

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR-08-7

BOARD OF OVERSEERS OF THE BAR)
)
Plaintiff)
v.)
)
Brian Condon, Jr., Esq.)
of Winthrop, ME)
Me. Bar # 8588)
Defendant)

DECISION and ORDER

The Board of Overseers of the Bar initiated the above attorney disciplinary matter on August 14, 2008. Based upon the parties' agreement at a subsequent pre-trial conference, this Court accepted their proposal to a stipulated proceeding without formal hearing. Throughout this disciplinary matter, Attorney Brian Condon, Jr. has acted *pro se* and the Board of Overseers has been represented by Assistant Bar Counsel Aria eee.

Prior to the final hearing in this case the parties notified the Court that they were in agreement as to sanctions and resolution of the disciplinary charges. The parties submitted a draft order to the Court on October 27, 2008 to memorialize that agreement. Additionally, the Board sent a copy of the proposed Order to the complainant, Ms. Julie A. Dana, who thus far, has filed no response to the proposal.

Following a review of the record and the parties' stipulations, the Court finds the following facts: In a 2006 refinancing transaction by Ms. Dana and her husband, Attorney Condon served as counsel for the bank providing a title

commitment regarding the Danas' six (6) parcels of land. Additionally, he acted as closing agent selected by both the bank and the Danas. Attorney Condon drafted the description for the mortgage deed and sold the Danas (who were *pro se*) an owner's title policy.

From the start of transaction, the Danas did not intend that the new mortgage would include their three (3) separate waterfront lots. The Danas contend that they explained this to Attorney Condon and then took steps to ensure that the appraisal included only the house and the three lots on the house-side of the road. Of note, Attorney Condon did not have a copy of the appraisal at or before closing, and met the Danas for the first time at the closing.

It is the Danas' recollection that Attorney Condon gave assurances at the closing that the deed complied with the mortgage broker's title request, which was in error as that request included all six (6) parcels of land. The Dana's ultimately discovered that the mortgage prepared by Condon included all six of their parcels. Unfortunately, Attorney Condon did not show the mortgage documents to the Danas for their advanced review before the closing; instead he relied on the title commitment sent to the mortgage broker, which was consistent with the broker's request. It is unclear if the broker showed that title commitment to the Danas prior to the closing.

After the closing, the Danas were required to escrow their real estate taxes. They experienced negative financial consequences resulting from the mortgaging of all six (6) parcels by having to escrow their real estate taxes for

the additional three lots. While Attorney Condon provided subsequent assistance (at no charge) to the Danas to secure the removal of the three (3) lots from the mortgage, he attributed much of the resulting problems to the services provided by their mortgage broker. Of note, if Attorney Condon had included just the three (3) lots in the description, it is anticipated that the taxes would still have been escrowed due to the communication between the mortgage broker and the bank.

Even so, Attorney Condon acknowledges that his failure to then fully appreciate his additional duty to the Danas at the closing and to recognize such a mistake resulted in conduct prejudicial to the administration of justice (See M. Bar R. 3.2(f) (4)). Attorney Condon also concedes that in hindsight, it was a lapse in his usual standard of care. (See M. Bar R. 3.6(a).

The Board and Attorney Condon agree, and the Court so finds that it is imperative for the administrative of justice and for the protection of the public, that the legal community at large is aware of an attorney's ethical duty to borrowers in a mortgage transaction. Regardless of the attorney's representation of a bank in a given transaction, as in this case, the attorney also owes duties to the mortgagor, despite the involvement of other non-attorney professionals.

Based on the facts set forth above, the parties agree and the Court so finds that Attorney Brian D. Condon, Jr. engaged in violations of the following Maine Bar Rules in this matter: 3.1(a); 3.2(f)(4) and 3.6(a).

In determining the appropriate sanctions for these bar violations, the Court must consider Attorney Condon's disciplinary history, including his suspension from practice which was effective and served earlier this year. The Court notes that generally, when a lawyer has been sanctioned for the same or similar misconduct and engages in further acts of misconduct that cause injury to a client, the public, the legal system, or the profession, the appropriate sanction is suspension. *ABA Standards for Imposing Lawyer Sanction* §8.2 (1986). See *Board of Overseers v. Bruce S. Billings*, BAR-90-16 (1991). In this case however, Attorney Condon did not engage in any similar misconduct. Furthermore, the Danas were not Attorney Condon's actual clients, but he agrees that as the closing agent and title insurer, he did owe some responsibility to them within that transaction.

Indeed, as the closing agent for the Danas and the lending institution, Attorney Condon held certain fiduciary duties to ensure that the proper standards of care were provided. The Danas did have definite, reasonable expectations of Attorney Condon's work on behalf of the bank. Given the simultaneous efforts of the mortgage broker, it cannot be said that all of the miscommunication is the fault of Attorney Condon. He has clearly stated his understanding of the scope of his responsibilities, even when he was not retained by the loan mortgagor. Attorney Condon expressed remorse for his lapse and assured the Court that he has a greater appreciation for the increased standards of care he must uphold.

Accordingly, it is hereby **ORDERED and ADJUDGED** that Brian D. Condon, Jr., Esq. is reprimanded for his violations of Maine Bar Rules 3.1(a); 3.2(f)(4) and 3.6(a).

Finally, Bar Counsel may file an information directly with the Court without any Grievance Commission review or hearing concerning any new complaints of professional misconduct allegedly committed by Attorney Condon and received by the Board after the date of this Order.

Seen and agreed to by:

_____/s/_____
Aria eee
Assistant Bar Counsel

Date: 10/24/08

_____/s/_____
Brian D. Condon, Jr., Esq.

Date: 10/24/08

Dated: October 31, 2008

_____/s/_____
Ellen Gorman
Associate Justice
Maine Supreme Judicial Court