

STATE OF CONNECTICUT



Michael P. Bowler
Statewide Bar Counsel

Frances Mickelson-Dera
Christopher L. Slack
First Assistant Bar Counsel

Tel: (860) 568-5157

Fax: (860) 568-4953

STATEWIDE GRIEVANCE COMMITTEE

www.jud.ct.gov/sgc/

Second Floor - Suite Two

287 Main Street, East Hartford, Connecticut 06118-1885

03/29/2011

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

ALEXANDER APONTE
LAW OFF OF ALEXANDER
APONTE & ASSOC, LLC
609 FARMINGTON AVE.
HARTFORD CT 06105

RE: GRIEVANCE COMPLAINT #09-0695
DIAZ vs. APONTE

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 John J. Quinn
HOWARD KOHN SPRAGUE & FITZGERA
Maribel Diaz

NOTICE REGARDING DECISION
SANCTIONS OR CONDITIONS

GRIEVANCE COMPLAINT # 09-0095

THE ATTACHED DECISION IS PRESENTLY STAYED IN ACCORDANCE WITH PRACTICE BOOK §§2-35 AND 2-38.

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).

SECTION 2-38 STATES, IN PART, AS FOLLOWS:

(b) ... Enforcement of a decision by a reviewing committee imposing sanctions or conditions against the respondent ... shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35(g). If within that period the respondent files with the Statewide Grievance Committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the Statewide Grievance Committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal [of the sanctions or conditions to the Superior Court] pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision imposing sanctions or conditions against the respondent. If at the conclusion of all proceedings, the decision imposing sanctions or conditions against the respondent is rescinded, the complaint shall be deemed dismissed as of the date of the decision imposing sanctions or conditions against the respondent.

DECISION DATE: 3/29/11

STATEWIDE GRIEVANCE COMMITTEE

Maribel Diaz
Complainant

:

vs.

:

Grievance Complaint #09-0695

Alexander Aponte
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 January 13, 2011. The hearing addressed the record of the complaint filed on August 3, 2009 and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the Town of Hartford, on December 1, 2009, finding that there existed probable cause that the Respondent violated Rules 1.16 and 8.4(3) of the Rules of Professional Conduct. The hearing also addressed the additional probable cause determination filed by a reviewing committee of the Statewide Grievance Committee on January 19, 2010, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, 1.5(b) (2006), 1.4(a) (2006) and 1.7(b) (2006) 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 December 6, 2010. Pursuant to Practice Book §2-35(d), First Assistant Disciplinary Counsel Patricia A. King pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing and testified. Attorney Stephan J. Stolarz represented the Complainant. Attorney James Sullivan represented the Respondent. Four exhibits were admitted into evidence.

A third member of the reviewing committee was not present at the hearing due to a vacancy on the reviewing committee. Since both the Disciplinary Counsel and the Respondent waived the participation of a third reviewing committee member, this matter was heard and decided by the undersigned.

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

In February of 2005, the Complainant assumed ownership of the El Poderoso Supermarket (hereinafter, the "Supermarket") located at 194 Mather Street, Hartford, Connecticut from Father Michael Garlasso, by having the store placed in her name. Apolinar Collado and his wife, Lillian

Adames were the actual owners of the Supermarket. In the summer of 2005, the Supermarket was the subject of an investigation by the United States Department of Agriculture (hereinafter, "USDA"). By letter dated November 3, 2005, the USDA charged the Complainant with accepting food stamp benefits in exchange for merchandise in violation of Food Stamp Program regulations. The November 3, 2005 letter (hereinafter "charge letter"), sent to the Complainant at the Supermarket address, indicated that the Complainant would be subject to a civil money penalty, in the event she sold or transferred ownership of the Supermarket.

On or about November 10, 2005, Mr. Collado brought the original charge letter to the Respondent's office and consulted with the Respondent. Mr. Collado advised the Respondent that the Complainant was his partner and that their store was the subject of an investigation by the USDA. Thereafter, the Respondent wrote a letter to the USDA dated November 11, 2005, in response to the charge letter, advising that he was representing the Complainant and requesting an appointment to discuss the charges and a copy of documents pertaining to the matter. By letter dated December 22, 2005, sent to the Complainant at the Supermarket address and copied to the Respondent, the USDA found certain food stamp violations and disqualified the Supermarket from the Food Stamp Program for a period of six months. The December 22, 2005 letter indicated that if a request for review was filed, the Complainant could continue to accept food stamps until a decision was made on the request. The letter further indicated that the Complainant would be subject to a civil money penalty, in the event she sold or transferred ownership of the Supermarket. By letter to the USDA dated January 3, 2006, the Respondent requested a review of the matter. On or about March 8, 2006, the Complainant transferred ownership of the Supermarket. Thereafter, Mr. Collado requested that the Respondent withdraw the appeal. By letter dated March 16, 2006, the Respondent informed the USDA that the Supermarket was sold and that the Complainant "no longer owns this store and does not wish to seek administrative review of the matter." The Respondent did not communicate with the Complainant in connection with the representation. Instead, the Respondent communicated with Mr. Collado. By letter to the Complainant dated April 19, 2006, the USDA advised that as a result of selling the Supermarket, the USDA assessed a civil monetary penalty in the amount of \$30,846.

While representing the Complainant, the Respondent also represented the interests of Apolinar Collado and Lillian Adames relative to the USDA matter, without notifying the Complainant or obtaining her informed consent. The Respondent did not consult with the Complainant regarding the multiple representation. The Respondent did not provide the Complainant with a written fee agreement.

This reviewing committee also considered the following:

The Complainant contended that she never met the Respondent or retained his services with regard to USDA matter. The Complainant further contended that she was not involved in the "management or administration" of the Supermarket and "derived no revenue or income from

same.” The Complainant maintained that the November 3, 2005 charge letter was never provided to her nor was she notified of the USDA investigation by Mr. Collado or Ms. Adames. The Complainant further maintained that she never received the December 22, 2005 USDA disqualification letter and did not know of the potential penalties, if she sold the store. The Complainant maintained that she was not aware of the USDA’s investigation and subsequent penalties or the Respondent’s representation until the fall of 2008, when she was going to buy a house. The Complainant indicated that the USDA penalty with subsequent fines and interest is now in excess of \$50,000.

The Respondent testified that when Mr. Collado consulted with him with regard to the charge letter, he relied on Mr. Collado’s representation that the Complainant was his partner. The Respondent testified that he assumed that the Complainant knew about his representation of her and that Mr. Collado was keeping the Complainant informed about the matter. The Respondent explained that, in hindsight, his assumption was wrong. The Respondent testified that he now requires individuals who come to his office with a charge letter to be the actual person being charged by the USDA. The Respondent indicated that as part of a settlement of a civil action brought against him by the Complainant, he agreed to pay the Complainant’s USDA debt.

This reviewing committee notes that the Respondent has no prior disciplinary history.

This reviewing committee finds the following violations of the Rules of Professional Conduct by clear and convincing evidence:

The Respondent engaged in unethical conduct in connection with his representation of the Complainant with regard to the USDA matter. The Respondent failed to provide the Complainant with a written fee agreement in violation of Rule 1.5(b) (2006). The Respondent failed to communicate with the Complainant in connection with the representation in violation of Rule 1.4(a) (2006). The Respondent failed to provide the Complainant with competent representation in violation of Rule 1.1, by failing to advise the Complainant regarding the consequences of transferring ownership of the Supermarket. The Respondent violated Rule 1.7(b) (2006) by representing the Complainant and the interests of Apolinar Collado and Lillian Adames in connection with the USDA matter. The Respondent did not consult with the Complainant regarding the multiple representation or obtain her informed consent. The Respondent withdrew from representing the Complainant by notifying the USDA that the Complainant no longer owned the store and withdrawing the request for administrative review. The Respondent’s withdrawal from representing the Complainant violated Rule 1.16(b). The Respondent’s withdrawal from the representation had a material adverse effect on the Complainant’s interests, by exposing the Complainant to a significant civil monetary penalty.

This reviewing committee concludes that the record lacks clear and convincing evidence to substantiate a finding that the Respondent violated Rules 1.3 or 8.4(3) of the Rules of

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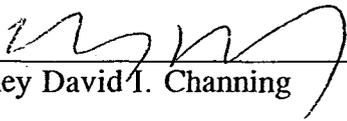
Professional Conduct.

This reviewing committee concludes that the Respondent's violation of Rules 1.1, 1.4(a) (2006), 1.5(b) (2006), 1.7(b) (2006) and 1.16(b) of the Rules of Professional Conduct warrants a reprimand. Accordingly, the Respondent is reprimanded.

DECISION DATE: 3/29/11

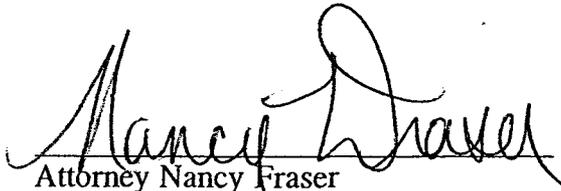
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Attorney David I. Channing

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Attorney Nancy Fraser