

STATEWIDE GRIEVANCE COMMITTEE

Mark A. Dubois
Complainant

:

vs.

:

Grievance Complaint #10-0091

Chance Gordon
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, 80 Washington Street, Hartford, Connecticut on September 2, 2010. The hearing addressed the record of the complaint filed on January 28, 2010, and the probable cause determination filed by the New Haven Judicial District Grievance Panel for the towns of Bethany, New Haven and Woodbridge on April 14, 2010, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 5.5, 8.4(2)¹ and 8.4(1), (3) and (4) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

This matter was originally scheduled for a hearing on July 1, 2010, but was continued at the request of the Respondent. The matter was thereafter scheduled for a hearing on September 2, 2010. Notice of the September 2, 2010 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on July 23, 2010. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant appeared at the hearing and testified. This reviewing committee also heard testimony from Mr. Joseph Migliore who was called as a witness by Disciplinary Counsel. The Respondent did not appear at the hearing.

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

The Respondent is licensed to practice law in California. He is not admitted to practice law in Connecticut. On January 29, 2009, a foreclosure proceeding was filed against Joseph Migliore in Connecticut Superior Court. Mr. Migliore participated in the foreclosure mediation program with the court, but was unable to reach a resolution through this program and the mediation period was terminated. Thereafter, on April 21, 2009, a motion for judgment for strict foreclosure was filed by the plaintiff with a hearing date of January 25, 2010.

¹ The reference to Rule 8.4(2) for failing to respond to the grievance complaint was a scrivener's error. The correct citation is Rule 8.1(2).

Mr. Migliore subsequently contacted the Respondent's law firm and spoke with John Gearries, an employee of the Respondent's firm, who advised that the Respondent's firm could assist Mr. Migliore in obtaining a modification of his loan for \$2,000. On or about August 25, 2009, Mr. Migliore signed a written fee agreement with the Respondent's firm. The agreement stated that the representation was limited to obtaining a modification of Mr. Migliore's loan and did not encompass representation in any litigation. Mr. Migliore thereafter completed the paperwork provided to him by the Respondent's firm regarding his income, mortgage, property taxes and tax returns. Mr. Migliore also completed an application to modify his loan under the federal government's Home Affordable Modification Program. On October 6, 2009, Mr. Migliore paid the Respondent's firm \$1,200 toward the \$2,000 retainer. The remaining \$800 was paid on November 5, 2009. Thereafter, the only information Mr. Migliore received from the Respondent's firm was that they were speaking to the bank and that the bank required additional documentation.

On January 8, 2010, Mr. Migliore contacted the Complainant regarding the Respondent's actions. Mr. Migliore was concerned that the Respondent's firm had not done anything in connection with the loan modification and the hearing on the motion for strict foreclosure was going to take place on January 25, 2010. After speaking with the Complainant, Mr. Migliore entered into discussions with the bank to try and modify his loan.

On January 15, 2010, the Complainant sent the Respondent a letter requesting that he cease and desist from the practice of law in Connecticut and return Mr. Migliore's retainer. On January 25, 2010, the motion for strict foreclosure was heard and a date for judicial foreclosure by sale was set. The Respondent replied to the Complainant's letter on January 26, 2010 and threatened litigation against the Complainant. The Respondent further maintained that he was not subject to the jurisdiction of Connecticut because federally insured lending institutions are subject to the jurisdiction of the federal courts. The Respondent contended that federal law authorizes his representation of clients in all fifty states. The Complainant thereafter filed this grievance complaint.

On February 2, 2010, the grievance complaint was sent to the Respondent by certified mail to 5455 Wilshire Boulevard, Suite 2010, Los Angeles, California 90036. The Respondent was advised of his duty under Practice Book §2-32(a)(1) to file a response within thirty days. On February 4, 2010, grievance panel counsel also sent a letter to the Respondent requesting that he respond within thirty days. Failing to receive a response from the Respondent, grievance panel counsel sent a second letter to the Respondent on March 11, 2010 advising him that the time to respond had passed and that failure to respond to a grievance complaint is a violation of the Rules of Professional Conduct. The Respondent did not respond to the grievance complaint as directed. On April 14, 2010, the grievance panel filed its probable cause determination.

This reviewing committee also considered the following:

At the hearing before this reviewing committee, Mr. Migliore testified that he understood that the Respondent's firm was only representing him in connection with the loan modification and would not be representing him in the foreclosure action in Connecticut. Mr. Migliore further testified, however, that the Respondent's firm did not discuss or further explain this limited representation in light of the pending foreclosure litigation in Connecticut. Mr. Migliore also stated that he advised Mr. Gearries about the status of the foreclosure proceedings in Connecticut and maintained that Mr. Gearries told him that the loan modification would slow down the foreclosure process. Mr. Migliore maintained that he spoke with the mortgage lender in December of 2009 and was advised that they had only spoken to the Respondent's firm on one occasion in October of 2009. Mr. Migliore testified that he did not know the status of the application he completed for the federal government's loan modification program and maintained that he discharged the Respondent's firm after speaking with the Complainant.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct in connection with his firm's representation of Mr. Migliore in the modification of Mr. Migliore's loan. The record indicates that the Respondent's firm was aware of the foreclosure proceedings pending against Mr. Migliore in Connecticut. In connection with those proceedings, Mr. Migliore had already participated in the court's foreclosure mediation program and was unable to reach a resolution with the lender under this program. Furthermore, a motion for judgment for strict foreclosure had been filed with a hearing date scheduled for January 25, 2010. Despite the status of the foreclosure proceedings, the Respondent agreed to represent Mr. Migliore in a modification of Mr. Migliore's loan. This reviewing committee concludes that the Respondent's actions, in light of the inability of Mr. Migliore to modify his loan under the court mediation program and the pending hearing on the judgment for strict foreclosure, did not constitute competent representation in violation of Rule 1.1 of the Rules of Professional Conduct and was prejudicial to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct.

We further conclude that the Respondent failed to act with reasonable diligence in representing Mr. Migliore. The record indicates that the Respondent was retained in August of 2009, at which time a January 25, 2010 hearing was scheduled in connection with the motion for judgment of strict foreclosure. Other than providing Mr. Migliore with paperwork to complete, the record is devoid of any actions taken by the Respondent to modify Mr. Migliore's loan with the lender. The only information provided to Mr. Migliore was that the Respondent's firm was speaking with the lender and the lender required additional documentation. In the five month period that the Respondent represented Mr. Migliore, he did not obtain a loan modification or even indicate the status of the negotiations to Mr. Migliore. Moreover, the Respondent's firm only contacted the lender once in October of 2009. We find that the Respondent was not diligent in his efforts to obtain a modification of Mr. Migliore's loan in violation of Rule 1.3 of the Rules

of Professional Conduct.

This reviewing committee concludes that the Respondent's communication with Mr. Migliore violated Rules 1.2 and 1.4 of the Rules of Professional Conduct. Rule 1.4(a)(1) states that "a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined by Rule 1.0(f), is required." Rule 1.0(f) states that "'informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Rule 1.2(c) states that a lawyer may limit the scope of representation if the limitation is reasonable and the client gives informed consent.

In this case, the Respondent limited his representation of Mr. Migliore to the modification of Mr. Migliore's loan and specifically excluded representation in any litigation matters. We conclude that this limited representation was not reasonable, given the pending hearing on the motion for strict foreclosure and that Mr. Migliore did not provide informed consent. The record indicates no one from the Respondent's firm communicated or explained the risks involved to Mr. Migliore in the foreclosure litigation by proceeding with a loan modification or any alternatives to this course of action. Nor did the Respondent advise Mr. Migliore that he was not licensed to practice law in Connecticut and therefore could not assist him in a Connecticut foreclosure action. Accordingly, we find that the Respondent violated Rules 1.2(c), and 1.4(a)(1) and (5) of the Rules of Professional Conduct. Moreover, this lack of communication concerning the limited scope of representation also violated Rules 1.2(a) and 1.4(a)(2) of the Rules of Professional Conduct since the Respondent failed to discuss with Mr. Migliore the means or the objectives of the representation.

The record before this reviewing committee is devoid of any communication by the Respondent regarding the status of the matter. There are no letters or bills from the Respondent indicating the actions taken on behalf of Mr. Migliore regarding the loan modification. In addition, Mr. Migliore was unable to obtain any specific information regarding his requests for the status of the matter. We find that the Respondent's failure to comply with Mr. Migliore's requests for information and keep him reasonably informed regarding the status of his case violated Rules 1.4(a)(3) and (4) of the Rules of Professional Conduct.

The record reflects that the Respondent charged Mr. Migliore \$2,000 in connection with the loan modification. We find the Respondent's fee to be unreasonable given the failure of the Respondent to make any significant progress in negotiating a modification of Mr. Migliore's loan with the lender in the five month period of his representation. Accordingly, we conclude that the Respondent's fee violated Rule 1.5(a)(4) and (6) of the Rules of Professional Conduct.

This reviewing committee concludes that the Respondent's representation of Mr. Migliore in the modification of Mr. Migliore's loan constitutes the unauthorized practice of law in violation of Rule 5.5(a) of the Rules of Professional Conduct. The practice of law is defined in Practice Book §2-44A as "ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person." In this case, the Respondent is not licensed to practice law in Connecticut. Despite this fact, he undertook the representation of Mr. Migliore in a modification of his loan while a foreclosure action was pending against him in Connecticut Superior Court. Mr. Gearries advised Mr. Migliore that the loan modification would help him in the foreclosure action in Connecticut by slowing down the proceedings. We conclude that this constituted legal advice to Mr. Migliore regarding a Connecticut matter and therefore constitutes the unauthorized practice of law.

Lastly, we find that the Respondent's failure to respond to the grievance complaint constitutes a violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

This reviewing committee finds that the record lacks clear and convincing evidence to conclude that the Respondent failed to properly safeguard Mr. Migliore's retainer fee in violation of Rule 1.15 of the Rules of Professional Conduct. We were also unable to conclude by clear and convincing evidence that the Respondent knowingly assisted or induced another to violate the Rules of Professional Conduct in violation of Rule 8.4(1) of the Rules of Professional Conduct or that the Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(3) of the Rules of Professional Conduct.

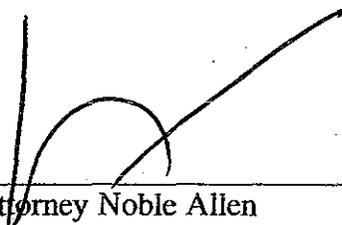
At the hearing before this reviewing committee, Disciplinary Counsel requested that this reviewing committee find that the Respondent also violated Rule 1.16(d) of the Rules of Professional Conduct upon his termination of representation by Mr. Migliore. We decline to find a violation of this Rule since the record lacks any evidence regarding Mr. Migliore's termination of the Respondent's representation.

This reviewing committee concludes that the Respondent's violations of Rules 1.1, 1.2(a) and (c), 1.3, 1.4(a)(1), (2), (3), (4) and (5), 1.5(a)(4) and (6), 5.5(a), 8.4(4) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) warrant a presentment. Accordingly, we direct Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline the court may deem appropriate.

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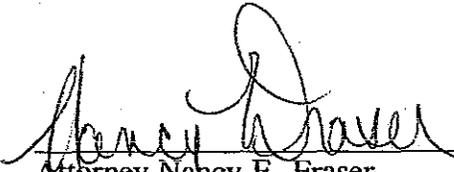
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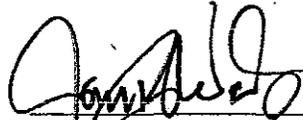


Attorney Nancy E. Fraser

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Mr. John B. Walsh