

ADMONITION NO. 00-08

CLASSIFICATION:

Neglect of a Legal Matter [Disciplinary Rule 6-101(A)(3)]

SUMMARY:

On November 21, 1985, an individual filed a complaint pro se with MCAD against a realty company and an agent alleging that he was discriminated against in his efforts to purchase a condominium unit. There was merit to the allegations and on February 13, 1986 MCAD found probable cause. A probable cause finding entitles the complaining party to a public hearing if the matter is not resolved at a voluntary conciliation.

In February 1987, after the finding of probable cause, the respondent was retained to pursue the client's case on a contingent fee basis. The client elected to take the case out of the administrative process and pursue his remedies in court. On February 20, 1987, the respondent filed a civil complaint in the Superior Court. The respondent limited the allegations to intentional infliction of emotional distress and statutory civil rights violations (G.L. c. 12 . 11I). The respondent did not assert any count under G.L. c. 93A against the real estate company or assert any G.L. c. 151B violation against either defendant.

There were numerous delays in the litigation, some of which were the fault of the respondent and many of which were beyond his control. Finally, on March 20, 1996, the Superior Court entered a pretrial conference order which contained a ruling on the defendants' motions to dismiss. In its order, the court dismissed the civil rights counts on the grounds that the plaintiff could not prove the element of "coercion" within the meaning of the statute. The court did not dismiss the intentional infliction of emotional distress claims but determined that the plaintiff's damages on these counts could not exceed \$25,000.00 and

accordingly transferred the case to the District Court.

The parties do not agree as to what happened next. They appear to have agreed not to pursue an interlocutory appeal of the dismissal of the civil rights counts. However, the client understood and believed that the respondent would pursue the remaining counts in the District Court. The respondent claims to have had a discussion with the client where it was agreed not to pursue the remaining counts. However, he did not advise the client of this decision in writing, return the client's file, or file a motion to withdraw.

The District Court dismissed the case on January 16, 1997 for failure to prosecute. A copy of the dismissal was sent to the respondent and was in the respondent's file. The respondent did not notify the client of the dismissal.

The respondent's neglect of a legal matter entrusted to him and his failure to adequately communicate with his client, resulting in the dismissal of his client's case, was in violation of Canon Six, Disciplinary Rule 6-101(A)(3).

The respondent was admitted in 1982 and has no prior discipline. The respondent does not currently practice law. Accordingly, the respondent received an admonition for the above violations.