

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellant,  
v  
EUGENE F. WILLIAMS, P-22344  
Respondent/Appellee.

File No. DP 197/85

Argued: March 23, 1987

Decided: May 20, 1987

OPINION OF THE BOARD

This matter comes before the Board upon the filing of a Petition for Review by the Grievance Administrator seeking an increase in the discipline imposed. We affirm the Hearing Panel Order suspending Respondent's license for a period of 119 days. We take this opportunity, however, to emphasize our disapproval of Respondent's conduct and to issue a warning that an attorney who borrows money from a client must be prepared to establish an exceptionally high degree of good faith. The case before us amply demonstrates the inherent dangers to the client and to the reputation of the legal profession when a lawyer allows his own financial self interest to bring injury to his client.

In November 1978, Respondent was retained by Edna B. Moore to file a personal injury lawsuit. The case was eventually settled for \$36,000 with a net recovery to Ms. Moore of \$23,933.34. Before the settlement funds were actually distributed to his client, Respondent Williams informed her that the Internal Revenue Service was preparing to foreclose on a tax lien and that he was about to lose his home. Respondent then proposed to Ms. Moore that she loan him the sum of \$17,028.54. The parties discussed the prevailing money market rates and Mr. Williams agreed to secure the loan with a mortgage on his home and a mortgage note calling for repayment within six months and at an annual interest rate of 14 percent.

The Hearing Panel concluded that Respondent's conduct violated the provisions of Canon 5 of the Code of Professional Responsibility DR 5-104(A) in that he entered into a business transactions with his client although they had differing interests as debtor and creditor and Ms. Moore was looking to Respondent to exercise his professional judgment for her protection. By his failure to inform his client that the interest rate he proposed was usurious and could be subject to forfeiture if the matter proceeded to litigation, Respondent failed to make the full disclosure to his client which is required by DR 5-104(A). Moreover, his failure to make that disclosure, coupled with his failure to secure proper title documentation, provided the basis for the Panel's finding that his conduct involved a lack of honesty in violation of Canon 1, DR 1-102(A)(4). There is certainly ample evidence for the Panel's conclusion that Respondent failed to disclose that which he was required by law to reveal to his client in violation of Canon 7, DR 7-102(A)(3) and that his conduct damaged his client. [DR 7-101(A)(3)]

As the Panel correctly pointed out, these entire proceedings might have been avoided had Respondent, at the time of the original loan request, simply referred his client to another attorney who could have exercised independent judgment and advised her accordingly. That he did not do so and that he concealed information (the potential unenforceability of the usurious interest rate) which a competent attorney would be expected to discuss with a client emphasizes the appearance of impropriety which would have characterized this transaction even if Respondent had then lived up to his part of the agreement.

Unfortunately for Ms. Moore and for the reputation of the legal profession, Respondent did not repay the loan within six months and the record discloses that Ms. Moore was forced to retain a lawyer to institute foreclosure proceedings. Although Respondent apparently paid \$3,000 to Ms. Moore prior to the filing of the foreclosure action, it was not until October 26, 1984, three and a half years after he borrowed from his client, that Respondent satisfied the judgment which his client obtained against him in Macomb County Circuit Court. Ms. Moore eventually recovered the principal loan, with interest allowed by the Court at 7 percent, but the record indicates that she was forced to expend \$4,000 in additional attorney fees to secure that repayment from Respondent.

For the most part, our sympathies must lie with the injured client and we find it especially distasteful that the Respondent, having induced his client to enter into a loan at the usurious rate of 14 percent, made repayment with interest at 7 percent and then not until the last day of the statutory redemption period.

The discipline imposed by the Hearing Panel could have been more severe. We note, for example, the nine month suspension ordered In The Matter of Joseph E. Chabot, DP 161/80; DP 74/81 (Michigan Attorney Discipline Board, 1980) involving a lawyer in a divorce action who lent himself money from the sale of his client's house but failed to advise the client to seek independent representation in regard to the loan. In this case, however, the Panel considered the mitigating effect of Respondent's confessed alcohol dependency, his continuing rehabilitation and his efforts to discharge his financial obligations. We decline to substitute our own feelings for those of the Panel in this case with regard to the sufficiency of a suspension of 119 days.

As indicated above, this case underscores the duty of every attorney to observe the utmost good faith when engaging in a financial transaction with a client. The attorney not only has duties of care and professional skill, but must also conduct himself or herself in a spirit of loyalty to the client, assuming a position of the highest trust and confidence. See Rippey v Wilson, 280 Mich 233 (1937).

We find that the Panel's reference to the standard enunciated by our Supreme Court in Kukla v Perry, 361 Mich 311 (1960) was entirely appropriate and we quote from the Court's opinion at page 329:

In no manner or way or to the least extent can an overreaching by an attorney in his dealings with a client be condoned. It may be said that almost every private transaction, as distinguished from professional representation, between an attorney and the client presents the

possibility of overreaching by the attorney. While not per se illegal, every such transaction places the integrity of the Bar as a body in jeopardy. Accordingly, every such transaction must be scrutinized closely and each is fraught with danger to the attorney involved.

The Order of the Hearing Panel is affirmed. (All Board Members Concurring with the exception of Ms. Komer who was not present.)