

New Hampshire Supreme Court  
**Professional Conduct Committee**

Margaret H. Nelson, Chair  
Benette Pizzimenti, Vice Chair  
Toni M. Gray,\* Vice Chair  
David N. Cole  
Thomas P. Connair  
Alan J. Cronheim  
Eleanor Wm. Dahar

4 Park Street, Suite 304  
Concord, New Hampshire 03301  
603-224-5828 ♦ Fax 228-9511

Gerald A. Daley\*  
Richard H. Darling\*  
Gretchen Rule Hamel  
James R. Martin  
David N. Page\*  
\* non attorney member  
Holly B. Fazzino, Admin. Coordinator

*Bosse, Leigh D. advs. Attorney Discipline Office #04-071*

**Six Month Suspension**

On July 18, 2006, the Professional Conduct Committee heard oral argument on the matter of Bosse, Leigh D. advs. Attorney Discipline Office #04-071. Members present were as follows: Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, Alan J. Cronheim, Richard H. Darling, James R. Martin. David N. Page and Gerald A. Daley did not participate in the discussion or vote. Landya B. McCafferty, Disciplinary Counsel, represented the Committee. Respondent Leigh D. Bosse was represented by David Garfunkel, Esquire.

**Factual Findings**

The parties had entered into a Stipulation As to Facts and Rules Violated. On July 18, 2006, the Professional Conduct Committee, upon consideration and review of the Stipulation, determined that the record supports the following findings of fact and rules violations by clear and convincing evidence:

1. Mr. Bosse is an attorney licensed to practice law in New Hampshire. Mr. Bosse was admitted to practice in 1975. At all times material to this matter, Mr. Bosse operated his law office as Law Offices of Leigh Bosse, P.O. Box 2100, Hillsboro, New Hampshire, 03244-2100,

and was the principal broker and owner of Century 21 Red Coat Realty in Hillsboro, New Hampshire.

2. On February 3, 2003, Mr. Bosse sent the following memorandum to approximately 35 property owners on Emerald Lake, a small lake located in Hillsboro:

To: Emerald Lake Property Owners

From: Leigh Bosse

Subject: Today's HOT Real Estate Market

If you ever thought about selling your land at Emerald Lake, NOW is the time. I am currently working with three builders who are looking for lots to build on.

I can almost guarantee a quick sale of your lot for at least \$10,000.00, provided a state approved septic system can be placed on it.

Although our normal commission for land sales is 10%, if we sell your lot to one of these three builders, I will cut the commission in half to only 5%.

If you are interested, act quickly before these favorable market conditions disappear.

Please let me know if you are interested.

CENTURY 21 Red Coat Realty  
By: Leigh Bosse, Owner/Broker

(Emphasis in original).

3. The three builders referred to in the memo were Messrs. Lemay, Dube and Costa.
4. On February 6, 2003, in response to this memorandum, Mr. Bosse received separate telephone calls from Mr. Raymond Grimard and Mr. Brian Soule, both Emerald Lake property owners.

5. Mr. Soule and Mr. Grimard each expressed interest in selling his lot for \$10,000.00, if Mr. Bosse could find a buyer for that amount. Mr. Bosse told each of these gentlemen that he would send a listing packet and if he could make contact with one of the builders identified in his memo, he would probably send them a purchase and sale agreement as well. Mr. Bosse did attempt to contact the builders but was unsuccessful. Mr. Soule told Mr. Bosse that he would come into the office to complete the paperwork. Mr. Bosse remembers Mr. Grimard as having asked him to mail the paperwork. Mr. Grimard remembers asking Mr. Bosse for an appointment to discuss the matter further.

6. On that same date, February 6, 2003, following Mr. Bosse's conversation with Mr. Grimard, Mr. Bosse mailed him an Exclusive Listing Agreement which contained a sale price of \$10,000.00, and a Disclosure of Agency Relationships in Real Estate Brokerage. The Listing Agreement also included a notation that the real estate commission would be 5% (rather than 10%) if the sale was to Messrs. Lemay, Dube or Costa.

7. On that same date, February 6, 2003, Mr. Bosse entered both Mr. Soule's and Mr. Grimard's information into his office computer.

8. Later that same date, Mr. Soule came to Mr. Bosse's office and signed a Listing Agreement.

9. On February 7, 2003, Mr. Dube came to Mr. Bosse's office. Mr. Bosse told Mr. Dube that he had one new Emerald Lake Listing (Mr. Soule) and another promised by return mail (Mr. Grimard).

10. Mr. Dube requested that Mr. Bosse prepare \$10,000.00 offers to purchase Mr. Soule's and Mr. Grimard's properties. Mr. Bosse did that.

11. Mr. Bosse also prepared for Mr. Dube's signature a Dual Agency Consent Agreement for each transaction. Mr. Dube signed both documents.

12. Mr. Dube further instructed Mr. Bosse to prepare listings on Mr. Dube's behalf for houses to be constructed by Mr. Dube in the future on the properties of Mr. Grimard and Mr. Soule. Anticipating the completion of these transactions in the future, Mr. Bosse entered these listings into his office computer.

13. Following Mr. Bosse's meeting with Mr. Dube, Mr. Bosse changed the status of both the Soule and Grimard listings to "pending" on his office computer. "Pending" status simply means that a sale of the property is pending.

14. On February 8, 2003, Mr. Soule came to Mr. Bosse's office, accepted Mr. Dube's offer, and signed a Purchase and Sale Agreement and Dual Agency Consent Agreement.

15. Northern New England Real Estate Network ("NNEREN") is the computerized Multiple Listing Service for New Hampshire. NNEREN required that any listing obtained by a real estate agent or any change in a listing status be forwarded to NNEREN within 48 hours. Failure to comply would result in a fine. At all times material to this matter, NNEREN was administered by Mr. James Boike.

16. As a result of the February 8, 2003, agreement entered into by Mr. Soule and Mr. Dube, that transaction was ripe for uploading to NNEREN. On that date, Mr. Bosse uploaded the Soule-Dube information.

17. On February 8, 2003, Mr. Bosse also uploaded the Grimard-Dube information.

18. On February 10, 2003, Mr. Boike contacted Mr. Bosse. Mr. Boike requested paperwork to substantiate the Grimard-Dube and Soule-Dube listings.

19. After speaking with Mr. Boike, Mr. Bosse attempted to reach Mr. Grimard but was unsuccessful. Mr. Bosse and Mr. Boike had a history of conflict and, at that point, rather than advising Mr. Boike that he had uploaded the Grimard deal too soon, Mr. Bosse signed Mr. Grimard's name to the following two documents: (a) the Exclusive Listing Agreement (the same document that Mr. Bosse had previously forwarded to Mr. Grimard but that Mr. Grimard had not signed or returned to Mr. Bosse), and (b) the Purchase and Sale Agreement (previously signed by Mr. Dube but not agreed to or signed by Mr. Grimard). While Mr. Bosse expected at that time that Mr. Grimard would be forwarding properly executed documents to him shortly, he admits that in signing Mr. Grimard's name to the Purchase & Sale Agreement, he acted without Mr. Grimard's consent or authorization.

20. On February 10, 2003, after signing Mr. Grimard's name to these two documents, Mr. Bosse forwarded them to Mr. Boike and falsely informed Mr. Boike in a cover letter that the Purchase and Sale Agreement was "in effect."

21. Prior to Mr. Bosse signing Mr. Grimard's name to these two documents, Mr. Grimard had decided (unbeknownst to Mr. Bosse) not to list his property with Mr. Bosse.

22. On February 10, 2003, Mr. Grimard listed his property with Wayne DeKoning, a real estate agent at O'Neil's Realty.

23. Upon discovering that Mr. Grimard had listed with O'Neil's Realty, Mr. Bosse wrote the following in a handwritten note to Mr. Boike:

Jim:

I don't know what's going on. Grimard now says he listed with O'Neil's for twice as much and I have withdrawn my agreement & listing.

## Rulings of Law

### **Rule 8.4(c): Deceit**

24. As described in detail above, Mr. Bosse signed Mr. Grimard's name to a real estate listing document and a purchase and sale agreement without Mr. Grimard's knowledge or consent.

25. Mr. Bosse then forwarded these two documents to NNEREN so that Mr. Boike would believe that Mr. Bosse had secured Mr. Grimard's agreement both to list his property with Mr. Bosse and to sell his property to Mr. Dube.

26. At the time Mr. Bosse forwarded these documents to Mr. Boike, Mr. Bosse falsely informed Mr. Boike in a letter that the deal between Mr. Grimard and Mr. Dube was "in effect."

27. At the time he signed these documents and forwarded them to NNEREN, Mr. Bosse knew that he did not have Mr. Grimard's consent to sign these documents.

28. In so doing, Mr. Bosse engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

29. Mr. Bosse's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

### **Rule 8.4(a): General Rule**

30. Because there exists clear and convincing evidence that Mr. Bosse violated the above rule, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

## Sanction

The parties, in their Stipulation, did not agree upon a recommended sanction for Mr. Bosse's admitted misconduct and submitted separate memoranda on the issue of sanctions. Disciplinary Counsel took the position that because Mr. Bosse committed acts of deceit in the context of a business transaction from which he stood to gain financially, he should be disbarred. Disciplinary Counsel noted that the Supreme Court had previously held "... [B]ecause no single transgression reflects more negatively on the legal profession than a lie, attorney misconduct involving dishonesty...justifies disbarment." *Nardi's Case*, 142 N.H. 602, 606 (1998) (quotations and brackets omitted). Mr. Bosse, through his counsel, argued that disbarment was too severe a sanction for a single act of misconduct, for which Mr. Bosse had already incurred the permanent loss of his real estate license. Comparing his case to another relatively recent case, *Christine Desmarais-Gordon advs. Professional Conduct Committee*, #00-N-125 where the Professional Conduct Committee had issued a six month suspension for conduct relating to the alteration of certain medical releases in connection with pending litigation, Mr. Bosse argued that his conduct was less egregious than Attorney Desmarais-Gordon's and hence should receive a lesser sanction. Considering certain admitted mitigating factors, such as his lack of a prior disciplinary record, his cooperation with the disciplinary process, the substantial penalty he had already incurred by loss of his real estate license and his remorse, Mr. Bosse argued that the Professional Conduct Committee should impose a public censure.

The New Hampshire Supreme Court has held that the purposes of attorney discipline are "to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession and prevent similar conduct in the future." *E.g., Coffey's Case*, 152 N.H. 503, 513

(2005) (internal quotations omitted); *Feld's Case*, 149 N.H. 19, 28 (2002). The sanction “must take into account the severity of the misconduct.” *Coffey's Case*, 152 N.H. at 513.

Although the Court has not adopted the ABA Standards for Imposing Lawyer Sanctions (1992), it looks to them for guidance. *Coffey's Case*, 152 N.H. at 513. The Standards set forth a four part analysis for courts to consider in imposing sanctions: “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors.” Standards § 3.0; *Coffey's Case*, 152 N.H. at 513.

Under the first prong of the analysis, Mr. Bosse violated a fundamental duty owed to the public and the legal profession: his duty to be honest and maintain high standards of integrity. *See* Standards § 5.11(b).

With respect to the second prong of the analysis, Mr. Bosse’s mental state, he acted deliberately and intentionally. Mr. Bosse signed Mr. Grimard’s name to two separate legal documents and then forwarded those documents to James Boike (Northern New England Real Estate Network administrator) with a cover letter falsely stating that the Purchase and Sales Agreement was “in effect.” At the time he did so, he did apparently expect that Mr. Grimard would be forwarding executed documents to him promptly.

The third prong of the analysis requires consideration of the potential or actual injury caused by Mr. Bosse’s misconduct. Here, the injury is subjective in nature and not quantifiable. Whenever an attorney engages in misconduct involving deceit, however, the injury to the integrity of the New Hampshire Bar is substantial.

With respect to the fourth prong, aggravating and mitigating factors, there are four mitigating and two aggravating factors to consider. The mitigating factors are as follows: (1)

Mr. Bosse has no prior disciplinary record; (2) Mr. Bosse has cooperated with the disciplinary process; (3) Mr. Bosse's real estate license has been permanently revoked as a result of this same misconduct; and (4) Mr. Bosse has shown remorse by admitting his deceit. *See Standards* § 9.32(a), (e), (k) & (l); *Feld's Case*, 149 N.H. at 30 (holding that remorse is demonstrated where attorney in a case involving deceit admits his misconduct). The two aggravating factors in this case are that Mr. Bosse acted with a dishonest and selfish motive, *see Standards* § 9.22(b), and had substantial experience (almost 30 years) in the practice of law at the time of his misdeeds. *See id.* § 9.22(i).

The Professional Conduct Committee took into consideration both the four-part analysis recommended by the *Standards*, as well as the purposes of attorney discipline in New Hampshire, as articulated by the Supreme Court, and the particular circumstances of this case. *See Standards* § 5.11(b). Based on its consideration of the foregoing, the Professional Conduct Committee determined that a six month suspension was appropriate.

In this case, Mr. Bosse forged Mr. Grimard's name to two legal documents in the context of a business transaction. This is egregious misconduct; however, it appears that at the time he committed this act, he did expect that Mr. Grimard would be forwarding properly executed documents to him shortly. While that does not excuse his misconduct, it does provide a context which makes the ultimate sanction of disbarment not appropriate. Additionally, the mitigating factors also justify a sanction less than disbarment.

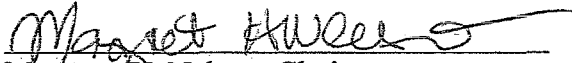
However, the Professional Conduct Committee concluded that a public censure would not be appropriate in this case. An attorney's forging of legal documents as part of a business transaction is a significant act of misconduct. A central purpose of attorney discipline is to "maintain public confidence in the bar." *Coffey's Case, supra* at 513. A public censure would

not serve this purpose. Judging this case “on its own facts and circumstances” (*O’Meara’s Case*, 150 N.H. 157, 159), the Professional Conduct Committee finds that a six month suspension would take into account the nature of Mr. Bosse’s misconduct, the aggravating and mitigating circumstances and the central purposes of attorney discipline.

**Conclusion**

Based on a consideration of the record and the parties’ arguments, the Professional Conduct Committee hereby orders that Mr. Bosse be suspended from the practice of law for six months and that he be assessed all the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter. This Order shall take effect on October 19, 2006, unless respondent files a timely appeal in the New Hampshire Supreme Court.

September 19, 2006

  
Margaret H. Nelson, Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel  
David A. Garfunkel, Esquire  
File