

J. TIMOTHY NEALON

Order (public reprimand) entered by the Board October 31, 2005.

SUMMARY¹

In November of 2004, the respondent agreed to represent a client in a pending civil action against the client's two sisters. The respondent filed his appearance on November 24, 2004, after receiving a \$1,000 retainer from the client. Prior to the respondent's appearance, the court had entered an order of default on June 23, 2004, against the first sister for failure to file an answer to the complaint. On September 21, 2004, the court entered an order that the "assessment of damages and/or any other remedy [against the first sister] should take place at the time of disposition of this matter as to the remaining defendant or at such time as this court otherwise orders."

On January 3, 2005, the respondent, after consultation with the client, agreed to dismiss the client's claims as to the second sister, and reported to the court that the client's claims as to the second sister had been settled. On January 3, 2005, the court entered a nisi dismissal order, requiring that an agreement for judgment or a stipulation of dismissal be filed in the clerk's office by February 2, 2005, and providing that if an agreement or stipulation was not filed by that date, the clerk was directed to prepare, sign and enter a judgment dismissing the complaint and all other claims without prejudice and without costs. The respondent received a copy of the nisi dismissal order in due course.

On January 13, 2005, the respondent, with the authorization of his client, signed a stipulation of dismissal, with prejudice, of the client's claims as to the second sister. On January 18, 2005, the parties filed the stipulation of dismissal in court. The stipulation of dismissal only addressed the client's claims as to the second sister. The client intended to continue with his claims as to the first sister.

On or about February 4, 2005, the clerk telephoned the respondent's office to inquire about the status of the client's claims as to the first sister. The respondent was on vacation and did not return the call. On his return from vacation, the respondent did not follow up with the court with respect to the status of his client's claim as to the first sister.

On February 15, 2005, the court entered a judgment of dismissal without prejudice of the client's civil action for failure to comply with the nisi dismissal order due to the respondent's failure to file an agreement for judgment or stipulation of dismissal. The respondent received a copy of the judgment of dismissal in due course. Through inattention and inadvertence, the respondent misread the judgment to apply to the client's claim against second sister, and not against the first sister. The respondent did not notify the client that he had received the judgment of dismissal.

Between February and April 2005, the respondent sought records to support the client's claim against the first sister. By letter dated April 5, 2005, the respondent provided the client with copies of financial records he had obtained by subpoena, and requested that they meet soon

to discuss the case. Prior to the meeting, the client contacted the court and learned that his civil action had been dismissed in February. During his meeting in early April 2005 with the client, the respondent telephoned the clerk's office, and confirmed that the client's lawsuit had been dismissed without prejudice. After consultation with the client, the respondent agreed to attempt to vacate the dismissal and to reinstate the client's claims as to the first sister.

Thereafter the respondent did not file a motion with the court to attempt to vacate the dismissal, and did not promptly respond to the client's communications requesting information about the status of his case. By letter dated May 6, 2005, the client discharged the respondent, and requested that the respondent return his file and account to the client for the funds the client had paid him. The respondent did not promptly return the client's file or provide the client with the requested accounting.

On May 18, 2005, the client filed a request for investigation with bar counsel. On or about June 30, 2005, the respondent returned the client's file and reimbursed the client for the \$1,000 retainer that the client had paid him. In August 2005, the respondent paid the client an additional \$630 for costs and expenses. By agreement with the client, in August 2005, the respondent also filed a motion to vacate the dismissal of the client's claim as to the first sister.

By failing to act diligently to seek removal of the judgment of dismissal against his client, the respondent violated Mass. R. Prof. C. 1.3. By failing to promptly respond to his client's requests for information about his case, the respondent violated Mass. R. Prof. C. 1.4(a). By failing to promptly render an account for the funds the client had paid him, and to return the client's file and unearned retainer upon request by the client, the respondent violated Mass. R. Prof. C. 1.15(d), and Mass. R. Prof. C. 1.16(d) and (3).

The respondent was admitted to the Bar of the Commonwealth on November 1, 1971. In aggravation, the respondent received an admonition in 2001 for neglect of an estate matter, and for failure to cooperate with bar counsel's investigation of a second unrelated grievance. Admonition No. 01-65, 17 Mass. Att'y Disc. R. 784 (2001). In addition, the respondent received an informal admonition in 1986 for neglecting a land court matter (B.B.O. File No. C2-85-290), and a private reprimand in 1988 for neglecting an estate matter and a civil litigation matter. PR-88-18, 5 Mass. Att'y Disc. R. 558 (1988).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on June 20, 2005, conditioned on the respondent's attendance at a CLE course designated by Bar Counsel.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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