

STATE OF MAINE

Kennebec, ss.

Board of Overseers of the Bar
Grievance Commission
File No. 98-40

BOARD OF OVERSEERS OF THE BAR)
)
 Petitioner)
)
 vs.)
)
 RICHARD L. RHODA, ESQ.)
)
 Respondent)

REPORT OF PROCEEDINGS,
FINDINGS, CONCLUSIONS
AND DISPOSITION

On April 1, 2003, pursuant to notice, Panel A of the Grievance Commission¹ conducted a public disciplinary hearing in the Probate Courtroom, Penobscot County Courthouse in Bangor, Maine. Assistant Bar Counsel Geoffrey S. Welsh appeared on behalf of the Board and Kevin M. Cuddy appeared for the Respondent, Richard L. Rhoda. There was no objection to the composition of the Panel.

The pleadings consisted of a Petition filed by the Board and a Response filed by Respondent. In the course of the proceedings, the Board offered Exhibits 1 through 10 inclusive; Exhibits 13 and 14 and Exhibits 19 through 21 inclusive, all of which were admitted without objection. Board Exhibits 11, 12, 15, 16, 17 and 18 were admitted over objection. Respondent offered exhibits 1 through 6, all of which were admitted without objection. Mary Gregor testified as did Respondent.

FINDINGS

Mary Gregor and her husband Francis began working together as real estate investors in 1978 and developed a “procedure” which was typically used in their real estate transactions.² That procedure is summarized as follows:

¹Marvin Glazier replaced Donald Fowler as a lawyer member of the Panel.

² This procedure was used, according to Mary, in 500 to 600 transactions.

1. A parcel of land in northern Maine³ would be located and a purchase price negotiated with the record owner;⁴
2. Mary would enter into a contract to purchase this parcel from the record owner;⁵
3. Mary would advertise the property out of state, representing she was record owner; obtain a buyer, enter into a contract to sell the property to that buyer and obtain a “deposit”⁶.
4. A simultaneous closing would then be scheduled between Mary (as purchaser of the parcel) and the record owner of the parcel and between Mary (as Seller of the parcel) and the new purchaser. At this simultaneous closing, any encumbrances on any particular parcel were to be paid in full by Mary prior to passing title to the new purchaser.

Oftentimes the original parcel was a large parcel which Mary would contract to buy from a record owner. Mary would then divide the large parcel into smaller parcels, selling the smaller lots in the same fashion as outlined above.

³Usually Aroostook County

⁴Oftentimes these parcels would be encumbered by mortgages or other liens.

⁵At some point between 1986 and early 1993 the Gregors decided to put all of their real estate holdings, as well as any personal property of value in Mary’s name in order to avoid Federal and State tax liens which had been filed against Francis.

⁶Often the “deposit” consisted of the entire purchase price of the parcel.

Mary and Francis began using the services of Respondent (Rhoda) in 1986 on a routine basis,⁷ primarily for Mary's real estate transactions, although Rhoda also helped Francis with his tax lien problems and other civil litigation. Mary and Francis continued to use Rhoda's services until early 1993. During this time period (1986-1993) Mary and Francis encouraged buyers not to use the services of any attorney or in the alternative to use "their" attorney. As such, Rhoda oftentimes conducted title searches for Mary's buyers and handled the simultaneous closings, billing Mary's buyers for his services.⁸ Rhoda did not begin informing these persons of his simultaneous representation of Mary (and subsequently Pine Grove Trust as described below) until January, 1991.

⁷Although Rhoda had done some work for them in 1981 and 1982. Rhoda began practicing law in 1972 and began a private practice in 1977. He considers himself an experienced real estate attorney.

⁸ However, Rhoda continued to simultaneously represent and bill, at least one of Mary's "purchasers" until 1996 (Ben Baggar). See Board Exhibits #7 and #18, as examples.

During this time period, (1986-1993) Mary and Francis told Rhoda to eliminate the title source in deeds he drafted on Mary's behalf to her purchasers.⁹ Rhoda knew the better practice was to include title sources in deeds and he asked Mary why she wanted the title sources eliminated. She told him the reasoning was to prevent the purchasers from attempting to cut her "out of the deal" by purchasing the property directly from the record owner for a lower price.¹⁰ Rhoda indicates Mary's reason made sense to him and so he complied. Mary's reasoning may have made sense at the beginning of his representation of the Gregors, but by 1990 Rhoda was well aware of the Gregors' dire financial situation and his motive for continuing to eliminate title sources from Mary's (and Pine Grove Trusts') deeds becomes suspect.

Mary's apparent financial problems began in 1990, the year she and Francis began building what she describes as a "million dollar" home in Aroostook County, which they furnished with expensive antiques and other valuable personal property. Rhoda was aware of the construction of this home. The home was financed in part by a real estate mortgage, but the costs associated with its construction began to overwhelm Mary and Francis and they began experiencing serious financial difficulties.

Unable to afford the mortgage and other expenses associated with this home, Mary began to divert funds she received as the "deposits" from purchasers involved in her real estate transactions for her personal use. Mary would make false "excuses"¹¹ to delay or extend closings.

RHODA'S FIRST LOAN TO MARY

⁹See: Board Exhibit #3.

¹⁰However, if Rhoda were in fact conducting title searches for Mary's purchasers, the record owner of the land should have been disclosed to the purchasers.

¹¹Citing health problems, for example. Mary and Rhoda both claim Rhoda knew nothing of Mary's diversion of these funds.

In 1990 Mary began running in arrears regarding payment of attorney fees to Rhoda.¹² On August 1, 1990, Rhoda made his first loan to Mary in the amount of \$14,001.00. That same day, Rhoda took a blanket mortgage on all real estate Mary owned as recorded in the Southern Aroostook Registry of Deeds. Mary signed a promissory note. Although no evidence suggests Rhoda informed Mary that she should seek advice from independent counsel prior to signing the mortgage and note, Mary states that she felt informed and it wouldn't have mattered anyway, because she was "desperate" for those funds. The loan was necessary because of problems which arose during a closing for Mary handled by Rhoda. Rhoda accepted a personal check from Mary, rather than a bank check, and forwarded it to the Seller. It bounced, the seller became irate, and because Mary was not around, Rhoda covered the check with his own funds. Rhoda's knowledge of Mary's attorney fees arrearage, coupled with his actions in obtaining a blanket mortgage over all of Mary's real estate holdings in Southern Aroostook County confirm his knowledge of her serious financial troubles.

RHODA'S SECOND LOAN TO MARY

Mary's financial situation worsened, and in February, 1991, she and Rhoda found themselves the subject of a lawsuit involving People's Heritage Bank, Norman Stimson, et al., (Stimson) Cynthia Jusseaume and John Worsley, et al (Worsleys).¹³ The facts behind this loan are as follows:

Mary acquired a large tract of land in Perham, Maine, which she mortgaged to Peoples Heritage Bank. She divided it into smaller lots. Rhoda did the title work for Mary and knew of the Peoples Heritage Bank mortgage. In 1988 Mary deeded one of these lots to Stimson; in 1988 she deeded another to Jusseaume; and on February 22, 1990 deeded a lot to Worsleys. All these deeds were warranty deeds prepared by Rhoda. They were recorded without Rhoda or Mary obtaining partial releases of the Peoples Heritage mortgage, of which these purchasers remained unaware. According to both Mary and Rhoda, these three deeds were recorded without Rhoda's knowledge.¹⁴ According to his office billings¹⁵ however, Rhoda represented all 3 of these parties, closed each of their transactions, prepared warranty deeds for each and did title work for Stimson and Jusseaume. He failed to notify these purchasers of his simultaneous representation

¹²Although because of his bookkeeping methods and office staffing problems, he did not know how much.

¹³See Board Exhibit #6

¹⁴ Mary recorded the Stimson and Jusseaume deeds in 1988. But on May 3, 1989, Rhoda wrote Stimson and sent him a bill, which included title work and asked him to pay it. The Worsley deed wasn't executed until 1990. If Rhoda had conducted title work on this property he should have known the partial releases had not been obtained or recorded.

¹⁵See Board Exhibit #7

of Mary. He admits that the following spring, when he first learned that the warranty deeds had been recorded, he still failed to notify any of these purchasers that their respective properties remained encumbered by the People's Heritage mortgage and that he had failed to secure partial releases of that mortgage prior to closing.

When Mary failed to keep her payments current to People's Heritage, it began foreclosure proceedings, naming Rhoda as a party in interest (because of his blanket mortgage on Mary's property), and naming the Stimsons, Jusseaume and Worsleys. as party's in interest. This was apparently the first time these 3 buyers learned the mortgage had not been released against their respective properties. The Stimsons counterclaimed and sued Rhoda for failing to notify them of the mortgage and failing to acquire the partial release. In order to "resolve" the issue of the lack of partial releases and the lawsuit against her, Mary needed money she did not have. Again, Rhoda helped her out (and himself) by lending her \$9,500.00 on August 15, 1991. As a result, the action was dismissed against them.¹⁶ But by then, Mary owed Rhoda \$38,294.77¹⁷ for her first mortgage, interest and legal fees, so he took a security interest (in the form of a Chattel Mortgage he drafted) on antiques and considerable other valuable personal property owned by Mary.¹⁸

Both Mary and Rhoda agree that Mary never disclosed to Rhoda her ongoing diversion of funds for her own personal use; nor she says, was she forthcoming about her financial difficulties. But by August 15, 1991 it should have been abundantly clear to Rhoda that Mary's finances were in complete disarray. He admits he should have withdrawn from further representation of Mary at this time, but did not.

RHODA'S THIRD LOAN TO MARY

No evidence was presented indicating Rhoda loaned funds to Mary on January 29, 1993 as alleged in paragraph 16(c)(3) of the Board's Petition. However, it appears from Board Exhibit #4 that a second personal property mortgage was taken by Rhoda securing personal property on August 15, 1991.

THE PINE GROVE TRUST

Federal and State Tax liens were filed against Francis Gregor and in October, 1991, Rhoda began negotiating with the State for discharges of same. A notice of foreclosure dated

¹⁶It can be argued Rhoda benefitted as much as Mary by the dismissal of this action, so that this \$9,500.00 was not an appropriate charge to his client.

¹⁷See: Board Exhibit #4

¹⁸According to Rhoda, Francis had no interest, equitable or otherwise, in Mary's real estate or in the personal property.

November 12, 1991 was filed against Mary regarding a mortgage on other property she owned. In May and October of 1992, Federal tax liens were filed against Mary.

In order to avoid the May tax lien from affecting her real estate business, (by alerting prospective purchasers of her woeful financial problems) Mary asked Rhoda to draft a real estate trust agreement.¹⁹ He did so in June of 1992, knowing full well of the existence of the recorded tax lien against Mary, the Notice of Foreclosure and the desperate financial straits of both Mary and Francis. Rhoda admits the Trust instrument was created specifically to avoid purchasers from learning of the recorded lien filed against Mary. Nothing in the trust instrument disclosed the Gregors' names. The trust settlor was Mary's mother, Marion Boyce. Thereafter, Rhoda drafted warranty deeds using the Trust.²⁰ It can be assumed that it would have been extremely detrimental to Rhoda should Mary's real estate business collapse, because, she owed him as of January 17, 1992, the sum of \$45,675.34,²¹ as principal and interest for his loans and fees.

HAYNES/GREGOR/GADDIS/LANGLAIS TRANSACTION

In August, 1991, Mary contracted with Haynes to buy several lots. She then divided the lots and contracted to sell 2 of the smaller lots to Gaddis and Langlais. Gaddis and Langlais paid Mary, but Mary didn't pay Haynes so no closings occurred between Mary/Gaddis and Mary/Langlais. Rhoda handled the Haynes to Gregor portion of the transaction and drafted the warranty deeds to Gaddis and Langlais. Langlais complained to Rhoda because she had paid for her parcel of land but had not received title. Eventually, Mary was able to convey title to Langlais by paying Haynes for the Langlais lot. She used Rhoda's services to close the deal with both herself and Haynes and herself and Langlais.

Mary never conveyed the Haynes lot to the Gaddis', despite the fact she took their money. She does not "remember" if she spoke with Rhoda about making the Gaddis' whole. but Rhoda, knowing of the Langlais' problem, should have known or at the very least inquired of Mary about the Gaddis' title, whereafter he had a duty to notify the Gaddis'.

CALLAHAN/FAULKNER/BAGGAR

¹⁹See Board Exhibit #1

²⁰See: Board Exhibit #8

²¹See Board Exhibit #4.

On August 11, 1992, Pine Grove Trust (with Mary acting as Trustee) contracted with Callahan to purchase property and then advertised the lot for sale. Baggar contracted to buy the property from Pine Grove Trust. Callahan executed a warranty deed to Pine Grove Trust, which was held by Rhoda. In the meantime, according to Rhoda, a pre-judgment attachment lien was filed against Pine Grove Trust. Knowing the Trust could not give good title to Baggar, Mary decided to use a “straw deed” to avoid the lien attaching to the Baggar conveyance. Rhoda concurred with Mary that a strawman would be necessary to avoid the lien and “came up” with Faulkner as the strawman. He thereafter drafted deeds from Callahan to Faulkner and Faulkner to Baggar. The financial arrangement as regards payment to Callahan and payments made to Pine Grove Trust by Baggar, if any, is unclear from the evidence. Rhoda admits it “bothered” him to use a strawman specifically to avoid a known lien, but he also knew the reason Pine Grove Trust was created in the first place (to avoid the Gregors’ liens).²²

RECORDING THE BAGGAR DEED

Rhoda who represented Baggar at the same time he represented Pine Grove Trust did not disclose his fiduciary relationship with the Trust (and Mary) prior to his representation of Baggar. Despite Baggar’s specific instructions not to record the deed he received from Faulkner, Rhoda did so, signing the necessary transfer tax form as Baggar’s agent (in 1994) even when he knew Baggar did not want the deed recorded. Rhoda did so because he “panicked” when his office was the subject of a search warrant from the U.S. Postal Service. Rhoda didn’t tell Baggar he had recorded this deed until he wrote him January 15, 1996.²³

GREGOR/MASSARO/McDONALD/BARNETT

On August, 31, 1992, (At the same time the Callahan transaction was developing) Pine Grove Trust (with Mary acting as Trustee) contracted with Massaro to purchase 40 acres. Pine Grove Trust²⁴ divided it and sold one lot to McDonalds, who paid the Trust and one lot to Barnett, who paid the Trust; however, Pine Grove Trust did not pay Massaro and consequently, the Trust did not have title to convey to McDonald or Barnett. Rhoda had prepared the deeds for McDonald and Barnett and had billed at least the McDonalds for closing costs. The McDonalds thought Rhoda was their lawyer. Despite his assertions that he began sending simultaneous

²²As was the case with Langlais, Rhoda was also personally involved in selling real estate to Baggar. See Board Exhibit 18, letter to Baggar dated 7/5/94.

²³See: Board Exhibit #18.

²⁴Pine Grove Trust handled real estate transactions in the exact same fashion as Mary had previously. Rhoda continued representing Pine Grove Trust in the same fashion he represented Mary individually.

representation letters to his clients in January, 1991, he sent no such letter to the McDonalds. When the McDonalds complained to Rhoda about having paid in full for a lot Pine Grove Trust didn't own, Rhoda eventually resolved the issue by obtaining funds from the Trust (Mary) and returning the purchase price, together with interest and attorney fees and an additional sum of \$500.00 to the McDonalds. It is unclear what happened to the Barnetts. Mary states "Barnett was one of many" who did not get good title in August of 1992.

This single transaction was the source of a Grievance Hearing held before Panel A of the Grievance Commission on November 11, 1994 resulting in a reprimand to this same Respondent.²⁵ Respondent urges this Panel to omit evidence of this transaction from this hearing on the basis of the Doctrine of Res Judicata. This panel declines to do so and considers the relevance of this transaction in the context of Respondent's pattern of behavior during this same time period.

Ultimately, Mary Gregor declared bankruptcy and In 1996, she was convicted for mail and wire fraud stemming from her various real estate transactions.

DISCUSSION

Initially, the Panel declines to find either the equitable doctrine of laches or the doctrine of *res judicata* applicable to the current proceeding. Laches does not bar prosecution of attorney discipline cases in Maine.²⁶ *Res Judicata* does not bar prosecution of the current proceedings because these proceedings do not arise from the same set of operative facts giving rise to Rhoda's prior disciplinary proceeding, although that prior disciplinary proceeding necessarily involved some of the same facts giving rise to this current action.

Rhoda's actions must be examined with reference to the time frame in which they occurred. In doing so, it becomes clear that if not directly a partner in Mary's real estate activities, Rhoda's relationship with her was so intertwined financially that it becomes difficult to separate the two.

Rhoda created the Pine Grove real estate trust; used straw deeds, regularly eliminated title sources from all deeds drafted for Mary and the Trust, regularly represented Mary's buyers, did their title work and billed them, without informing those same buyers of his simultaneous representation of Mary and the Trust-- all during a time period in which Rhoda knew of the Gregors' appalling financial situation. Rhoda's cumulative actions constitute a pattern of deceit, aimed at Mary's purchasers and lienholders and designed to keep Mary's business afloat. And keeping Mary's business afloat was as much a priority for Rhoda, as it was for Mary, because during this time period she owed him many thousands of dollars.

²⁵See: Board Exhibit #21

²⁶See: Board of Overseers of the Bar vs. Brian Olson, Docket No. 87-19 (1988)

Rhoda's conduct in omitting deed references, creating Pine Grove Trust and using a "straw man", was a violation of Maine Bar Rules 3.2(f)(3) which prevents a lawyer from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." The Panel recognizes the accepted use of real estate trusts as well as straw deeds, in the practice of real estate law; however, Rhoda's knowledge of Mary's financial situation as well as his own financial stake in her enterprise leads to the conclusion his aforementioned conduct was based on his desire to keep Mary afloat by keeping her financial troubles hidden from potential buyers as well as her creditors. Mary's various buyers, who were represented by Rhoda while he was representing Mary (or the Trust) were victims of this pattern of behavior, as well as Mary's various creditors.

Rhoda's blanket mortgage over Mary's real estate holdings during a time she owed him significant attorney fees, as well as Rhoda's "loan" to Mary in order to resolve a lawsuit in which he and Mary were named Defendants violated Maine Bar rule 3.4(f)(1)(2). A substantial risk existed that both his significant financial and personal relationship with Mary would materially and adversely affect his representation of her. He failed to fully disclose to Mary the repercussions of these various loans and he did not obtain her written consent. Precisely because Mary was "desperate" for the money Rhoda lent her, it was incumbent upon him to ensure compliance with Bar Rule 3.4(f)(1)(2). He did not do so.

Rhoda's simultaneous representation of purchasers involved with Mary and the Trust violated Maine Bar Rule 3.4(c)(d). He routinely failed to obtain the required informed consent and at no time advised these various purchasers of the effect that a multiple representation might have. Nor did he apprise these persons of his own close financial relationship with Mary.

Finally, Rhoda violated Maine Bar Rule 3.5(b)(2)(ii) by failing to withdraw from his representation of Mary and the Trust. Rhoda continued to represent both her and the Trust after he learned that Mary had engaged in misrepresentations to Stimson, Jusseaume and Worsleys regarding the People's Heritage Mortgage. At this point, he certainly knew Mary had perpetrated a fraud.

Based upon the evidence and the record before it, Panel A determines that the appropriate disposition of this Petition is that the Respondent should and hereby is reprimanded.

Dated: _____

Rebecca A. Irving, Esq.

Raymond Cota

Marvin Glazier, Esq.