appears to be the outside edge of the disciplinary penalties that should be levied in this case..

Respondent also points to In Re Strouse PR B decision 128, which imposed a six-month

suspension for dishonest conduct towards a law firm in violation of the very rule charged herein.

Further, it is obvious that TL by virtue of this complaint and his testimony in the action as well as his failure to actively oppose the rule 16 motion surrounding the default judgment is attempting to bootstrap this action into a potential claim for malpractice.

It is clearly not the place or venue in which to bootstrap into reality a potential malpractice claim which will fail on its face but for some finding by this panel as to wrongdoing.

Dated at Rutland Vermont this 17th day of June 2019

Sigismund J Wysolmerski Esq.
respondent

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