

STATEWIDE GRIEVANCE COMMITTEE

Tricia Scully
Complainant

:

vs.

:

Grievance Complaint #10-0024

Valerie Ann Votto
Respondent

:

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 235 Church Street, New Haven, Connecticut on May 5, 2010. The hearing addressed the record of the complaint filed on January 18, 2010, and the probable cause determination filed by the New London Judicial District Grievance Panel on March 4, 2010, finding that there existed probable cause that the Respondent violated Rules 1.2(a) and (c), 1.4(b), 1.5(b), and 1.15(e) of the Rules of Professional Conduct, and Practice Book §2-32(a)(1).

Notice of the hearing was mailed to the Complainant, to the Office of the Chief Disciplinary Counsel, and to the Respondent on April 6, 2010. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Beth Baldwin pursued the matter before this reviewing committee. Neither the Complainant nor the Respondent appeared at the hearing.

This reviewing committee finds the following facts by clear and convincing evidence:

In August of 2009, the Complainant and her husband retained the Respondent to represent them in the "short sale" purchase of a home that was being foreclosed in Madison, Connecticut and the contemporaneous sale of their home in Chester, Connecticut to Michael Vukovinsky. The Chester home was to be sold on October 13th; the Madison home was to be purchased on October 15th. The October 13th sale of the Chester home was contingent on Mr. Vukovinsky's financing approval, which was to occur no later than October 7th. There was no written fee agreement given to the Complainant outlining the services to be rendered or the fees to be charged by the Respondent.

The October 7th financing deadline for the Vukovinsky financing commitment was not met, threatening the sale of the Chester home and the purchase of the Madison property. This led to a verbal agreement made by the Respondent with the mortgagor of the Madison property to pay a per diem interest rate on the property after October 15th to prevent the mortgagor from putting it into a foreclosure sale. The per diem rate was \$200, of which Mr. Vukovinsky

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would be responsible for one day and the real estate brokers would cover seven additional days.

On Wednesday, October 14th, the Complainant spoke with the Respondent, who informed her that the prospect of Mr. Vukovinsky getting a mortgage "doesn't look good." Nevertheless, the next day the Complainant learned from the Respondent that Mr. Vukovinsky was "ready to close" on the Chester property at 1:00 p.m. that day. The Respondent suspected that neither Mr. Vukovinsky nor his attorney would be prepared for a closing at that time and were only making the overture to avoid the one day per diem rate on the Madison property. The closing on the Chester property did not go forward on the 15th and was rescheduled to October 16th at 11:00 a.m. The Respondent told the Complainant and her husband to meet her at 7:45 a.m. on the 16th to sign the appropriate paperwork.

On Friday, October 16th, the Complainant and her husband arrived at the Respondent's office with the intent of signing the paperwork related to the sale of their home in Chester. When they arrived for the meeting, no paperwork was prepared and the Respondent asked them to return at 9:00 a.m. The Respondent told the Complainants that the paperwork was not ready due to her schedule on the 15th. At 9:00, when the Complainants returned, the paperwork was ready but the Respondent told them that she would not be attending the closing, but rather dropping off the paperwork at Mr. Vukovinsky's attorney's office.

During the meeting with the Respondent, the Complainant questioned "the numbers" but due to the 11:00 closing was not able to have them addressed. As the meeting was ending, Mr. Vukovinsky's attorney faxed an "Escrow and Use and Occupancy Agreement" to the Respondent regarding the Chester property. The Complainant and her husband planned to lease back the Chester home from Mr. Vukovinsky for two weeks even though they expected to close on the Madison property later in the day on the 16th. The agreement provided that \$5000 would be escrowed from the sale of the Chester property to be released on October 31st after the Complainant and her husband vacated the property and it was inspected by Mr. Vukovinsky. The Complainant, her husband and the Respondent were unaware of the terms of the agreement until the morning of the 15th when they received the fax and reviewed it for the first time.

Neither the Complainant, her husband nor the Respondent physically attended the closing on the Chester property. During the closing an issue arose regarding credits for heating oil and Mr. Vukovinsky's attorney demanded that a new HUD form be prepared. No one advocated the Complainant's position on this issue and she and her husband were later forced to sign a new HUD form after the closing occurred conceding the point to Mr. Vukovinsky.

Nevertheless, the Complainant believed that the Madison closing would take place later on the 15th, after the proceeds from the sale of her Chester home were wired by Mr. Vukovinsky's attorney to the mortgagor foreclosing on that property. The Complainant repeatedly confirmed with Mr. Vukovinsky's attorney's office that the funds had been wired, but they were not received by the mortgagor for the Madison property. At 4:00 on Friday the 16th, the Respondent's paralegal called the mortgagor's attorney and indicated that there were no funds to close. The failure to close triggered two additional days worth of per diem payments (Saturday and Sunday), and the real estate brokers refused to pay for them as was originally understood by the Complainant. Because the Respondent had not attended the closing on the Chester property, no funds from it were escrowed by her to ensure that the brokers abided by the oral agreement made on or around October 7th.

The Madison property closed on October 19th and the Complainant and her husband vacated the Chester property on October 31st. A dispute arose regarding the return of the \$5000 escrow held pursuant to the use and occupancy agreement, which was not resolved until December 30th.

The grievance complaint was filed on January 8, 2010. On January 12, 2010, the Respondent was mailed a copy of the complaint by certified mail, return receipt requested. The Respondent's paralegal signed for the certified mailing on January 28, 2010. The Respondent did not answer the complaint.

We conclude by clear and convincing evidence that the Respondent engaged in unethical conduct. The representation involved multiple closings and strict deadlines that carried with them significant financial repercussions for the Complainant and her husband if not met. The Madison closing was delayed due to the Chester purchaser's inability to obtain financing in a timely manner, yet the Respondent failed to a basic objective of the representation by reducing a crucial agreement (the per diem responsibilities) to writing, in violation of Rule 1.2(a) of the Rules of Professional Conduct. The Respondent thereafter failed to attend the Chester closing, and was therefore not present to advocate her client's position on the oil adjustment. The Respondent did not discuss the implications of not attending the closing with her clients in violation of Rules 1.2(c) and 1.4(b) of the Rules of Professional Conduct. The Respondent failed to have a written agreement with her clients outlining the scope of the representation and the fee to be charged, in violation of Rule 1.5(b) of the Rules of Professional Conduct.

After the Madison closing, the Respondent failed to deliver the title insurance policy to the Complainant and her husband, in violation of Rule 1.15(e) of the Rules of Professional Conduct. After this complaint was filed, the Respondent failed to file a written answer to it, in violation of Practice Book §2-32(a)(1).

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We direct the Disciplinary Counsel to file a presentment against the Respondent in Superior Court for the imposition of whatever discipline the court deems appropriate. Because the presentment hearing is *de novo*, we direct the Disciplinary Counsel to include the following additional violations of the Rules of Professional Conduct and the Practice Book:

1. The Respondent failed to attend the Chester closing or to advocate for her clients' position regarding the fuel oil adjustment, in violation of Rule 1.3 of the Rules of Professional Conduct.

2. The Respondent failed to provide the title insurance policy on the Madison property to her clients, in violation of Rule 1.3 and 1.16(d) of the Rules of Professional Conduct.

(9)

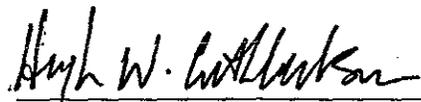
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DECISION DATE: 7.9.10

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Attorney Hugh W. Cuthbertson

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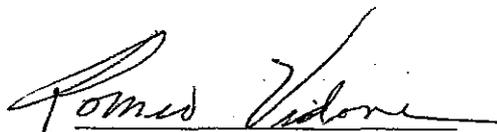


Attorney Howard M. Gould

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Dr. Romeo Vidone