

STATE OF CONNECTICUT



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STATEWIDE GRIEVANCE COMMITTEE

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287 Main Street, East Hartford, Connecticut 06118-1885

02/18/2011

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

MORRIS I OLMER
140 BELLEVUE ROAD
NEW HAVEN CT 06511

RE: GRIEVANCE COMPLAINT #10-0708
BLACKWELL vs. OLMER

Dear Respondent and Disciplinary Counsel:

Enclosed herewith is the decision of the reviewing committee of the Statewide Grievance Committee concerning the above referenced matter. In accordance with the Practice Book Sections 2-35, 2-36 and 2-38(a), the Respondent may, within thirty (30) days of the date of this notice, submit to the Statewide Grievance Committee a request for review of the decision.

A request for review must be sent to the Statewide Grievance Committee at the address listed above.

Sincerely,

Michael P. Bowler

Encl.

cc: Attorney Michael A. Georgetti
David H. Blackwell

**NOTICE REGARDING DECISION
- PRESENTMENT -**

GRIEVANCE COMPLAINT # 10-0708

**THE ATTACHED DECISION IS PRESENTLY STAYED IN
ACCORDANCE WITH PRACTICE BOOK §2-35.**

SECTION 2-35 STATES, IN PART, AS FOLLOWS:

(e) ... Enforcement of the final decision ... shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the statewide grievance committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38(b).

Note: This stay terminates upon the issuance of a final decision by the Statewide Grievance Committee.

DECISION DATE: 2/16/11

STATEWIDE GRIEVANCE COMMITTEE

David Blackwell :
Complainant :
vs. : Grievance Complaint #10-0708
Morris Olmer :
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, 1 Court Street, Middletown, Connecticut on December 9, 2010. The hearing addressed the record of the complaint filed on August 19, 2010, and the probable cause determination rendered by the New Haven Judicial District Grievance Panel for the towns of Bethany, New Haven and Woodbridge on October 15, 2010, finding that there existed probable cause that the Respondent violated Rules 5.5, 8.4(3) and 8.1(2)¹ of the Rules of Professional Conduct as well as Practice Book Section 2-32(a)(1).

Notice of the December 9, 2010 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on November 8, 2010. Pursuant to Practice Book §§3-14 et seq. and 2-35(d), certified legal interns Kevin Kiley and James Montana of the Yale Law School Lawyering Ethics Clinic assisted in the presentation of this matter under the supervision of First Assistant Chief Disciplinary Counsel Patricia A. King. The Complainant and the Respondent appeared and testified. This reviewing committee also heard testimony from Gerard Smith, Thomas Leutner, and James Aiken. Two exhibits were admitted into evidence.

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

The Respondent was suspended from the practice of law on February 15, 2007 and resigned from the practice of law on August 27, 2008. He is not eligible to apply for reinstatement to the practice of law unless he pays full restitution.

The Complainant is licensed to practice law in Connecticut. His office is the exclusive attorney for real estate closings of property owned by the Department of Housing and Urban

¹ Although the local grievance panel found the Respondent had violated Rule 8.4(2) in failing to answer the grievance complaint, it is clear from the findings of probable cause that the grievance panel intended to charge the Respondent with a violation of Rule 8.1(2) and not 8.4(2). Accordingly, as noted at the hearing, this reviewing committee considered whether or not the Respondent violated Rule 8.1(2), and not 8.4(2), when he failed to file an answer to the grievance complaint.

Development ("HUD") in Connecticut. The Complainant has participated in hundreds of real estate closings in Connecticut.

This complaint involves the sale of property located at 28 Sarsfield Street, Waterbury Connecticut from HUD to Kerline Badio. Gerard Smith was the salesperson who sold the property to Ms. Badio. In order to purchase the real property from HUD, the Badios needed to obtain financing. They were able to obtain private financing from investors. Mr. Badio contacted a friend of his, who referred him to the Respondent for financing. The Respondent worked with Thomas Leutner, an ordained minister with the United Church of Christ, who knew investors and facilitated the transaction; they split a \$1,500 fee. The Respondent told Ms. Badio that he used to be an attorney but now did financial work and that she did not need an attorney to help her with the real estate closing. The Respondent called the management company for HUD and told them to schedule the closing. He told them that the Badios did not need an attorney.

Mr. Smith advised Ms. Badio and her husband that they should find an attorney to represent their interests at the real estate closing. Ms. Badio has some physical disabilities and limited proficiency in English. Ms. Badio did not tell Mr. Smith that she had hired an attorney, but instead Mr. Smith began to receive phone calls from the Respondent who was trying to coordinate the real estate closing. He believed that the Respondent was looking after Ms. Badio's interests. He worked with the Respondent to determine where the funds would come from, and where and when the closing would take place. He sent a copy of the real estate contract to the Respondent and they discussed the legal rights of the buyer. At no time, during these discussions did the Respondent expressly state that he was no longer licensed to practice law in Connecticut, nor did the Respondent indicate that he was asking these questions on behalf of the investors. The Respondent prepared a HUD form and faxed it to the seller's management company. The faxed HUD form indicated it was faxed from Attorney David Avigdor's fax machine. The money was transferred to HUD prior to the closing and the only thing that needed to be done at the closing was the transfer of the deed.

In July of 2010, the Complainant was scheduled to attend the Badio closing at the Respondent's office. On the day of the closing, Ms. Badio came to the Respondent's office early, but left before the Complainant appeared. The Respondent told Ms. Badio that she could leave the closing and he would complete the closing without her. The Complainant was aware that the Respondent had resigned from the Connecticut Bar. He believed Attorney Avigdor might be at the closing because Attorney Avigdor shared office space with the Respondent and his name was on the faxed HUD form. When the Complainant arrived at the Respondent's office, Attorney Avigdor was not there and neither were the Badios. The Complainant asked the Respondent who would be the settlement agent and who would act on behalf of the buyer. The Respondent indicated the buyer did not need to be there nor did a licensed attorney. The Complainant refused to participate in the closing and left the Respondent's office.

As of the date of the closing, the lenders had already transferred their portion of the funds to the seller. The lenders did not require the Badios to sign a promissory note on the date of the closing; the note was signed some months later.

The closing took place several months later and the Badios were represented by counsel.

The Respondent did not file an answer to the grievance complaint.

This reviewing committee also considered the following:

The Respondent testified that he was merely facilitating the loan transaction with the Badios and part of his fee from the lender was for ensuring that the closing went forward. The Respondent also indicated that the Badios were using his office as a courier service; a place where the seller could drop off the deed and the buyer could receive the deed. He indicated he had no intention of reviewing the deed for accuracy. He also claimed that he and Mr. Leutner only prepared and faxed the HUD statement because HUD required the document. There is no federal requirement for a HUD form in a cash transaction involving private money lenders. The Respondent continued to insist at the hearing that the Badios did not need an attorney to close on the property.

The Respondent has been presented to the court for discipline in eleven grievance complaints in the past four years.

We find clear and convincing evidence that the Respondent engaged in the unauthorized practice of law in violation of Rule 5.5 of the Rules of Professional Conduct. We did not find the Respondent's testimony to be credible. The evidence shows that at all relevant times, the Respondent had resigned his attorney's license and was not eligible to practice law. The Badios spoke poor English, and their real estate agent, Mr. Smith, told them that they should hire an attorney. The Respondent then began to call Mr. Smith and speak on behalf of the Badios. The Respondent discussed the legal rights of the buyer with Mr. Smith; he reviewed the real estate contract and set up the real estate closing; he faxed the HUD statement to the sellers for their approval from an attorney's fax machine; he scheduled the real estate closing to take place at a law office; he waited with the buyer and then spoke on her behalf to the Complainant. These actions constitute the practice of law.

The Respondent's assertion that his actions in this closing were solely done on behalf of the lender to facilitate the loan as a businessman is not credible. First of all, there was no reason for the lender to participate in the closing. The lender had already wired the funds to the seller and did not expect the buyer to sign a note or mortgage the day of the closing. There was no mortgage on the property and the lender had no interest in whether or not the title actually passed. Second of all, the Respondent spoke with the real estate agent and HUD on the buyer's behalf to set up the closing. Third of all, the Respondent prepared and faxed the

HUD form from Attorney Avigdor's office and offered to host the closing at Attorney Avigdor's office. Finally, the Respondent authorized the buyer to leave his office on the date of the closing and attempted to complete the closing with the Complainant. If the Respondent was not the buyer's attorney then the buyer would have communicated with the Complainant directly and the Respondent would not have spoken on her behalf regarding the closing. We also could not find a legitimate purpose for the Respondent's continued advocacy for the Badios to not hire an attorney for the real estate closing.

The Respondent argued his only fault was that he gave off the appearance of being an attorney by his looks and manner of speaking; he states that he never affirmatively told anyone he was an attorney and therefore could not have engaged in the unauthorized practice of law and never made any misrepresentations to anyone. We disagree. By all accounts, the buyer was an unsophisticated woman with little knowledge of real estate and the legal system. The Respondent admitted he told her he had been an attorney but was now in the financial business and that she did not need an attorney to close on the deal. The Respondent also prepared the HUD statement and faxed it from an attorney's fax number. He also set up the closing to be held at an attorney's office. He then spoke to the Complainant as though he was a representative for the buyer. The evidence clearly shows that the Respondent intentionally gave off the appearance of being a licensed attorney without specifically asserting to anyone that he was an attorney. The Respondent's behavior was calculated to fool people while still allowing him to deny any allegations that he had called himself an attorney or engaged in the unauthorized practice of law. We believe this behavior violates Rule 8.4(3) of the Rules of Professional Conduct, which prohibits engaging in conduct involving dishonesty, fraud, deceit or misrepresentations. After carefully crafting the appearance that the Respondent was an attorney licensed to practice law and after engaging in the practice of law, we find the Respondent's intentional omission to the Complainant, Mr. Smith and the buyer that he was no longer licensed to practice law and could not provide any legal services in connection with this transaction to be deceitful.

The Respondent did not offer an explanation for why he failed to answer the grievance complaint. The Respondent did appear at the hearing and defend himself against the underlying charges. We find clear and convincing evidence that the Respondent's failure to answer this complaint violates Rule 8.1(2) of the Rules of Professional Conduct as well as Practice Book Section 2-32(a)(1).

Since we conclude that the Respondent violated Rules 5.5, 8.4(3) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1), we direct the Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline the court deems appropriate.

(D)

EMR

DECISION DATE: 2/18/11

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Decision

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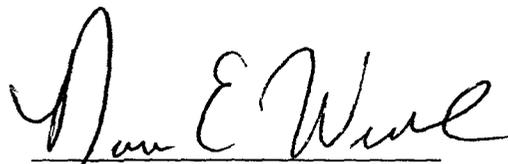


Attorney Howard Gould

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Attorney Donna Woviotis

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Mr. Peter Jenkins