

STATE OF CONNECTICUT



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STATEWIDE GRIEVANCE COMMITTEE

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10/18/2011

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

PAUL NICHOLAS BOLOGNA
PAUL N. BOLOGNA & AS
184 ATLANTIC STREET
STAMFORD CT 06901

RE: GRIEVANCE COMPLAINT #10-0954
CHRISTENSEN vs. BOLOGNA

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,

A handwritten signature in cursive script, appearing to read "Michael P. Bowler".

Michael P. Bowler

Encl.

cc: Attorney Eugene J. Riccio
PIAZZA SIMMONS & GRANT LLC
Eric Christensen

STATEWIDE GRIEVANCE COMMITTEE

Eric Christensen
Complainant

:

vs.

:

Grievance Complaint #10-0954

Paul N. Bologna
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, One Court Street, Middletown, Connecticut on June 9, 2011. The hearing addressed the record of the complaint filed on November 22, 2010, and the probable cause determination filed by the Stamford/Norwalk Judicial District Grievance Panel on April 15, 2011, finding that there existed probable cause that the Respondent violated Rule 1.5 (a) and (b) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on May 6, 2011. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne B. Sutton pursued the matter before this reviewing committee. The Complainant did not appear. The Respondent appeared at the hearing and testified. The Respondent was represented by Attorney Anthony Piazza. At the request of the reviewing committee, post-hearing briefs were submitted.

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

The Complainant and his wife, Maria Christensen, were seeking to sell a house in Weston, Connecticut. The transaction would be a "short sale" because the Christensens owed more money on the house than it was currently worth. The Respondent was retained in December of 2009 regarding the short sale. The retainer agreement provided for a flat fee of \$7,500, "deemed earned upon receipt. Said fee is deemed earned regardless of the results of the efforts of this firm and regardless of whether said property is actually sold or transferred." The retainer stated that the flat fee covered "the negotiation of one (1) short sale with the lending institution holding said mortgage" and "one (1) contract will be negotiated and drafted with one (1) buyer of said property." The retainer went on to state that, in addition, "any fees, legal or otherwise, approved by the lender will be deemed earned by the firm and will be due and payable upon the closing."

Negotiations with potential buyers ensued, with a purchase price of \$600,000. The Christensens owed \$750,000 on the property. The Respondent proffered an "Addendum to Real

Estate Sales Agreement” that contained a clause which stated that “Seller agrees to provide Buyer a 3% concession of the purchase price. In exchange, Buyer agrees to pay a transaction fee of 3% for the short sale being approved payable to Paul Bologna & Associates.” The three percent fee would have amounted to \$18,000.

When the Complainant questioned this Addendum, the Respondent told him that it was “done all the time” and was for purposes of “negotiating with the bank.” However, the buyers would not agree to the Addendum, so it was taken out.

Subsequently, a HUD-1 form was proposed by the Respondent that included a provision for an additional \$3,500 in fees to the Respondent. The Complainant retained new counsel to conclude the transaction. The Respondent never received the \$18,000 or the \$3,500, but did receive the \$7,500 flat fee.

This reviewing committee also considered the following:

The Respondent characterized the \$18,000 fee and the \$3,500 fee which he had sought, as “negotiating” items. He stated that it is a tactic he has used before, but that he has never collected a three percent fee of the type he used here. He noted that fees of this type cannot go to the seller under short sale law, but that he has used it to negotiate down the deficiency in a short sale. The Respondent claimed that a three percent fee would be reasonable given that the short sale would eliminate the deficiency. The Respondent also noted the additional efforts necessary in a short sale versus a regular real estate transaction, in seeking to justify these additional fees.

In his testimony before this reviewing committee, the Respondent noted that, upon the advice of counsel, he has modified his retainer agreement, including deleting the provision whereby fees were deemed earned upon receipt.

The Respondent argued that the proposed three percent was reasonable given the potential deficiency of \$150,000 and the Respondent’s efforts to get that deficiency reduced or waived, and that the money the Respondent sought, would have come from the buyers or the bank rather than the Christensens. The Respondent claimed that these moneys were covered by the provision in the retainer agreement regarding “any fees, legal or otherwise...”

This reviewing committee finds by clear and convincing evidence that the Respondent violated Rule 1.5 of the Rules of Professional Conduct. Subsection (a) of Rule 1.5 states in pertinent part that a lawyer “shall not make an agreement for, charge, or collect an unreasonable fee...” Subsection (b) requires that: “The scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will

charge a regularly represented client on the same basis or rate.”

The Grievance Panel, in its finding of probable cause, noted that the initial retainer of \$7,500 was reasonable, but that “on two occasions the Respondent attempted to charge and collect an unreasonable fee in contravention of the terms of the retainer agreement.” That \$7,500 should have represented the entire fee sought by the Respondent in this matter. The Respondent’s attempts to collect the additional \$18,000 and \$3,500 represented an obvious windfall, clearly outside of the “time and labor required” for the representation, as contemplated under Rule 1.5(a)(1). The provision for the additional three percent represented an attempt to obtain a contingent fee based on the value of the transaction, in addition to the flat fee already “earned.”

Even if such funds did not come directly from the client in such a situation, they would still constitute a “fee” to the attorney, as they would be predicated upon the completion of the objective of the representation. Indeed, if the monies were not considered legal fees, they would implicate several others of the Rules of Professional Conduct, including the conflict of interest provisions.

The provisions seeking to collect the \$18,000 and the \$3,500 clearly constituted the charging of an unreasonable fee, given the existence of the flat fee of \$7,500 that already covered the representation, and thus were in violation of Rule 1.5(a) of the Rules of Professional Conduct. Furthermore, these provisions were in contravention to the stated terms of the retainer agreement given that, as above, the flat fee already covered the services for which these additional fees would ostensibly be charged, in violation of Rule 1.5(b).

Having found that the Respondent violated Rule 1.5(a) and (b), we order the Respondent to take, at his own expense, a continuing legal education (“CLE”) course in legal ethics. The CLE course is to be attended in person unless the Respondent obtains pre-approval from the Statewide Grievance Committee to take the CLE course electronically or through some other means. The CLE course is to consist of a minimum of three (3) credit hours and is to be taken within nine (9) months of the issuance of this decision. The Respondent is further ordered to provide the Statewide Grievance Committee with written confirmation of his compliance with this condition within thirty (30) days of completion of the CLE course. The written confirmation should be in the form of a certificate of attendance or similar documentation from the course provider.

We note that the Respondent has modified his fee agreement in this matter. We would suggest that he consider further revisions consistent with this decision.

So ordered.

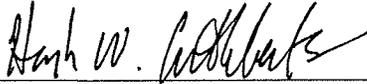
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DECISION DATE: 10/18/11

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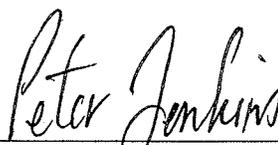
Attorney Hugh W. Cuthbertson

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Attorney Howard M. Gould

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Mr. Peter Jenkins