

New Hampshire Supreme Court
Professional Conduct Committee

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Battles, William R. advs. Sue W. Larsen # 04-099

Reprimand

On February 20, 2007, the Professional Conduct Committee considered the above-referenced matter pursuant to New Hampshire Supreme Court Rule 37A(III)(d)(2)(B). The Committee consisted of Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni Gray, Vice Chair, Alan J. Cronheim, Gerald A. Daley, Thomas P. Connair, Richard H. Darling, Gretchen Rule Hamel and David N. Page. Ellen L. Arnold and David N. Cole participated by telephone. James R. Martin was absent.

The Professional Conduct Committee, upon consideration, granted the Assented to Motion to Permit Waiver of the Hearings Committee Process, including the issuance of Notice of Charges. Further, the Committee approved the Stipulation as to Facts, Rules violated and Sanction.

FACTUAL FINDINGS

The Professional Conduct Committee determined that the record supports the following findings of fact as stipulated to by the Respondent, William R. Battles, and General Counsel, James L. DeHart.

1. Mr. Battles was admitted to the New Hampshire Bar in 1976.
2. At all relevant times hereto Mr. Battles has maintained a law practice in North Conway, New Hampshire with a mailing address of P.O. Box 1757, North Conway, New

Hampshire, 03860-1757.

3. In late 1999, Mr. Battles began representing Sue W. Larsen and John Larsen of South Windsor, Connecticut. The Larsens were attempting to purchase a lot in Bartlett, New Hampshire, where they planned to eventually build a retirement home.
4. There were issues involving road access to the lot.
5. After an extended period, a 13 page purchase and sale agreement was negotiated and executed.
6. The purchase and sale agreement required the sellers to effect the final subdivision of the premises on or before August 1, 2000. It was contemplated that the closing would take place 15 days thereafter.
7. By August 15, 2000, it was clear that the sellers had not obtained the subdivision approval as required.
8. Although the parties executed an amendment to the purchase and sale agreement extending the date for the sellers to obtain subdivision approval until January 1, 2001, the issues were never resolved.
9. By late July of 2001, the broker for the sellers notified the Larsens that the seller's attorney had concluded that the sellers could not receive the town and state approvals necessary to transfer title to the parcel.
10. Attempts to get a further explanation were not successful.
11. Up to this point, the regularity of communications between Mr. Battles and his clients were sufficient to meet his obligations under the Rules of Professional Conduct.
12. Thereafter, Mr. Battles and Ms. Larsen had a telephone conversation about proceeding against the sellers for specific performance.
13. In January of 2002, Ms. Larsen sent Mr. Battles a check for \$7,500 as a retainer. The check was deposited in Mr. Battles' trust account.
14. After receiving the deposit, Mr. Battles reviewed all the documentation related to the matter and determined that it appeared that the cause of action for specific performance would have accrued not earlier than July 25, 2001, the date of the broker's letter first informing the Larsens that the sellers were not going to close the transaction. Therefore, the three year statute of limitation would not run prior to July 24, 2004.

15. During the spring and summer of 2002, Mr. Battles researched the issues related to specific performance. By the fall of 2002, he became concerned that the legal framework existed for a specific performance action but that a problem existed because the land could not be legally conveyed without subdivision approval. The Bartlett Planning Board was not going to approve the subdivision without adequate arrangements for securing the sellers' obligation to construct the road and utilities.
16. During the months that followed, Mr. Battles discussed the situation with other attorneys with significant experience in real estate litigation. None of the attorneys were able to offer insights which would solve the problem.
17. Ms. Larsen reported that Mr. Battles did not take or return her calls between January 2002, and August, 2003. Mr. Battles did not initiate any communications to his client to report what he was doing and the problems he had encountered.
18. The Larsens did not know the status of the matter or that no action for specific performance had been filed.
19. By letter dated July 27, 2003, Ms. Larsen set out her concerns about the lack of communication.
20. By mid-August of 2003, Mr. Battles had spoken with the Larsens' Connecticut attorney and had been advised that under the circumstances the Larsens were no longer interested in purchasing the property.

RULINGS OF LAW

Having found the above-listed facts by clear and convincing evidence, the Professional Conduct Committee concludes that William R. Battles violated the following Rules of Professional Conduct by clear and convincing evidence.

21. Mr. Battles failure to communicate with his clients over a prolonged period of time violated Rules 1.4(a) and 1.4(b) of the Rules of Professional Conduct.
22. It is also agreed that the above violations constitute a violation of the general rule, 8.4(a), by violating the Rules of Professional Conduct.

MITIGATING FACTORS

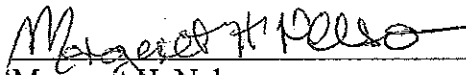
23. Mr. Battles has no history of prior discipline.
24. Mr. Battles failure to properly communicate with his clients did not involve a dishonest or selfish motive.
25. Mr. Battles has been cooperative with the Attorney Discipline Office.
26. By letter dated June 15, 2005, Ms. Larsen attempted to withdraw her complaint stating, in part:

We discussed the issues concerning the sale of the Bartlett property and while we do not agree with the outcome due to differing experiences, we did discuss the lack of communication which led to the complaint. I believe we both learned a valuable lesson and I am satisfied with the outcome.

SANCTION

27. It is agreed that a reprimand is the appropriate sanction, in light of the mitigating factors, and is consistent with the purposes of the ABA Standards for Imposing Lawyer Sanctions. Standard 1.3.

March 5, 2007



Margaret H. Nelson
Chair

Distribution:

James L. DeHart, General Counsel
William R. Battles, Esquire
Sue W. Larsen
File