

DEC 2005
FILED
DHC

15824

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DISCIPLINE

FINDINGS OF FACT

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5. By assignment recorded in the Rockingham County Registry on April 24, 2000, the French deed of trust was assigned to Prinsburg State Bank.
6. By assignment recorded in the Rockingham County Registry on June 28, 2000, the French deed of trust was assigned to Gulf Coast Bank and Trust Company ("Gulf Coast").
7. On January 13, 2003, Douglas P. Caire, Vice-President of Gulf Coast ("Caire") sought to engage D'Amelio to foreclose on the French deed of trust and had a representative of Gulf Coast send D'Amelio the necessary documents for that purpose.
8. On January 14, 2003, D'Amelio wrote to Gulf Coast acknowledging receipt of the documents and accepting the engagement. D'Amelio promised to "proceed with the demand letter and foreclosure in the most timely manner allowed by law."
9. Also on January 14, 2003, D'Amelio sent a demand letter to the French's.
10. On March 6, 2003, D'Amelio sent Gulf Coast a Substitution of Trustee document that he asked to be signed, notarized and returned.
11. On March 20, 2003, Gulf Coast sent D'Amelio the executed Substitution of Trustee document naming D'Amelio as substitute trustee, although D'Amelio never filed that document.
12. Thereafter, D'Amelio advised representatives of Gulf Coast that he had initiated foreclosure on the French deed of trust.
13. On June 17, 2003, Caire wrote to D'Amelio instructing him to enter a protective bid on behalf of Gulf Coast in the foreclosure of the French deed of trust.
14. Shortly after Caire's letter of June 17, 2003, D'Amelio advised representatives of Gulf Coast that a foreclosure sale had occurred and that upset bids had been filed.
15. Representatives of Gulf Coast then sought status updates from D'Amelio concerning the foreclosure of the French deed of trust periodically over the next couple of months.
16. After not hearing further from D'Amelio, Caire asked Gulf Coast's Louisiana counsel, Russell Nunez ("Nunez"), to look into the status of the foreclosure of the French deed of trust shortly before September 15, 2003.
17. On September 15, 2003, Nunez sent D'Amelio a letter by Federal Express demanding that D'Amelio forward to Caire copies of all of the pleadings filed on behalf of Gulf Coast, an accounting of competitive bids submitted by third parties, and any third party proceeds D'Amelio had received in connection with the foreclosure of the French deed of trust.

18. D'Amelio did not respond to Nunez or to Caire after receiving the September 15, 2003 letter from Nunez.

19. On or just prior to September 22, 2003, D'Amelio contacted the French's. D'Amelio falsely led the French's to believe that, by executing the deed to the commercial property, that their house would be saved from foreclosure.

20. On September 22, 2003, the French's executed a general warranty deed to Gulf Coast conveying the commercial tract secured by the French deed of trust.

21. On September 23, 2003, D'Amelio recorded the general warranty deed conveying the commercial tract secured by the French deed of trust to Gulf Coast.

22. D'Amelio did not seek his client's authorization or consent to accept a general warranty deed on the commercial tract in lieu of foreclosure on the French deed of trust, either before obtaining the signed deed or before recording it.

23. D'Amelio never filed a foreclosure proceeding on the French deed of trust on Gulf Coast's behalf.

24. D'Amelio filed the general warranty deed to cover up his failure to file foreclosure on Gulf Coast's behalf and his false statements made to Gulf Coast's representatives that he had filed a foreclosure action and had conducted a sale.

25. Gulf Coast had to employ other counsel to file an Affidavit of Non-Acceptance and Quitclaim Deed rescinding the general warranty deed D'Amelio had filed granting the commercial property to Gulf Coast and to institute foreclosure of the French deed of trust.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over D'Amelio and the subject matter.

2. D'Amelio's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that D'Amelio violated the Revised Rules of Professional Conduct as follows:

- (a) by failing to timely file a foreclosure proceeding on behalf of Gulf Coast in the French deed of trust matter, D'Amelio failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

- (b) by failing to respond to Gulf Coast's representatives' inquiries as to the status of the foreclosure of the French deed of trust, D'Amelio failed to keep his client reasonably informed about the status of the matter and promptly comply with reasonable requests for information in violation of Rule 1.4(a)(3) and (4);
- (c) by falsely representing to Gulf Coast's representatives that he had initiated foreclosure in the French deed of trust matter when he had not done so, D'Amelio engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and made a false or misleading communication about his services in violation of Rule 7.1;
- (d) by falsely representing to Gulf Coast's representatives that a foreclosure sale had occurred and that upset bids had been filed in the French deed of trust matter when neither had occurred, D'Amelio engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and made a false or misleading communication about his services in violation of Rule 7.1;
- (e) by falsely leading the French's to believe that, by executing the deed to the commercial property, that their house would be saved from foreclosure, D'Amelio engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (f) by filing a general warranty deed conveying the commercial tract to Gulf Coast without the authority and consent of Gulf Coast, D'Amelio failed to abide by his client's decisions concerning the objectives of the representation and the means by which they are to be pursued in violation of Rule 1.2(a) and failed to reasonably consult with the client about the means by which the client's objectives are to be accomplished in violation of Rule 1.4(a)(1) and (2);
- (g) by causing Gulf Coast to have to employ counsel to rescind the general warranty deed he had filed without authority or consent, D'Amelio prejudiced or damaged his client during the course of the professional relationship in violation of Rule 8.4(g).

BASED UPON the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, and the arguments of counsel, the hearing committee hereby makes the following:

FINDINGS AND CONCLUSIONS REGARDING DISCIPLINE

1. D'Amelio's misconduct is aggravated by the following factors:
 - (a) A prior disciplinary record - a Reprimand issued by the Grievance Committee in 01G1118;
 - (b) A dishonest, but not a selfish, motive; and

- (c) Substantial experience in the practice of law.
2. D'Amelio's misconduct is mitigated by the following factor:
 - (a) Personal or emotional problems;
 - (b) Full and free disclosure to the hearing committee and cooperative attitude toward the disciplinary proceedings;
 - (c) Good character and reputation;
 - (d) Interim rehabilitation; and
 - (e) Remorse.
 3. Neither the mitigating nor the aggravating factors outweighed the other.
 4. Prior to the relevant time of his misconduct, D'Amelio was experiencing significant personal problems in his life that caused him to suffer from depression.
 5. In December 2001, D'Amelio sought treatment for his depression from a Board Certified Psychiatrist, Dr. Pamela M. Pittman. D'Amelio also began therapy with a psychologist, Barbara A. Fousek.
 6. Just prior to the time of his misconduct, D'Amelio began to become erratic in the taking of his medication due its unpleasant side effects. The lack of appropriate medication contributed to D'Amelio's loss of judgment that led to his misconduct.
 7. In June 2005, Dr. Pamela M. Pittman changed D'Amelio's medication. The new medication does not have the unpleasant side effects that caused D'Amelio to become erratic in taking his former medication. According to Dr. Pamela M. Pittman, the combination of the new medication and Barbara A. Fousek's therapy has resulted in D'Amelio doing well.
 8. D'Amelio's conduct is serious enough to warrant more than a Censure, but does not warrant an active suspension of his license.

BASED UPON foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the FINDINGS AND CONCLUSIONS REGARDING DISCIPLINE, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The license of the defendant, Lawrence J. D'Amelio, III, is hereby suspended for a period of one year.

2. The one-year suspension of D'Amelio's license is stayed for a period of three years on the following conditions:

- (a) D'Amelio shall, at his own expense, continue treatment with Dr. Pamela M. Pittman, or other psychiatrist approved by the Office of Counsel, and continue therapy with Barbara A. Fousek, or other therapist approved by D'Amelio's psychiatrist as long as recommended by the psychiatrist; and shall comply with the course of treatment prescribed by his psychiatrist for the next three years, or until D'Amelio is released from treatment, whichever first occurs;
- (b) D'Amelio shall be responsible for ensuring that a written report is received in the Office of Counsel from his psychiatrist on January 1, 2006-2008, April 1, 2006-2008, July 1, 2006-2008 and October 1, 2006-2008. Those reports shall indicate whether D'Amelio is following his treatment plan and whether the condition for which he is being treated impairs his professional judgment, performance or competence as an attorney;
- (c) Within 30 days of service of this Consent Order of Discipline, D'Amelio shall provide the Office of Counsel with a written release, authorizing the Office of Counsel to contact Dr. Pamela M. Pittman for the purpose of determining whether D'Amelio is following his treatment plan and whether the condition for which he is being treated impairs his professional judgment, performance or competence as an attorney. D'Amelio shall not revoke his written release given to Dr. Pamela M. Pittman, or other approved psychiatrist, prior to November 1, 2008;
- (d) D'Amelio shall not violate any state or federal laws during the period of the stayed suspension;
- (e) D'Amelio shall not violate any provisions of the Rules of Professional Conduct during the period of his stayed suspension;
- (f) D'Amelio shall respond to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner; and
- (g) D'Amelio shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education (CLE) requirements on a timely basis.

3. If the stay of the suspension of D'Amelio's law license is lifted, the DHC may enter an order providing for the imposition of such conditions as it deems necessary for reinstatement of D'Amelio's law license at the end of the suspension period.

4. D'Amelio is taxed with the costs of this action as assessed by the Secretary and shall pay those costs within 90 days of service of notice of those costs.

Signed with the knowledge and consent of the other members of the hearing committee
this the 15th day of ~~November~~ ^{December} 2005.

F. Lane Williamson
F. Lane Williamson, Chair
Hearing Committee