

Grievance Administrator  
v  
FREDERICK A. SAUER, JR.  
A Member of the State Bar of Michigan,  
Respondent-Appellant.  
File No. DP-25/84

Argued: January 18, 1985

Decided: April 16, 1985

OPINION OF THE BOARD

Respondent was charged in a one count Formal Complaint with violation of several disciplinary rules including Canon 6, DR 6-101(A)(3) and Canon 7, DR 7-101(A)(1-3) of the Code of Professional Responsibility. The Formal Complaint stemmed from Respondent's handling of a divorce action in which the court ordered the sale of a home. The complainant alleged she was not adequately notified of the sale. The hearing panel found that Respondent did violate the disciplinary and related court rules as alleged by the Grievance Administrator. The panel also found that Respondent failed to adequately inform and advise his client of the status of the home sale resulting in prejudice or damage to the complainant. Respondent appeals the panel order of reprimand and restitution in the amount of \$7,500. We affirm the reprimand, but vacate the requirement of restitution. The Board adopts the findings of fact and conclusions of law entered by the hearing panel. The neglect proven in this matter warrants a reprimand and assessment of costs.

Respondent sent a letter to his client Sandra G. Benjamin (the complainant here) in August, 1982 merely Informing her of the court ordered sale of her home "on or before September 27, 1982, at 5:00 pm." This letter was incorrect and not consistent with the letter sent by the court-appointed receiver to Respondent, dated September 7, 1982, Indicating 4:00 p.m. as the correct time of the sale and establishing the terms of the sale. The other evidence presented was subject to the hearing panel's assessment of credibility which is afforded deference by the Board in this matter.

However, we do not find in the record a sufficient basis for determining, with specificity, the extent of the client's monetary damages resulting from Respondent's violation. According to MCR 9.106 (formerly GCR 955) a hearing panel may require restitution, in an amount it sets, as a condition In an order of discipline. This is a relatively recent feature in the disciplinary rules and there is a scarcity of discussion on this subject in disciplinary decisions. We hope to provide our hearing panels with some guidance with regard to this issue.

The Michigan Supreme Court, in its wisdom, allowed restitution as a discretionary adjunct to discipline. However, not every case, perhaps not most, involve circumstances and proofs which would make restitution appropriate. In the disciplinary forum, the calculation of reimbursable losses is fought with difficulty. Formal Complaints filed by the Grievance Administrator usually do not aver a specific sum lost, nor are such complaints generally designed to show that certain acts or omissions are the sole cause of specific losses in verifiable amounts.

The discipline forum is not intended or equipped to resolve monetary disputes; rather it is the overriding purpose of our discipline system, in the adjudication of complaints against attorneys, to take proofs, rule upon the ethical issues and fashion appropriate disciplinary sanctions to deter similar misconduct and otherwise protect the public, the courts and the legal profession. MCR 1985, 9.105 and 9.110.

Certainly the rule amendment allowing restitution is useful and welcome and, in appropriate circumstances, may allow reimbursement to clients who would otherwise have to needlessly undergo further time and expense of a separate civil action. However, it is the opinion of the Board that restitution should only be considered in disciplinary cases where the Respondent admits responsibility for the loss of a sum certain or the link between misconduct and a readily verifiable degree of loss is demonstrated without the need for lengthy proofs or proceedings.

The restitution in the amount of \$7,500, as ordered by the panel here, is speculative at best. We are left to surmise whether the award of \$7,500 is an accurate prediction of what would be obtained from a “forced” sale of the property in question. It is questionable whether this amount is the actual net that the client would have realized by such a court-ordered sale. Rather, the panel-ordered restitution appears to be an estimate based upon factors not adequately addressed in the complaint or the record of proofs.

In this case the question of restitution is better left to separate civil litigation. The testimony regarding value and actual loss was conflicting and there was confusion regarding the option to purchase and complainant's actual loss.

The reprimand is affirmed; the panel order is vacated in part, deleting the requirement of restitution.