

SUPREME COURT OF WISCONSIN

OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

09-OLR-16

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Attorney at Law

The Respondent, Attorney Colleen J. Locke, practices in Jefferson, Wisconsin.

A husband and wife (clients) had approximately \$200,000 in unpaid medical bills for the wife's cancer treatment. The husband's former employer (employer) had failed to pay the medical bills even though, as a self-insurer, it was responsible for the payments. These medical bills constituted the bulk of the clients' debts.

In late January 2008, the clients consulted Respondent about a possible bankruptcy. Respondent admits that the clients told her they did not want to lose the equity in their home. Nevertheless, because the clients told Respondent they wanted to move to Australia to be with their daughter's family, Respondent advised the clients to file for Chapter 7 bankruptcy and, as she stated in a December 12, 2008 affidavit filed with the bankruptcy court, "I never brought up the notion of filing a Chapter 13 with them."

According to the clients, Respondent did not explain to them that in a Chapter 7 bankruptcy the equity they had in their home, less the homestead exemption of approximately \$40,000, would be applied by the bankruptcy trustee to their debts and that, unless they could give the trustee a sum equal to the remainder of their equity, if any, they would lose their home.

On February 1, 2008, the clients gave Respondent a check for \$1799, which included \$1500 for attorney's fees and \$299 for the bankruptcy filing fee. Respondent asked for and

received from the clients all information regarding their debts, including mortgages, creditors, and monthly bills, all information regarding their income and any assets they had, and tax returns for the preceding two years.

Using the information provided to her by the clients, Respondent prepared the Chapter 7 bankruptcy petition and schedules and, after reviewing them with the clients, electronically filed them with the bankruptcy court on March 21, 2008.

On Schedule A (Real Property) of the clients' bankruptcy petition, Respondent listed the value of the clients' home at \$141,200. This amount, supplied to Respondent by the clients, was the value listed on the clients' previous year's property tax bill. Respondent reported on Schedules A and D (Creditors Holding Secured Claims), secured claims against the home totaling \$21,596.64.

The clients' bankruptcy petition and schedules were incomplete and contained inaccuracies. Some examples include, but are not limited to, the following:

- Schedule B (Personal Property) failed to include the clients' interest in a 401K valued at \$12,577.53. Instead, Respondent checked the box marked "None."
- Schedule B also failed to disclose the clients' claim against the employer for failure to pay the wife's medical bills.
- On Schedule C (Property Claimed as Exempt), Respondent failed to list the value of any of the claimed exemptions.
- Respondent checked "None" for every statement on the clients' Statement of Financial Affairs, even though the Statement asked for information regarding the clients' income from employment and other sources, which the clients had, and information regarding payments to creditors, which the clients were making.
- Respondent's Statement Pursuant to Rule 2016(b), which requires attorneys to disclose how much they have been or will be paid for representing the debtor(s) in bankruptcy, was blank.

Respondent did not file amended documents to correct these problems.

A class action lawsuit had been filed against the employer for failure to pay employees' medical bills. Although Respondent apparently did not know about the lawsuit at the time she filed the clients' bankruptcy petition, the clients had told her that they had been trying to get the employer to pay and that other employees were having the same problem. The clients' successor counsel discovered the class action suit shortly after the clients hired her, and she referred them to the class action attorney. Some of the clients' bills were subsequently paid by the employer.

Just three days after Respondent filed the clients' bankruptcy petition, the bankruptcy trustee sent a March 24, 2008 letter to Respondent pointing out that the value of the clients' home, less the relatively small mortgage, created a substantial equity in the bankruptcy estate. The trustee said it would be necessary to add the trustee as a named insured to the clients' homeowner's insurance policy. In concluding the letter, the trustee stated:

I would appreciate it if you would let me know if your clients have a plan for redeeming the residence and if they do not, may I have my real estate broker contact them directly or would you prefer the contact to come through your office?

By letter dated March 31, 2008, Respondent sent the clients a copy of the trustee's March 24, 2008 letter and asked them to add the bankruptcy trustee to their homeowner's policy. Respondent's letter notified the clients that the first meeting of creditors was scheduled for May 14, 2008, but did not discuss the significance of adding the trustee to the insurance policy or the fact the trustee's letter implied they would probably lose their home.

The only entries in Respondent's billing records for April 2008 are entries on four different dates for contacts with the trustee or the clients regarding adding the trustee to the insurance policy. The next entry is for attendance at the May 14, 2008 meeting of creditors.

In a May 19, 2008 letter to Respondent, the trustee noted that the schedules she had filed did not contain any values for the claimed exemptions, among other things. The letter notified

Respondent that the clients had unprotected equity in their home of \$79,904 and stated, “I would appreciate it if you could provide within the next 10 days a proposal of how your clients wish to deal with the excess equity.”

In a May 23, 2008 letter to the clients, Respondent stated:

Enclosed in a copy of a letter I received from the trustee. Please note, I believe that your house is not worth as much as we listed it in our petition. What I need you to do is to get a realtor to do a real estate assessment (determine how much the house would sell for). This person needs to be available to come to a hearing before the judge to have the real estate value set. My plan is to have the real estate valued as being at least 25% lower than it was on our schedules.

The clients sent Respondent a June 5, 2008 email which stated that their former realtor had assessed their home at \$149,900, which was more than the value listed on the tax bill. The email further stated they could not afford to pay for someone to come to Milwaukee to testify about the home’s value. In the email, the clients expressed their dismay that, although they had lived frugally and tried to pay their bills, they were now required to pay \$80,000 or lose their home. The clients pointed out that no bank would loan them money under the circumstances. The email concluded, “I think we would have had (sic) done many things different had we known before going into this. PLEASE CALL AND GET THIS FIXED.”

Respondent’s June 6, 2008 responsive email stated, in its entirety:

I know you are frustrated, and I would be too, in your situation. No, you didn’t waste the money. No you never spent it on fancy meals for clothes or vacations or anything frivolous. Now we just have to figure out the best way to get you out of this.

I will call you later this afternoon and we can talk about it.

Subsequent to her June 6, 2008 email, there is no evidence that Respondent ever consulted with the clients about the excess equity in their home.

After learning that they were probably going to lose their home, the clients sought a second opinion from another attorney and decided to hire her. On June 26, 2008, successor counsel filed a notice of appearance and a motion to convert the clients' bankruptcy to a Chapter 13 proceeding. Respondent received notice of the motion to convert. Successor counsel also sent an email to Respondent asking her to sign and return an attached stipulation for substitution of attorneys.

On July 15, 2008, the trustee filed an objection to the motion to convert, and a hearing on his objection was scheduled for July 30, 2008. In his objection, the trustee stated that the clients had approximately \$80,000 in non-exempt equity in their home, which he said he brought to Respondent's attention in March 2008 when he asked to be placed on the clients' homeowner's insurance policy. The trustee said he brought the excess equity to Respondent's attention again in May 2008, after the first meeting of creditors. The trustee also stated that the clients had not disclosed a potential cause of action against the employer, and that, as of the date of his objection, the clients' bankruptcy schedules had not been amended. The trustee maintained that the motion to convert, made only after he had commenced attempts to administer the non-exempt assets, was not made in good faith and should not be granted.

On July 17, 2008, successor counsel filed amended schedules correcting the deficiencies in the original documents filed by Respondent.

After the July 30, 2008 hearing on the motion to convert, the bankruptcy judge issued an order which stated, "The court believes this is not a bad faith situation, as it appears the debtors received poor legal advice." The court acknowledged that the clients wanted to keep their home and that they had a potential cause of action against the employer, and it granted the motion to convert to Chapter 13.

In an August 15, 2008 letter, successor counsel asked Respondent to refund the \$1500 the clients had paid her. Successor counsel pointed out that by advising the clients to file under Chapter 7, Respondent had set them up to lose their home. Additionally, successor counsel pointed out that Respondent had failed to include a lot of information on the bankruptcy schedules she had filed for the clients.

By letter to successor counsel dated August 21, 2008, Respondent said she would not return the clients' attorney's fees and stated:

At the time we filed their chapter 7, the [clients] informed me that their home was worth approximately half of what it was valued at on the tax bills. Under those circumstances, they would not have had any additional equity in their home. It was only after I pressed [the husband] to find an appraiser to testify as to the home's value that it became clear that this was not the case. I agree the [clients'] bankruptcy schedules needed to be modified. However, [the clients] have not contacted me regarding updating their schedules...

The clients strongly deny telling Respondent that their home was worth less than the amount listed on their tax bill. Respondent did not explain why she listed the value of the home at \$141,200 on the bankruptcy schedules if she believed it was worth half as much.

On December 4, 2008, successor counsel filed a motion for an order requiring Respondent to refund the clients' attorney's fees. Among other things, successor counsel's motion noted the deficiencies in the documents filed by Respondent, said that Respondent did not file amended schedules even after the trustee brought the need for some changes to her attention, and said that Respondent did not tell the clients that the trustee could sell their home to capture their excess equity. In the motion, successor counsel said that Respondent's statement in her August 21, 2008 letter that the clients lied to her about the value of their home was not credible and not supported the evidence.

Respondent's December 12, 2008 affidavit objecting to successor counsel's motion included the following attestations:

- The debtors also insisted that their home had been listed for sale for quite some time and that "they couldn't get what it was listed for because it was worth much less than that." They had no documents substantiating their claim...
- I admit the [clients'] petition and schedules had some deficiencies. These were brought to my attention at the first meeting of creditors on May 14, 2008...
- After the first meeting of creditors, I spoke via telephone with [the husband] regarding hiring an appraiser to value the parties' home. Once the appraiser had concluded what the value of the home was, I was planning on bringing a motion before the court to have the new value of the home used as the value of the home.
- [The husband] informed me vial (sic) e-mail that the only appraisers he could find who were willing to testify would charge \$400-500 for the appearance and they could not afford that. This was the last contact I had with [the husband]...

Respondent maintained that she had completed work for the clients and had earned her fees.

After a January 7, 2009 hearing on Respondent's objection to successor counsel's motion for a refund of attorney's fees, the court issued the following written order on January 13, 2009:

The debtors believe they were not properly represented by [Respondent] when they initially filed for chapter 7 bankruptcy. There were errors in their initial chapter 7 schedules, and they were not informed they would lose the equity in their house if they filed.

The objection is overruled and the motion for refund of attorney fees is granted in part. [Respondent] will refund \$1000 to be paid directly to the debtors forthwith.

Respondent submitted evidence to the Office of Lawyer Regulation that she sent the clients a check in the amount of \$1000 on January 8, 2009.

By advising the clients to file a Chapter 7 petition for bankruptcy when she knew that the assessed value of the clients' home was \$141,200 and the secured claims against the home were

only \$21,596, and when she knew the clients did not want to lose the equity in their home and, by failing after receipt of the trustee's March 24, 2008 letter alerting her to the clients' substantial equity, to file a motion to convert to Chapter 13 or to otherwise take steps to rectify the problem, Respondent violated SCR 20:1.1, which states:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

By failing to discuss with the clients the option of filing a Chapter 13 petition and, by failing to explain the differences between a Chapter 7 and a Chapter 13 filing and the potential ramifications of each option, particularly with respect to preserving the equity they had in their home, Respondent violated SCR 20:1.2(a), SCR 20:1.4(a)(2) and SCR 20:1.4(b).

SCR 20:1.2(a) states, in relevant part:

...a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued.

SCR 20:1.4(a)(2) states that a lawyer shall:

Reasonably consult with the client about the means by which the client's objectives are to be accomplished.

SCR 20:1.4(b) states:

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

By failing to file an amended petition and schedules to correct deficiencies in the initial documents she had filed, particularly after she had been made aware of the problems at the May 14, 2008 first meeting of creditors and had received the trustee's May 19, 2008 letter notifying

her of some of the deficiencies, including the fact that she had failed to include values for the claimed exemptions, Respondent violated SCR 20:1.3, which states:

A lawyer shall act with reasonable diligence and promptness in representing a client.

After receipt of the trustee's March 24, 2008 letter, by failing to explain to the clients that the trustee intended to apply the excess equity in their home to their debts and that they would lose their home and their equity in it and, by failing to discuss the problem with the clients after she said in her June 6, 2008 email she would do so, Respondent violated SCR 20:1.4(a)(3) & (4) and SCR 20:1.4(b).

SCR 20:1.4(a)(3) & (4) state that a lawyer shall:

(3) Keep the client reasonably informed about the status of the matter;

(4) Promptly comply with reasonable requests by the client for information.

By stating in her August 21, 2008 letter to successor counsel that the clients told her their home was worth half the amount listed on their tax bill and that "it was only after I pressed [the husband] to find an appraiser...that it became clear this was not the case," Respondent violated SCR 20:8.4(c), which states:

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

By stating in an affidavit she filed with the bankruptcy court that the clients told her their home was "worth much less" than it was listed for, when she reported the home's value on the bankruptcy schedules to be the amount listed on the clients' tax bill, when she admittedly had no information to substantiate a lesser value for the home, and when her May 23, 2008 letter to the clients said it was her "plan" to have the home valued "at least 25% lower than it was on our

