

## **ADMONITION NO. 00-06**

### **CLASSIFICATION:**

Conduct Adversely Reflecting on Fitness to Practice [Mass. R. Prof. C. 8.4h]

**SUMMARY:** The respondent represents an estate. In 1991, a buyer purchased certain real estate from the estate and the estate took back mortgages totaling \$25,000. When the mortgages came due in 1996, the buyer initially failed to pay them off. The respondent sent several written demands for payment of \$25,000. The buyer then obtained alternative financing.

The respondent wrote to the lender in August 1997, indicating that the buyer had asked him to advise the lender as to "what is still owed" and that the buyer was "liable for the principal amount borrowed, \$25,000, now due and payable." In response, counsel for the lender wrote to the respondent in September 1997 enclosing a check for \$25,000 as "payment in full of [the] mortgage," asking to be advised immediately if the sum was insufficient or otherwise in error, and requesting that the respondent forward a discharge.

The respondent and his client negotiated the check. Eleven days later, the respondent wrote to the buyer indicating that interest was still owed. The respondent offered to accept \$2000 to compromise the approximately \$4000 claimed as interest. Although the lender protested, the respondent and his client refused to discharge the mortgages. In March of 1999, the respondent's client was paid \$2000 and executed the mortgage discharges.

The respondent's letter to the lender indicating that the buyer was liable for the principal balance of \$25,000 was at least unintentionally misleading. However, the more serious concern is that, despite the lender's cover letter requesting both to be advised immediately if there was a deficiency and that discharges be provided, the respondent and his client negotiated the \$25,000 check and did not advise the buyer or the lender that it was insufficient, or that they would not provide discharges, until after they had the funds. Lawyers need to be able to rely on each other in these circumstances and the respondent's disregard for the conditions under which the check was sent was improper, in violation of Mass. R. Prof. C. 8.4 (h).

The respondent has a previous admonition from 1993 and an informal admonition from 1991, both for neglect. He received an admonition for his misconduct, conditioned on attendance at CLE programs designated by Bar Counsel and including a program on conveyancing.