

**EDWARD M. WHEELER****Public Reprimand No. 2012-8****Order (public reprimand) entered by the Board on June 1, 2012.****SUMMARY**¹

In March 2007, a client engaged the respondent to handle two commercial collection matters for the client's business. The client was the principal of the business, which sold wholesale produce to restaurants. In 2007, the business was owed about \$6,000 by restaurant A and \$1,600 by restaurant B. The respondent and the client agreed that the respondent would be paid out of the settlement proceeds from the two collection matters.

Shortly after he was engaged, the respondent sent out demand letters to both debtors. The owner of restaurant A disputed the amount owed, but agreed to pay a portion of the claimed debt by September 2007. No payment was made. No response was received from restaurant B. Between September 2007 and July 2008, the respondent took no further action of substance on either matter.

On July 30, 2008, the respondent filed civil lawsuits on behalf of the business against both debtors in Somerville District Court. When he filed the complaint against restaurant A, the respondent filed a motion for an ex parte attachment against a real estate trust owned by restaurant A's owner. On July 30, 2008, the motion was allowed and the attachment issued. The respondent arranged for service of the summons, complaint, motion, affidavit and writ of attachment on restaurant A's owner. On August 4, 2008, the respondent recorded the writ of attachment in the amount of \$6,335 at the registry of deeds.

The respondent did not serve the summons and complaint in connection with the restaurant B matter. Between August 2008 and August 2009, the respondent did not take any action of substance to pursue the case against restaurant B. On November 12, 2008, the civil action against restaurant B was dismissed without prejudice due to the respondent's failure to make service. The respondent did not take any action of substance to re-file the case. The respondent did not inform the client that the case was dismissed, and that he had not taken any action to revive the case. Between August 2008 and August 2009, the respondent intentionally misrepresented to the client that the case was proceeding.

In August 2009, the client engaged successor counsel to take over the case against restaurant A. In August 2009, at the client's request, the respondent turned over the file to successor counsel. At that time, the respondent told the client that he would complete the restaurant B matter. The respondent intentionally failed to disclose to the client that the case against restaurant B had been dismissed without prejudice in November 2008, and that the respondent had not taken any action since then to revive the matter.

In about July 2010, successor counsel collected the judgment against the owner of restaurant A, and paid the respondent \$500 for his legal services on the matter.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

Between August 2009 and December 2010, the respondent failed to take any action of substance on the restaurant B matter. During this time period, the respondent failed to return several telephone calls from the client asking about the status of the matter. When he did speak with his client, the respondent intentionally misrepresented that the case was moving forward. On December 7, 2010, the respondent re-filed the case against restaurant B in Somerville District Court

On December 29, 2010, bar counsel received from the client a request for investigation of the respondent and bar counsel's assistance in having the respondent deliver the file concerning restaurant B to the client's successor counsel. On December 31, 2010, bar counsel sent the client's correspondence to the respondent, who received it in due course. The respondent did not deliver the file to successor counsel until February 18, 2011. The client was not ultimately financially harmed by the respondent's lack of diligence.

By failing to diligently pursue his client's collection matters between 2007 and 2011, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By failing to promptly respond to his client's reasonable requests for information about the status of the representation, by failing to inform his client that one claim had been dismissed, and by intentionally misrepresenting the status of the claim to the client, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and 8.4(c). By failing to turn over the client's file within a reasonable time following the client's request and upon termination of the representation, the respondent violated Mass. R. Prof. C. 1.16(d) and (e).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The board accepted the parties' recommendation, and on May 14, 2012, the board ordered a public reprimand.