GRIEVANCE ADMINISTRATOR
v
DWIGHT N. TEACHWORTH,
A Member of the State Bar of Michigan,
Respondent-Appellant,
File No. DP-64/84

Argued: February 28, 1985
Decided: April 16, 1985

Portia Y.T. Hamlar, Attorney Grievance Commission, on behalf of Petitioner-Appellant;

Sidney J. Suo, Esq., on behalf of Respondent-Appellant.

Both the Grievance Administrator and the Respondent have filed a petition for review of the level of discipline imposed by the hearing panel. In its report, the hearing panel found that the Respondent failed to disclose material facts to his client, in violation of DR 7-102(A)(3) and GCR 953(1), did not properly disclose a conflict of interest to his client, in violation of DR 1-102(A)(4)(6), and wrongfully discharged in bankruptcy a lawful debt owed to his client, in violation of DR 6-102(A). The panel dismissed charges that the Respondent attempted to obstruct the Grievance Administrator's investigation and engaged in misconduct by addressing a letter to the complainant which demanded retraction of certain statements in the grievance. We vacate the hearing panel's order of suspension of 90 days and reverse the panel findings of misconduct, except the findings of a conflict of interest, which constitutes a violation of DR 5-105(A)and(B). The discipline for the conflict of interest violation shall be reduced to a reprimand.

The intricate and voluminous web of facts which gave rise to the allegations in the Complaint are, in large measure, not relevant to the Board's determination and will not, therefore, be fully addressed here. It is, however, necessary to elucidate the precise circumstances pertaining to the conclusion that the Respondent engaged in a conflict of interest. The Respondent has been an attorney for eight and one half years, and has no prior record of misconduct. He held a real estate broker's license at the time of the incidents leading to the complaint. The complainant-client, Arlene Birdsall was aware of his dual professional status (as broker and lawyer), but she initially retained the Respondent as an attorney in order to avoid the unprofitable consequences of an agreement for the sale of her condominium. Subsequent to settling a dispute over that sale, the Respondent personally produced another purchaser, (a friend of the Respondent) for Complainant's property on more favorable terms. An agreement was reached, and the land contract sale was consummated. At the time of the closing, Respondent made an agreement with the Complainant that he would collect the land contract payments for her, and use the proceeds to make mortgage payments and monthly maintenance fee payments. He also agreed to refund any surplus to her.

Respondent also agreed to manage the condominium for the land contract purchaser or, in essence, to act as the purchaser's rental agent. His duties as rental agent consisted of applying the land contract payments to the underlying mortgage and paying the monthly maintenance assessments

as they came due. The Complainant, however, was not aware of the various duties and positions held by the Respondent on behalf of the purchaser.

Turning to the other major area of the Formal Complaint, we note that the Complainant and Grievance Administrator give considerable significance to Respondent's action to secure bankrupt status. In January of 1983, the Complainant commenced an action against Respondent, alleging she had suffered damages because of Respondent's negligence, breach of contract, or both. Respondent contended that he owed nothing, but nevertheless consented to a judgment in the amount of $8,800. Respondent paid $1,300 of the judgment, but was unable to obtain a time extension to meet subsequent payment deadlines; he filed bankruptcy under Chapter 7 and listed the Complainant, as well as the condominium purchaser, as unsecured creditors. Complainant brought a claim contesting the bankruptcy proceedings, but neither she, nor her counsel, appeared as scheduled before the bankruptcy court and the adversary claim was dismissed with prejudice. Respondent and Complainant agreed that no costs would be assessed against Complainant due to her failure to appear at the bankruptcy court hearing and Complainant would make no attempt to set aside dismissal of her claim. However, Complainant and the Grievance Administrator maintain that, although all debts must be listed in bankruptcy court, Respondent had an affirmative duty to disclose which debts were not properly dischargeable. Consistent with this reasoning, the panel concluded that Respondent had willfully eliminated a debt, in violation of DR 6-102(A).

Findings by the Board

We reverse the panel's conclusions with regard to the bankruptcy proceedings. The sole affirmative duty required of the Respondent when he filed for bankruptcy was to list all of his debts in the petitions. He was in no way obliged to characterize which claims might not have been dischargeable. Moreover, Complainant's challenge to discharge of her claim was dismissed for good reason. Respondent had no duty, contrary to the arguments of counsel for the Grievance Administrator to essentially argue on behalf of his adversary, the Complainant, and ever to the court that DR 6-102(A) prevented discharge of the Complainant's claim by the federal bankruptcy court.

Regarding the other allegations, we agree with the panel's determination that Respondent did not properly disclose the conflict of interest at the time of the condominium sale thereby engaging in actionable misconduct. Even if the Complainant was apprised of Respondent's potential capability to function as a licensed real estate broker as well as an attorney, she was unaware of his dual role in the real estate transaction. Respondent, as charged in Count I paragraph L of the Formal Complaint, failed to disclose to Ms. Birdsall that the buyer, Marion Bell, was a close friend and co-investor with Respondent and that Respondent simultaneously represented Ms. Bell.

His conduct clearly included a blatant conflict in violation of DR 5-105(A)(B) and involved a concealment or lack of candor in violation of Canon 7, DR 7-102(A)(3). Respondent should have fully informed his client of the various duties he was performing and positions he held during the entire transaction. [However, there is nothing in the evidence which suggests that there was any fraudulent intent or misrepresentation. Therefore, we cannot adhere to the panel's conclusion that Respondent violated DR 1-102(A)(4).

Additionally, we find no evidence on the record to support the panel's conclusory suggestions of other misconduct including dicta to the effect that Respondent was an "undisclosed principal co-purchaser" in the condominium transaction and that he made undisclosed use of supposedly borrowed money to purchase the property.

Accordingly, in light of our conclusion that the proofs support the charges of violations of the nondisclosure and conflict of interest rules, but no others alleged in the Complaint, the discipline ordered by the hearing panel shall be modified.

It is important that attorneys strive to be fair and candid with their clients and constantly maintain as paramount the best interests of their clients which may tend to become obfuscated by the complexity and economic pursuits of everyday practice. This, the first disciplinary action against Respondent, stands as a warning that marginal or minimal compliance with the disciplinary rules is a danger to the practitioner and the public and may be viewed as an aggravating factor which could be the basis of a more severe discipline as well as a judgment for damages in another forum.

The suspension of 90 days is reduced to a reprimand.

All concur.