IN RE: VANTHAN R. UN

NO. BD-2011-111

S.J.C. Order of Term Suspension/Stayed entered by Justice Cordy on November 9, 2011.[1]

SUMMARY[2]

On November 9, 2011, the Supreme Judicial Court for Suffolk County ordered that the respondent, Vanthan R. Un, be suspended for three months, with the execution of the suspension stayed for one year and subject to conditions, for misconduct.

In June 2006, the client retained the respondent to represent him in his immigration matters. The client informed the respondent that he had divorced his wife, an American citizen, because of spousal abuse in November 2005. The respondent advised the client that he would prepare and file with the U. S. Citizenship and Immigrations Services (USCIS) his Petition for Amerasian Widow(er) or Special Immigrant (I-360 petition) based upon spousal abuse. The respondent did not tell the client that there is a two-year statute of limitations for filing the I-360 petition running from the date of the divorce and that the statute would toll on June 1, 2007.

Shortly thereafter, the client provided the respondent with documentation to support the petition. The documentation included joint bank account statements, his marriage certificate and a certificate of divorce. On November 11, 2006, the client executed the completed I-360 petition prepared by the respondent. The client also provided a witness statement to the respondent in November 2006. However, the respondent did not timely file the I-360 petition.

Between November 2006 and June 2007, the client repeatedly requested an update on the status of his case from the respondent. The respondent repeatedly informed the client that there were no updates and failed to inform him that the statute of limitations was nearing. On or about June 21, 2007, the respondent filed the I-360 petition. By this time, the two-year statute of limitations for filing the I-360 petition had passed.

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[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

On July 9, 2007, USCIS notified the respondent that the petition did not establish a prima facie case and that additional supporting evidence should be provided. The respondent did not provide further evidence to USCIS.

On October 3, 2008, the respondent was notified by USCIS of its intent to deny the petition due to the lack of evidence submitted in support of the petition. The notice provided that evidence must be submitted by the deadline of November 5, 2008. The respondent then directed the client to, among other things, get a report from a psychologist regarding his abuse and provide a clearance report from his local police department. By letter dated October 28, 2008, the respondent submitted the evidence to USCIS in support of the I-360 petition.

On June 8, 2009, the respondent was notified that his client's petition was denied because it had been filed after the two-year statute of limitations had run. The respondent was notified that he had thirty-three days to appeal from the denial. The respondent did not inform the client that the I-360 petition had been denied, and he did not file an appeal from the denial.

At a Master Hearing in court on February 9, 2010, the client learned that his petition had been denied. When questioned why the petition had been denied, the respondent informed the client that it had been denied due to lack of evidence. The client only learned from successor counsel in or about February 11, 2010, that his petition had been denied because it was filed after the deadline.

The respondent's failure to provide competent representation to the client violated Mass. R. Prof. C. 1.1.

The respondent's failure to adequately communicate with the client regarding the status of his case violated Mass. R. Prof. C. 1.4.

The respondent's failure to timely file the I-360 petition violated Mass. R. Prof. C. 1.3.

The respondent's conduct in intentionally misrepresenting to the client the status of his case and in failing to inform him that his petition had been denied due to the statute of limitations in order to conceal his neglect violated Mass. R. Prof. C. 8.4(c) and (h).

In aggravation, the respondent received a public reprimand for similar misconduct involving neglect, in 2010.

On September 27, 2011, the parties jointly recommended to the board that the respondent be suspended from the practice of law for three months, with the execution of the suspension stayed for one year and subject to the following conditions. The respondent must undergo an audit by the Law Office Management Assistance Program (LOMAP) within sixty days from the entry of the order of suspension, and implement LOMAP's recommendations. The respondent must comply with these conditions for the one-year probationary period, and if he fails to comply, bar counsel may petition the Court for immediate imposition of the three month suspension. After one year from the order of suspension, the respondent may file an affidavit of compliance with proof of his completion of the conditions.

On October 17, 2011, the Board of Bar Overseers voted to accept the stipulation of the parties and the joint recommendation, and to file an information with the Supreme Judicial Court. On November 9, 2011, the Supreme Judicial Court for Suffolk County (Cordy, J.) so ordered.