

LEWIS S. VICTOR
Public Reprimand No. 2019-9
Order (public reprimand) entered by the Board on June 27, 2019.

The respondent stipulated to a public reprimand and agreed to immediately cease taking on new clients and to close his practice and assume retirement status by December 31, 2019. The respondent had multiple conflicts of interest and failed to disclose his role as counsel for other parties when he handled a real estate transaction involving a vulnerable property owner and later acted against her interests in working with family members to oppose a guardianship and conservatorship.

SUMMARY¹

The respondent engaged in conflicting representations and related violations arising out of a real estate transaction and a guardianship and conservatorship petition not involving self-dealing or fraud.

In the fall of 2015, a nephew and his aunt jointly owned a residential property in East Bridgewater. The aunt, who suffered from numerous psychological, neurological and physical illnesses, had lived at the property with family caretakers since the late 1980s. The nephew did not live at the property, although he was a co-mortgagor with his aunt on a mortgage loan for the property. In about October 2015, the nephew sought to refinance the mortgage in his name alone. The bank approved the loan and referred the matter to the respondent to act as closing counsel.

Prior to the closing, the nephew asked the respondent to prepare a deed transferring the property from the nephew and aunt as joint owners to the nephew as sole owner. Although preparing the deed was not within the scope of the respondent's services as counsel for the bank, he prepared the deed for the nephew without charge per the nephew's instructions. The deed did not reserve a life estate interest for the aunt and recited a consideration of \$1 to the aunt for transferring her one-half interest to the nephew. The nephew brought his aunt to the respondent's office, and the respondent notarized their signatures on the deed. The respondent, who had never met the aunt before, only spoke to the aunt briefly. He did not explain the transaction to her and held himself out as disinterested. Although he knew that the aunt was not represented by counsel and reasonably should have known that she misunderstood his role in the matter, the respondent did not make reasonable efforts to correct the aunt's misunderstanding, in violation of Mass. R. Prof. C. 4.3.

As bank's counsel at the December 11, 2015 refinance closing, the respondent had the nephew sign a loan application and occupancy affidavit. The nephew stated on the loan application that he intended to use the property as his principal residence. The respondent notarized the occupancy affidavit even though the nephew failed to answer a question declaring whether he intended to use the property as his principal residence. After the closing, when respondent learned that the nephew did not live at the property and was not intending to make the property his primary residence, the respondent did not disclose this information to the bank. By failing to have the nephew complete the affidavit of occupancy at the closing, and by failing to inform the bank when he later learned that the nephew did not intend to occupy the property as his principal residence, the respondent failed to provide competent representation to the bank and to communicate information necessary to permit the bank to make informed decisions regarding the representation, in violation of Mass. R. Prof. C. 1.1 and 1.4(b).

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

On January 29, 2016, the nephew met with the respondent to discuss problems he was having with a relative who was seeking appointment as guardian and conservator of the aunt in order to revoke the deed from the aunt to the nephew. The respondent informed the nephew that he did not have standing to oppose the guardianship and conservatorship petitions. However, the respondent agreed to represent other members of the family who did have standing and were opposed to the proposed guardianship and conservatorship. The nephew paid the respondent a \$7,500 flat fee that day to represent his mother, grandmother, the proposed ward's son, and the proposed ward. Before accepting payment of his fee from the nephew, the respondent did not seek the informed consent of the proposed clients, in violation of Mass. R. Prof. C. 1.8(f)(1). By undertaking the joint representation of the proposed ward and family members opposed to the guardianship/conservatorship, when there was a significant risk that the representation of one or more of the clients would be materially limited by his responsibilities to another client or to the nephew, without obtaining the informed consent of each client confirmed in writing, the respondent violated Mass. R. Prof. C. 1.7.

On or about March 3, 2016, the respondent learned that the proposed ward supported the relative's petition to be appointed her guardian and conservator. Her mother, sister, and son maintained that the proposed ward did not need a guardian or conservator. On March 9, 2016, the respondent filed appearances in the probate court on behalf of the proposed ward and her mother and sister as attorneys-in-fact and representative payee for the proposed ward, objecting to the proposed guardianship and conservatorship. By filing his appearance on behalf of the proposed ward without first notifying or consulting with her, when he was aware that the proposed ward supported the guardianship and conservatorship, the respondent violated Mass. R. Prof. C. 1.2(a), 1.4(a) and (b), 1.14(a), and 8.4(d).

In March and April of 2016, the respondent agreed to represent the nephew in serving a notice of no trespass prohibiting the proposed guardian/conservator from entering the property where the proposed ward lived. The respondent also agreed to represent the nephew in seeking to evict the proposed ward's brother who was sharing an apartment with her at the property, and in opposing a restraining order obtained by the brother after a confrontation with the nephew at the property. The respondent undertook his representation of the nephew in these matters which were opposed to the proposed ward's interests while simultaneously purporting to represent the proposed ward in the guardianship and conservatorship proceedings, without first obtaining the proposed ward's informed consent confirmed in writing, in violation of Mass. R. Prof. C. 1.7 and 1.16(a)(1).

At a court hearing in April 2016, the respondent first learned that the nephew had allegedly lied to the proposed ward in the fall of 2016 to get her to sign the deed transferring her interest in the house to him. Shortly thereafter the respondent stopped representing the nephew in any legal matters.

In March 2016, the proposed ward revoked the appointment of her sister as her attorney-in-fact effective immediately. After receiving notice of the revocation, the respondent did not withdraw his appearance of the sister as attorney-in-fact for the proposed ward in the guardianship and conservatorship matters.

On about July 27, 2016, the proposed ward notified the respondent that she was discharging him as her counsel. The respondent did not withdraw his appearance for the proposed ward in the guardianship and conservatorship matters.

On December 2, 2016, the proposed ward's mother filed assents to the petitions for guardianship and conservatorship. The respondent did not promptly seek to withdraw his appearance on behalf of the mother as attorney-in-fact for the proposed ward in opposition to the guardianship and conservatorship.

On January 4, 2017, the respondent filed a motion seeking appointment of independent counsel to represent the proposed ward in the guardianship and conservatorship proceedings. The court did not act on the motion. On February 7, 2017, the respondent filed a motion to withdraw his appearances in the guardianship and conservatorship matters, and his motion was allowed. On February 7, 2017, the court appointed the relative as temporary guardian and conservator, and she was subsequently appointed permanent guardian and conservator.

By failing to promptly withdraw his appearances in opposition to the petitions for guardianship and conservatorship when he was discharged by the proposed ward, the sister was removed as attorney-in-fact, and the mother assented to the pending petitions, the respondent violated Mass. R. Prof. C. 1.16(a)(1) and (3), and 8.4(d).

In aggravation, the respondent was admitted to practice in 1974 and had substantial experience in the practice of law, including in the practice area involved in the matter. The respondent also engaged in multiple acts that resulted in rule violations over the course of several years.

On March 29, 2019, bar counsel filed a petition for discipline and the respondent's answer and stipulation of the parties, recommending a public reprimand. On April 8, 2019, the Board of Bar Overseers voted to make a preliminary determination to reject the stipulation and recommendation. On April 30, 2019, the parties filed an amended stipulation of the parties and joint recommendation for a public reprimand, conditioned on the respondent's immediate cessation of taking on new client matters and his agreement to close his law practice and assume retirement status by no later than December 31, 2019. On May 13, 2019, the Board voted to accept the amended stipulation of the parties and impose a public reprimand.