

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2009-OLR-8

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Since 1989, a woman employed Vida as her attorney for real estate and tax matters. In 2004 and 2005, the woman hired Vida to represent her in the purchase of a house, the purchase of some adjoining property needed to remediate a septic system problem, and to pursue a lawsuit against the sellers of her home and the sellers' realtor. There was no written agreement between the woman and Vida addressing the objectives of the representation or the fees.

The woman asserted in her October 22, 2007 grievance, that Vida lacked diligence in pursuing her real estate matters, failed to ensure she received certain documents, and engaged in deceit regarding the filing of a lawsuit.

On October 4, 2004, the woman signed an offer to purchase a house located in Caledonia, Wisconsin. The offer to purchase contained an inspection contingency and an additional contingency, as follows: "This offer is contingent upon Buyer reviewing and signing a copy of the Sellers' Condition Report dated 10-2-04 within 3 days of acceptance of offer." The signed offer also contained an addendum that stated in pertinent part, "If this property is serviced by an operable private well or sanitary disposal system, Seller agrees to provide Buyer, all Brokers and Buyer's lender with the results of a bacteriological water test and a well and sanitary disposal system inspection report from a qualified testing agency, governmental agency, licensed plumber or licensed sanitarian dated no earlier than thirty (30) days prior to the closing."

The woman met with Vida on October 5, 2004 and he reviewed her offer to purchase. Vida was aware that the home had a septic system. The woman stated that she hired two inspectors, left Vida in charge of completing the purchase of the house, and then she returned to Arizona to complete work related to her relocation to Wisconsin.

In November of 2004, the woman moved into her newly-purchased house and immediately discovered septic problems. The water and septic systems were not inspected prior to closing. The woman never received a copy of the sellers' October 2, 2004 condition report or the sellers' current septic report. The woman discovered that septic problems pre-dated her purchase.

On January 4, 2005, Vida sent the woman a bill for his \$225.00 attorney fee for his reviewing of the offer to purchase, the title, and the closing documents as well as office and telephone conferences. The woman paid the fee.

The woman's remedial efforts to alleviate the septic system problems failed and on April 6, 2005, Racine County issued an enforcement order giving the woman 90 days to correct her sewage system. To remedy the problem, the woman needed to purchase additional land (.13 of an acre) behind her house in order to install a mound septic system. The woman negotiated directly with the owner of land and arranged for a property survey without Vida's assistance.

Vida stated the woman contacted him in late March of 2005 regarding the failure of the septic system and the need to purchase additional land. The woman hired Vida to draft an offer to purchase the additional property. The woman and Vida dispute the diligence with which Vida prepared the offer to purchase. The woman alleged that she had to call Vida repeatedly to get the offer to purchase prepared and that the delay resulted in her paying an additional \$300.00 to the seller for crop damage caused by driving heavy equipment over already-planted crops during the

installation of the septic system. Vida asserted that he received the land survey from the woman on May 3, 2005, he drafted the offer to purchase on May 4, 2005, and the woman picked it up the same day.

By letter dated July 5, 2005, Vida sent the woman a bill for his \$400.00 attorney fee for work relating to the woman's acquisition of additional land for the mound septic system. The woman paid the fee. No other fees were charged by Vida.

The woman expended a total of \$31,055.21 for septic-related service charges, the purchase of land for a new septic system, and a new septic system.

Sometime in July 2005, the woman contacted Vida to pursue remedies against the previous owners and the realtor for failing to disclose a known sewer problem. On July 8, 2005, and on November 18, 2005, Vida sent the sellers and their realtor letters demanding reimbursement of \$30,000 because of their failure to disclose the septic defect. The realtor's attorney, by letter dated January 11, 2006, offered a \$6,000 settlement saying that the Buyer had the right to inspect and in failing to do so, waived all defects. The woman rejected the offer. During the fall of 2005 and the spring of 2006, the woman stated she repeatedly directed Vida to commence a lawsuit, as she was not willing to accept the settlement offers.

Vida agreed to file a lawsuit. The woman was suspicious that Vida was stalling. The woman's notes indicated she had telephone contact or in-person contact with Vida on approximately 25 occasions between October 2005 and September 2006. On or about October 25, 2005, November 21, 2005, March 30, 2006, and September 29, 2006, without Vida's knowledge, the woman tape-recorded conversations she had with Vida concerning her case.

On November 7, 2005, the woman checked with various courts and could not discover a lawsuit filed on her behalf. On or about November 21, 2005, she confronted Vida and he

replied, “I don’t understand why they don’t have a record of that.” Vida stated he would be at the court the next day and indicated he would check on the status of her case. The woman asserted that Vida later admitted he had not filed her lawsuit.

In December 2005, Vida told the woman on two occasions that he would file the summons soon. During the tape-recorded March 2006 conversation, the woman asked Vida if there was a cost to filing her lawsuit. Vida told the woman the cost would be “\$240,” and then they discussed who would be named as the parties to the case.

The woman continued to call Vida at least twice a month regarding the status of her lawsuit and a court date. On June 8, 2006, Vida told the woman he filed her lawsuit. On August 16, 2006, Vida had the woman execute an affidavit concerning her willingness to permit the court to refer the matter to arbitration. The woman asked for paperwork regarding the filing of her lawsuit and the woman stated that Vida gave her a copy of that affidavit as proof that the lawsuit had been filed. The affidavit is entitled “State of Wisconsin, Circuit Court, Racine County,” and has as its case number “06” with a case code of “30301.” On September 24, 2006, the woman took the affidavit to the Racine County Courthouse and she was told that the paper meant nothing as it did not contain a case number.

The woman confronted Vida on September 29, 2006 in his office and she stated he became distraught and admitted he never filed the suit. The woman stated that during the course of the representation Vida did not provide her with copies of the two land deeds, copies of correspondence with the realtor’s lawyer offering a settlement, and that she did not receive a copy of the condition report until after she hired a new attorney.

In his February 8, 2008 responsive submission to OLR, Vida stated the following in reference to his October 5, 2004 meeting with the woman in which he reviewed her offer to purchase:

In early October 2004, [the woman] contacted me regarding her intention to move back to Milwaukee. She indicated that she had found a home she wished to purchase, and arranged to meet with me on October 5, 2004. At the meeting, we reviewed an Offer to Purchase ... [My client] had negotiated the terms and signed the Offer on October 4th, the previous day. The Offer provided for an inspection contingency and subsequent provision of the Real Estate Condition Report. [My client] informed me that she would arrange for inspection of the property. I do not recall that there was discussion that I would be responsible for arranging an inspection of the septic system ... I did not receive a copy of the Real Estate Condition Report. I again met with [the woman] on October 15, 2004 to review an Amendment to the Offer prepared by [the sellers' real estate agent] ... My subsequent involvement with this transaction was the review of closing documents prepared by Land Title Services. I was not asked to attend the closing. I understood my role in this transaction was to review documents for content, as [my client] was knowledgeable in business and real estate matters and had negotiated the terms of the purchase directly with the agent...

In his responsive submission dated February 8, 2008, Vida further stated:

As [my client's] phone log indicates, I did, regrettably, make numerous misleading statements regarding the status of the litigation, which I intended to file on her behalf, for which I can offer no excuse, but only my sincere apology.

In a responsive submission dated March 13, 2008, Vida stated:

I do not dispute that the transcribed conversations occurred between myself and [my client]. [My client's son], who resides with her, was also present at the meetings. As previously indicated, I made misrepresentations that led [my client] to belief [sic] that I had filed a lawsuit when I had not. I am sincerely sorry for this conduct.

By letter dated December 20, 2007, OLR sent Vida notice of the formal investigation of the woman's grievance. Vida was directed to provide a complete written response to the grievance no later than January 14, 2008.

Vida did not respond to the grievance by the January 14, 2008 deadline. OLR sent a second notice to Vida at his office address on January 18, 2008, by both regular first class and certified mail. A new response deadline of January 28, 2008, was established. On January 19, 2008, an agent of Vida's signed the certified mail return receipt for the letter that was sent via certified mail. In addition, the letter that was sent by regular mail was not returned to OLR as undelivered. Vida did not respond by the January 28, 2008 deadline.

Having received no written response to the December 20, 2007 and the January 18, 2008 letters, OLR arranged for personal service of the grievance materials and notice of investigation.

Personal service was accomplished on February 7, 2008, and on February 12, 2008, OLR received a response from Vida dated February 8, 2008.

During the course of his review of his client's offer to purchase, which required the seller to provide a condition report and a current sanitary disposal system report, by failing to either act on his own to timely secure those reports or to instruct his client to obtain those reports on her own, Vida violated SCR 20:1.3 that states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to pursue his client's lawsuit for damages in a real estate transaction over the course of fourteen months, and by otherwise failing to timely advance his client's interests in obtaining compensation from the seller and realtor, Vida further violated SCR 20:1.3.

By intentionally communicating false information to his client stating that he had filed her lawsuit when he had not done so, causing the client to have an incorrect understanding of the status of her legal matter, Vida violated the following Rules of Professional conduct:

Former SCR 20:1.4(a), applicable to conduct occurring prior to July 1, 2007, that stated, "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

SCR 20:8.4(c) that states, "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

By failing to provide a written response to the client's grievance after OLR's initial request dated December 20, 2007 until February 8, 2008, and only after Vida had been

