

**BRIAN R. SULLIVAN**

**Public Reprimand No. 2012-13**

**Order (public reprimand) entered by the Board on June 19, 2012.**

**SUMMARY<sup>1</sup>**

In July 2004, homeowners filed suit in Superior Court against a corporation and its principal officer (the client) alleging breach of contract and breach of warranty arising out of the construction and sale of the home. The client retained John J. Veysey, who filed an answer on behalf of the client and the corporation in October 2004. The case was scheduled for trial on December 2, 2008. The client was unaware of the trial date and did not appear. Veysey also did not appear for trial. The court held a bench trial, and the plaintiffs presented their case.

In July 2009, the court issued findings of fact, rulings of law and an order of judgment in favor of the plaintiffs in the amount of \$105,205 plus treble damages and attorneys' fees pursuant to G.L. c. 93A. In October 2009, plaintiffs' counsel filed a motion for attorney's fees and costs and sent a copy of the motion to the client, who learned of the judgment for the first time when he received a copy of the plaintiffs' motion. In January 2010, the client also learned for the first time that Veysey had been administratively suspended from the practice of law for his failure to cooperate with bar counsel in an unrelated matter. In February 2010, judgment was entered against the client and the corporation for \$315,615, plus interest and attorneys' fees.

On or about April 9, 2010, the client retained the respondent to file a motion to vacate the judgment in the civil litigation. The respondent drafted a motion to vacate the judgment, and he obtained an affidavit from Veysey dated May 11, 2010, attesting that he had not received notice of the December 2, 2008 trial date in the civil litigation. On May 23, 2010, the respondent emailed the client and knowingly falsely advised him that he had forwarded the motion to vacate and the Veysey affidavit to plaintiffs' counsel pursuant to Superior Court Rule 9A. The respondent further advised the client that once he received plaintiffs' opposition, he would file the motion to vacate and the opposition with the court. The respondent never forwarded the motion or affidavit to opposing counsel, and he never filed the motion with the court.

In July and August 2010, the client repeatedly emailed the respondent requesting information on the status of the motion to vacate. The respondent failed to provide the client with information, and he failed to take any further substantive action on the matter. On August 23, 2010, the client discharged the respondent and two days later retained a second successor counsel to file a motion to vacate the judgment. The motion was ultimately filed

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<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

on November 17, 2010, and denied by the court after hearing on November 23, 2010. The respondent has malpractice insurance, and the client is aware of that fact.

The respondent's failure to file the motion to vacate, his failure to adequately communicate with the client about the motion to vacate, and his misrepresentation to the client that he had forwarded the motion to opposing counsel when he had not were in violation of Mass. R. Prof. C. 1.3, 1.4(a), and 8.4(c) and (d).

In an unrelated litigation matter, the respondent was retained to represent an individual and a corporate defendant and filed an answer in the matter in October 2008. He defended the action until 2011. On June 20, 2011, the clients discharged the respondent in writing and retained successor counsel to represent them in the matter. From June to September 2011, both successor counsel and the clients repeatedly called, wrote, and faxed the respondent requesting the file without receiving a response. In July 2011, successor counsel filed his appearance in the case indicating to the court that he did not yet have access to the case file, and he sent a copy of the appearance to the respondent. The respondent did not make the file available to successor counsel until September 23, 2011. The respondent did not file a notice of withdrawal until September 26, 2011.

The respondent's failure upon discharge to respond to successor counsel's calls and requests for the file were in violation of Mass. R. Prof. C. 1.16(d) and (e) and 8.4(d). The respondent's failure to timely file a notice of withdrawal was in violation of Mass. R. Prof. C. 1.16(a)(3).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by a public reprimand conditioned upon attending a CLE program designated by bar counsel. On June 11, 2012, the board voted unanimously to accept the stipulation and impose the recommended discipline.