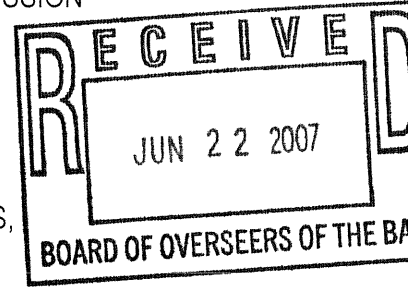


STATE OF MAINE

KENNEBEC, ss.

BOARD OF OVERSEERS OF THE BAR
GRIEVANCE COMMISSION
GCF #06-383



BOARD OF OVERSEERS OF THE BAR,)
)
Petitioner)
)
vs.)
)
RICHARD W. SALEWSKI, ESQ.)
Me. Bar No. 7185)
)
Respondent)

REPORT OF PROCEEDINGS,
FINDINGS, CONCLUSIONS
AND DISPOSITION

The above matter was referred by the Grievance Commission Panel A, on June 5, 2007, at the U.S. District Court house in Bangor, Maine. Pursuant to a Disciplinary Petition dated October 3, 2006, with proper notice being provided, a disciplinary hearing open to the public was conducted on this date pursuant to Maine Bar Rules 7.1(e)(1),(2) to determine whether grounds exist for the issuance of a reprimand or whether probable cause exists for the filing of an information with the Court. The Board of Overseers was represented by Assistant Bar Counsel, Nora Sosnoff, Esq., and Respondent Richard Salewski represented himself. Witnesses included Attorney Salewski, and the Complainant, Irmgard Dering.

The pleadings consisted of a Petition filed by the Board and Response filed by the Respondent. In the course of the proceedings, Exhibits 1 through 6 were offered by the Board, and admitted without objection; Exhibits 1 through 5 were offered by the Respondent and also admitted without objection.

Background and Findings of Fact

1. In February of 2006, the complainant Irmgard Dering first contacted Attorney Salewski to represent her in a transaction for the purchase of real estate located in Bowdoin, Maine. She was referred to Attorney Salewski by the lender that she was working with at that time. Attorney Salewski did in fact represent Ms. Dering in that February 2006 land transaction, but that transaction was not consummated by the parties and the Purchase and Sale Agreement was voided
2. On or about March 11, 2006, Ms. Dering entered into a second Purchase and Sale Agreement for a piece of property and home located at 24 Stone Ridge Lane, in Bowdoin, Maine. The sellers of that property were Robert and Stephanie Dundas. For this transaction, Ms. Dering obtained her financing with Camden National Bank. Pursuant to Respondent's Exhibit #1, Ms. Dering chose Attorney Salewski as her attorney to close the transaction. Phone records further suggest that there was ongoing contact through February and March of 2006 between Ms. Dering and Attorney Salewski.
3. Consistent with her selection of Attorney Salewski as her attorney, the Purchase and Sale Agreement was forwarded to Attorney Salewski and he was instructed to commence taking the necessary steps to prepare for closing.
4. Ms. Dering was of the reasonable belief that Attorney Salewski was at all times representing her and acting as her lawyer for the purpose of the Stone Ridge Lane purchase transaction.

5. In conducting the title search in preparation for closing, Attorney Salewski discovered a problem with the Stone Ridge Lane property. The existing access to the primary roadway was by a right of way over an adjacent property. The nature of the relevant defect was that the right of way boundaries drawn by a surveyor at the time of the subdivision approval were not the actual boundaries of the roadway as constructed and existing on the face of the earth. This problem was detected by a Mortgage Loan Inspection performed by a surveyor. The right of way was essential to allow access to and from the property.
6. On or about May 11, 2006, Attorney Salewski notified Ms. Dering that there was a problem with the right of way. Attorney Salewski testified that these discussions were limited in scope to those problems revealed by the Mortgage Loan Inspection. Attorney Salewski told Ms. Dering that he would take the necessary steps to resolve the right of way problem.
7. To resolve the right of way problem as identified by the Mortgage Loan Inspection, Attorney Salewski prepared deeds to be exchanged between the Dundas' and the abutting property owners, the McManus'. Those deeds were signed by the Dundas' and McManus' on or about May 15, 2006, and appear to reasonably correct the problems identified by the Mortgage Loan Inspection.
8. Attorney Salewski charged the Sellers his fee to prepare those curative documents regarding the right of way and to prepare the Dundas' deed of conveyance; but also had the Dundas' sign an acknowledgement in which they acknowledged that Attorney Salewski was representing the bank and was not representing them.
9. The closing was scheduled for May 16, 2006. On May 15, 2006, Ms. Dering called Attorney Salewski's office to inquire as to the status of the defective right of way. She was informed by a staff member that the right of way defect had been taken care of.
10. The closing occurred of May 16, 2006, at Attorney Salewski's office. Although a number of the closing documents were reviewed and explained by Attorney Salewski, he did not specifically explain to Ms. Dering the existing terms of the right of way. The work done by Attorney Salewski in no way changed the terms of the right of way; his work merely corrected the location of the right of way. Nonetheless, Attorney Salewski failed to discuss or explain to Ms. Dering any of the remaining terms of the right of way, specifically those regarding upkeep and maintenance of the right of way.
11. A number of months after the closing, Ms. Dering was contacted by her neighbor, the McManus', on whose property the right of way was located. Mr. McManus presented her with a bill for half of the charges he incurred to have the right of way paved. Ms. Dering became extremely upset. She was of the belief that Attorney Salewski had "resolved" the right of way issues, and has since come to the misunderstanding that Attorney Salewski's curative work with the right of way somehow created for her greater obligations with regards to maintenance and upkeep.
12. Upon receipt of the complaint brought by Ms. Dering, Attorney Salewski took the position that he was never representing Ms. Dering. In responses written by Attorney Salewski dated September 5, 2006, and January 30, 2007, Attorney Salewski repeatedly maintained he was not representing Ms. Dering and that he was only representing the lender, Camden National Bank.

Discussions

The Board has alleged that Attorney Salewski has violated the following bar rules:

1. 3.4(a)1 Disclosure of Interest;

2. 3.4(a)2 Commencement;
3. 3.4(c)(2);
4. 3.6(a) Standards of Care and Judgment;

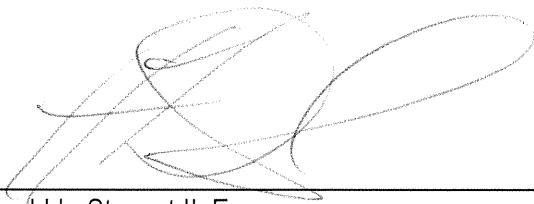
The Panel finds that Attorney Salewski did violate all of these rules. From the facts, there is no question that, by an objective standard, that both the lawyer and the client could and should reasonably understand and agree that Attorney Salewski had undertaken representation of Ms. Dering. That representation began not only with the February 2006 purchase, but also with the March 2006 purchase of the Stone Ridge Lane property. The Panel is particularly concerned by Attorney Salewski's repeated position that he was only representing the bank and not Ms. Dering. Although Attorney Salewski now acknowledges that representation may have occurred, it is clear that through the duration of his representation of and dealings with Ms. Dering, he was of the firm belief that he was not representing her. As a result of his failure to acknowledge that he was representing Ms. Dering, it in effect became impossible for him to meet or fulfill all of the other obligations which he owes to a client pursuant to the Maine Bar Rules.

Since Attorney Salewski was of the mistaken belief that he was not representing Ms. Dering, he obviously was also in violation of Rule 3.4(a)¹ which required him to disclose to Ms. Dering his dual representation of her and the bank. This is a technical violation in that Attorney Salewski failed to disclose in writing the dual representation and provide to Ms. Dering the additional cautions required by the rule. At the same time, it is likely Ms. Dering understood all along that Attorney Salewski was not only representing her but also the bank. Similarly Attorney Salewski violated the Rule 3.4(c)2 in that Ms. Dering was not given the opportunity to make a decision and give her consent to the dual representation. More importantly, as a result of Attorney Salewski's failure to recognize that he was representing Ms. Dering as well as the bank, it again became impossible for him to recognize that there could be conflicts which could arise which could require him to terminate his simultaneous representation, withdraw from employment, and refer the clients to other attorneys.

Finally, the Panel finds that Attorney Salewski violated Rule 3.6(a), particularly in that he failed to take reasonable measures to keep his client informed of the client's affairs. The particular title problem that developed was the right of way. The Board is satisfied that Attorney Salewski took reasonable steps to cure the right of way problem that was disclosed by the Mortgage Loan Inspection. By that time, however, Ms. Dering was of the misunderstanding that "all right of way issues had been resolved". Attorney Salewski acknowledged that he failed to review with Ms. Dering at any time prior to closing the very important terms of the right of way regarding upkeep and maintenance. The terms of the right of way as disclosed in the deed are conditions of title that Attorney Salewski should have and was under a duty to at a minimum review with his client. Attorney Salewski was in error to operate under the belief that conditions in the title are a matter that can be left to real estate brokers to explain. Conditions of title are a critical example of an area that an attorney representing a client in a real estate transaction should review and discuss with his client. Attorney Salewski's failure to review this matter with Ms. Dering flows from his failure to acknowledge that he was in fact representing her throughout this transaction. The Panel is not suggesting that Attorney Salewski created any problems with the right of way and in fact finds to the contrary; Attorney Salewski's work in curing the right of way issues dealt only with the location of the right of way. Attorney Salewski's failure is specifically limited to his failure to discuss the terms of the right of way in any manner with Ms. Dering. All that would have been required of him would have been to disclose and review the terms of that right of way with Ms. Dering. Pursuant to that discussion, she then could have made informed decisions on how to proceed. The Panel acknowledges that had such a discussion occurred, there may have been in fact nothing that could be done to change the terms of the right of way and that the transaction may still have gone through as planned. The point is Attorney Salewski failed to provide his client with this important information, thereby depriving her of the opportunity to make informed decisions. Again, this violation flows from and is a direct result of Attorney Salewski's failure to recognize he was representing Ms. Dering during this transaction, which the Panel finds to be the most troubling.


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

DATED: June 20, 2007



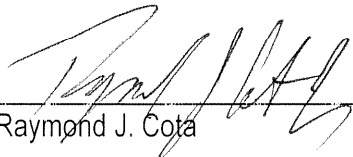
Harold L. Stewart II, Esq.

DATED: 6-15-07, 2007



John A. Mitchell, Esq.

DATED: 6-18-07, 2007



Raymond J. Cota