

FILE NO. C3-03-190

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against MURRAY R. KLANE,  
a Minnesota Attorney,  
Registration No. 132998.  
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**AMENDED PETITION  
FOR DISCIPLINARY  
ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 30, 1981. Respondent currently practices law in Minnetonka, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On April 4, 2000, respondent received an admonition for conflict of interest in obtaining funds from a client to invest in Collateral Acquisition Corporation, a business in which respondent had an ownership interest, in violation of Rule 1.8(a), Minnesota Rules of Professional Conduct (MRPC).

## FIRST COUNT

### Pattern of Conflict of Interest, Self-Dealing, Preferential Treatment and Misleading Statements to Lenders

#### **Introduction.**

1. Respondent was an owner and principal of a number of businesses, including Collateral Acquisition Corporation, KM Properties of Minnesota, LLC, Senior Cottages of America, LLC, and Millennium Properties, LLC.

2. Respondent solicited loans for these businesses from a number of his clients, friends and family members.

3. In his handling of these loans, respondent engaged in a pattern of conflict of interest, self-dealing, preferring his own interests, or those of his close friends and family members, over those of his clients and giving misleading information to lenders.

#### **I. Rochelle Christianson Trust.**

4. In April 1990 Rochelle Christianson ("Chelle"), a young adult, was seriously injured and rendered a paraplegic as the result of a car accident. Chelle commenced a personal injury lawsuit.

5. By approximately May 1992, Chelle had agreed to accept \$465,000 in settlement of her lawsuit. Chelle's lawyer referred her to respondent for representation in creating a trust to which the settlement proceeds could be subject. This was necessary to ensure that the settlement proceeds did not reduce or limit Chelle's entitlement to other benefits.

6. Respondent prepared a trust agreement under which he and Cheryl Enevold, Chelle's mother, were named co-trustees. The co-trustees signed the agreement (hereinafter the Trust) on May 15, 1992.

7. Respondent became attorney for the Trust and his law firm received monthly checks for attorney fees from the Trust. Enevold understood that respondent was acting as both co-trustee and lawyer for the Trust, and periodically asked respondent for legal advice regarding Trust matters.

8. During approximately the first year, respondent received \$250 per month in compensation from the Trust. Thereafter, respondent received \$100 per month from the Trust. These payments included compensation for preparation of the federal and state Trust tax returns. The Trust discontinued its payments to respondent in February 2000. Respondent received more than \$10,000 total in fees and costs from the Trust.

9. As specifically noted in the Trust agreement, respondent's selection as co-trustee was based on his status as an attorney and a certified public accountant and "his expertise in trusts and financial planning." Enevold was chosen "because of her close personal relationship with Chelle."

10. The Trust agreement provided that (a) respondent was responsible for "management and investment of the corpus and income of this Trust"; (b) in the event of a disagreement between the co-trustees as to the distribution of funds, respondent's "discretion as a co-Trustee . . . shall control"; and (c) respondent was "responsible for financial management and investment and shall have the powers and authority granted under the laws of the State of Minnesota . . . ." The agreement further required the filing of a receipt with the court when the funds subject to the Trust were received, annual accountings with the court and at least annual in-person meetings between the co-trustees. In practice, Enevold was active in the day-to-day management and control of the Trust.

11. Upon completion of the settlement, portions of the settlement proceeds were immediately disbursed to pay a medical lien and attorney's fees. Respondent introduced Enevold to an American Express financial planner and Enevold promptly invested \$75,000 of the Trust funds with American Express. After these disbursements, the Trust corpus totaled approximately \$240,000.

12. As attorney and co-trustee, respondent advised Enevold to make large investments of Trust assets in various businesses in which he had an interest, including \$30,000 in Senior Cottages of America, \$75,000 in Collateral Acquisition Corporation

(CAC) and \$25,000 in KM Properties (KM). Respondent did not at any time, orally or in writing, advise Chelle or Enevold to consider consulting with independent legal counsel regarding these loans. Respondent did introduce Enevold to Lois Toohey, a longtime financial planner, before Enevold made any investment decisions.

13. Respondent did not file the required receipt or annual accountings.

14. In approximately March 2001, the court ordered the Trust to prepare and file Trust accountings for the period 1992 to 2001. To comply with this order, the Trust retained another lawyer who charged approximately \$6,800 in legal fees to the Trust.

15. On October 11, 2002, respondent was charged with one count of mail fraud, a felony, with respect to his solicitation of the \$30,000 loan to Senior Cottages of America from the Trust (Exhibit 1). With the advice of his counsel Daniel Scott, respondent has pled guilty to this charge (Exhibit 2). A sentencing date has not yet been set.

16. In addition to the mail fraud relating to Senior Cottages, respondent also engaged in a pattern of misrepresentation and conflict of interest with respect to Trust investments in CAC and KM Properties.

17. With respect to the CAC and KM properties, respondent represented that they were safe investments for the Trust.

18. Respondent sent Enevold a series of misleading letters encouraging her to extend the due dates of notes and to make further investment of Trust monies for property in which he had an ownership interest.

19. Respondent voluntarily resigned as co-trustee on September 15, 2000.

## **II. Senior Cottages/Millennium Properties.**

20. John Ahern was the president and managing officer of DKM II, Inc. ("DKM"). Ahern's daughters were also DKM shareholders.

21. DKM owned 51 percent of Senior Cottages Management, LLC, (SCM) a management company that owned 100 percent of Senior Cottages of America, LLC,

hereinafter collectively referred to as "Senior Cottages." Senior Cottages developed affordable senior housing through the use of tax incentives and private investors. The other owners of SCM were Intercapital Group, Inc., owned by Roger Peterson (30%), and Assets International, Inc., owned by James Martinson (19%).

22. Senior Cottages required a substantial amount of short-term money up-front for development and related construction costs. It was expected that during the development and construction phases, Senior Cottages would operate at a negative cash flow. When the housing projects were completed and sold or leased, Senior Cottages could obtain permanent financing and satisfy its obligations to the short-term lenders.

23. In December 1995, Roger Peterson, with whom respondent was involved in an unrelated real estate venture, introduced Ahern to respondent. During this initial meeting, Ahern described the history and status of Senior Cottages' operations. Respondent presented his resume and represented that he could provide legal services to the company and assist it in raising funds for working capital.

24. In January 1996, respondent entered into a written engagement letter with Senior Cottages to both provide legal services and to "seek to introduce [Senior Cottages] to potential investors . . . ."

25. Among other things, the engagement letter obligated Senior Cottages to pay respondent and Michael Cohen, an attorney with whom respondent shared office space, a 10 percent "finder's fee" on all investments for which they were responsible, and an additional 10 percent of Senior Cottages' interest in the cash flow, sales, or refinancing proceeds of certain designated housing projects. It was understood and agreed that respondent and Cohen would provide hourly legal services to the company, but a rate for those services was not stated in the letter. The engagement letter acknowledged that neither respondent nor Cohen were registered brokers/dealers and

further provided, "The Finders [sic] Fee shall also constitute payment for all legal and other services provided by Klane and Cohen."

26. In fact, respondent thereafter billed Senior Cottages for his and Cohen's actual hourly legal services. During at least the years 1996 and 1997, Senior Cottages regularly paid respondent's and Cohen's legal and finder's fees. During the year 1997, for example, respondent received \$175,000 in finder's fees from Senior Cottages.

27. Upon respondent's suggestion and an interview with management, Senior Cottages hired respondent's brother, Steve Klane, as its chief financial officer in 1996.

28. In late 1996 or early 1997, Senior Cottages hired Michael Cohen as its in-house lawyer. At that time, the level of legal services Senior Cottages requested of respondent decreased substantially. (Senior Cottages apparently hired a second in-house lawyer in late 1997.)

29. During the period of time in which he was providing legal services to Senior Cottages, respondent loaned a significant amount of money to the company.

30. During the period through at least the year 1996, respondent raised approximately \$2 million in debt capital for Senior Cottages.

31. As noted above, James Martinson was a 19 percent owner of SCM at the time Senior Cottages retained respondent. Martinson's role in Senior Cottages was to raise funds.

32. In December 1995, Martinson suffered a heart attack. His ongoing health problems thereafter prevented him from returning to work for Senior Cottages.

33. In approximately July 1997, respondent acquired a 19 percent ownership interest in Senior Cottages. It is respondent's position that this interest was that of James Martinson.

34. In acquiring his 19 percent interest, respondent failed to advise Ahern/DKM that they should consider consulting with independent legal counsel or

provide them with a reasonable opportunity to do so or to transmit the terms and conditions to Ahern/DKM in writing.

35. In his combined role as lawyer and financial consultant for Senior Cottages, respondent acquired information regarding the financial status of Ahern/DKM and Senior Cottages.

36. After acquiring his ownership interest, respondent continued to provide and bill Senior Cottages for legal services and to collect his 10 percent commission on new investments.

37. On approximately March 25, 1998, after consulting with Richard Morris, a lawyer with the firm Morris, Carlson & Hoelscher, and respondent's business partner, respondent made a written offer to acquire a controlling interest in Senior Cottages. Respondent discussed with Ahern and Peterson that he would use his best efforts in order for the company to resolve the unpaid payroll taxes and would pay Ahern and the other DKM shareholders in accordance with any subsequent agreement.

38. On April 1, 1998, respondent entered into a written agreement with DKM, Ahern and others.

39. Under the terms of the April 1, 1998, agreement, respondent, Peterson and Senior Cottages agreed that (a) DKM would receive a monthly consulting fee of at least \$7,500 for five years; (b) DKM had a continuing interest in all Senior Cottages' projects; (c) Ahern and DKM were entitled to Senior Cottages' financial and operating information and would automatically receive quarterly financial statements and information regarding every closing; and (d) Ahern would receive continuing health insurance benefits, which was essential to him given his age and the deteriorating condition of his health. In exchange, Ahern and DKM tendered to respondent a 60 percent interest in Senior Cottages, thus significantly reducing the interests of DKM and Peterson. Respondent paid nothing for his interest, but states that his provision of "future services" served as consideration. The interest had a speculative value.

40. The April 1, 1998, agreement further provided:

[T]o the extent SCM, its affiliates or any of the parties hereto, do pursue potential opportunities in such areas, they agree to do so in the name of SCM, or in the name of an affiliate in which SCM owns an interest consistent with the percentage interest SCM has historically owned in such entities.

It is the intent of this provision to provide that DKM shall continue to have an interest, in accordance with the recapitalization terms in Section 1, and subject to the dilution provisions described in Section 2, above, in any future projects of the parties hereto, as described in this Section 5, regardless of the entity in which the future projects are undertaken.

Alternatively, should a new entity, in which SCM does not own an interest, be required to pursue future projects, it shall be formed in a manner which provides for DKM to hold a membership interest equal to the interest which it holds in SCM, as set forth in Section 1 herein and subject to the dilution provisions described in Section 2, above.

41. Respondent further (a) agreed that Ahern and DKM would have no further liability for Senior Cottages' debts and obligations, (b) provided that he would raise sufficient capital to cover those debts and obligations, including the various promissory notes on which Senior Cottages were obligated on a "best efforts" basis, (c) committed to improve Senior Cottages' financial condition by making it a publicly-traded company (if this was possible, which it turned out not to be), and (d) agreed to assist in resolving past-due payroll taxes.

42. After execution of the April 1, 1998, agreement, Senior Cottages was owned as follows: 60 percent by respondent, 25 percent by DKM and 15 percent by Intercapital Group, Inc. (Peterson). Respondent was thereafter in complete control of Senior Cottages' daily business operations. He decided which employees, investors and other creditors the company paid. Respondent states that the company never in its history generated any significant revenue.

43. Obligations under the April 1, 1998, agreement were not thereafter satisfied. In particular, Senior Cottages was not made a publicly-traded company, the required

consulting payments to Ahern were not made (in fact, only one such payment was made), past-due payroll taxes were not paid and Ahern's health insurance coverage was cancelled. Respondent failed to affirmatively provide Ahern/DKM with the quarterly financial statements or information regarding each closing required by the agreement or to direct another to do so.

44. In approximately August 1998, respondent formed Millennium Properties, LLC. Millennium was owned by respondent and Peterson. Neither Ahern nor DKM had any interest in Millennium.

45. By a written Assignment respondent transferred substantially all of Senior Cottages' assets, secured debt and each of its ongoing projects to Millennium. In addition, under the terms of the assignment Millennium was entitled to receive Senior Cottages' future income stream. After the transfer, Millennium consisted entirely of assets and projects, all of which had been granted or were applying for tax credits, that formerly belonged to Senior Cottages. Respondent failed to affirmatively notify Ahern/DKM of the transfer or direct another to do so, although he states that Ahern was independently aware of the transfer. The transfer was designed to keep the operation afloat and to attract the necessary additional investors, without any continuing obligation to unsecured creditors.

46. As determined by the Hennepin County District Court, *see*, paragraph 48 below, respondent made the transfer as a fraudulent means of avoiding his contractual and fiduciary obligations to Ahern/DKM and other unsecured creditors.

47. After the transfer, respondent made the following payments to himself: October 30, 1998, \$10,000; December 4, 1998, \$15,000; and July 28, 1999, \$10,000 from the Millennium accounts. These payments were partial repayments of respondent's loans to the company.

48. Ahern/DKM sued respondent for fraud and breach of contract. In its April 12, 2000, order the Hennepin County District Court found that respondent had breached his contractual obligations and made a fraudulent transfer:

Defendant Murray Klane has personal liability for his involvement in orchestrating the fraudulent schedule wherein the valuable assets of SCA/SCM were transferred after conferring and consulting with legal counsel. [Ahern and DKM] have shown that Defendants engaged in the transfer in an attempt to avoid payment to them under the [April 1, 1998] Agreement and to otherwise honor their future interests in projects of the business.

49. The court found that respondent violated the "Minnesota Fraudulent Transfer Act," Minn. Stat. § 513.41, *et seq.*, and specifically concluded that respondent was an "insider" as defined by the statute, was the chief manager of both entities, concealed the transfer, failed to provide adequate consideration for the transfer and that SCM/SCA was statutorily insolvent at the time of the transfer.

50. Until January 1999, Senior Cottages owned a 51 percent interest in Prairie Senior Cottages. This interest was in recognition of an approximately \$400,000 loan Senior Cottages made to Prairie Senior Cottages.

51. In January 1999, an Assignment of Membership Interest in Prairie Senior Cottages was executed, under which Senior Cottages' interest was assigned to Millennium. Senior Cottages received no direct payment of cash for this assignment, although respondent states that Millennium assumed liabilities of approximately \$250,000. Respondent signed the assignment on behalf of both Senior Cottages and Millennium.

52. Respondent failed to affirmatively inform Ahern/DKM of the assignment from Prairie Senior Cottages or to direct another to do so.

53. Millennium, in turn, received from Prairie Senior Cottages a \$52,802 promissory note at 10 percent interest, a portion of which was paid. Millennium

forgave the balance of its indebtedness, and acquired an equity interest in four of Prairie Senior Cottages' future projects.

54. At the time of respondent's deposition in the Ahern lawsuit, Millennium had already received one such equity interest in a project in Hutchinson, Minnesota. That project had been constructed and partially leased. Projects in New Ulm and Marshall, Minnesota, were being explored.

55. Respondent acknowledges that he had conflicts of interest, including corporate director conflicts prohibited by Minn. Stat. § 302(a).

### **III. Other Lenders.**

56. Respondent solicited loans to his various businesses from several other current and former clients, without advising each of these clients to consider consulting with independent counsel regarding their loans.

### **IV. Winberg Matter.**

57. In June 1993, Robert and Jane Winberg retained respondent to represent them and their company, J&R Petroleum Products, Inc. (J&R), with respect to various financial obligations, including obligations to Norwest Bank, the Minnesota Department of Revenue (DOR), the Internal Revenue Service (IRS) and Hennepin County. The Winbergs and J&R owned and operated the New Hope Car Wash (the car wash).

58. At the time they retained respondent, the Winbergs were obligated to Norwest Bank on an approximately \$140,000 promissory note that matured on October 1, 1995. J&R was obligated to Norwest Bank on a \$98,500 promissory note that matured on December 1, 1995. The Norwest Bank notes were secured by mortgages on the real property on which the car wash was located and personal property used by the car wash. The Winbergs and J&R also owed significant tax amounts to the DOR, IRS and Hennepin County.

59. At the time the Winbergs retained him, respondent was a partner at the Morris, Fuller & Seaver law firm. Respondent left that firm and formed his own firm in January 1995.

60. On August 15, 1995, Norwest Bank separately notified the Winbergs and J&R that it would not "renew, extend, or restructure" the notes and that final payment on the notes would be demanded on the maturity dates. Thereafter, Norwest Bank took actions preliminary to foreclosure, while respondent continued to negotiate with Norwest to settle the matter and he and the Winbergs attempted to locate a buyer of the car wash.

61. By approximately late December 1995, before Norwest Bank had commenced formal foreclosure proceedings, respondent had negotiated a reduction, to \$40,500, for an assignment in the Norwest Bank notes.

62. In early December 1995, respondent contacted Douglas Bell, a construction contractor with whom respondent was then in partnership on an unrelated business venture and who was then remodeling respondent's law office, about purchasing the Norwest Bank interest and possible eventual ownership of the car wash. On January 9, 1996, Bell, the Winbergs and Norwest Bank signed an Asset Assignment Agreement by which Norwest Bank's security interest in the car wash was assigned to Bell. Bell signed the assignment agreement even though he was still undecided regarding the transaction. Respondent advised Bell, who was not otherwise represented by counsel, regarding the assignment. The Winbergs believed that the assignment to Bell extinguished their ownership interest in the car wash. During this period of time, the Winbergs continued to operate the car wash and respondent gave them no directions regarding management of the car wash. Respondent also states that the Winbergs continued to actively list the car wash with their real estate broker. Respondent did not arrange for the recording of the documents effecting the assignment to Bell until November 26, 1996.

63. Bell paid nothing in exchange for the assignment. Rather, on January 9, 1996, respondent paid the \$40,500 to Norwest Bank for the assignment with funds he borrowed from Craig DeBerg, an individual that had previously invested in one or more business ventures with respondent. In exchange for the funds, respondent gave DeBerg a promissory note and personal guarantee. Respondent and DeBerg discussed the possibility of DeBerg loaning the funds directly to the Winbergs to enable them to purchase the Norwest interest. However, based on those discussions, DeBerg concluded that the Winbergs were insolvent and that loaning funds to them would be risky. DeBerg instead loaned the funds to respondent based on his relative financial strength and their prior business relationships. Respondent did not inform the Winbergs that he and DeBerg were the source of the funding.

64. Respondent and Bell orally agreed that if Bell ultimately decided he wanted to complete the purchase of the Norwest Bank interest, he would simply repay respondent the \$40,500, plus interest. Conversely, if Bell determined not to go forward with the purchase, he could simply transfer his interest and walk away. There were no documents memorializing this agreement.

65. Bell determined not to purchase the Norwest Bank interest. On February 23, 1996, Bell signed an assignment and other documents by which he assigned his purported interest in the property to Lloyd Myster, a lawyer who leased office space from respondent. Respondent advised Bell regarding the assignment. Myster contributed no funds in exchange for the assignment. Michael Cohen, another lawyer who leased office space from respondent, prepared the assignment documents. Respondent did not arrange for the recording of the documents effecting this assignment until November 26, 1996.

66. At some point, respondent and Cohen orally agreed that Cohen would receive one-half of whatever profits respondent ultimately realized on the transaction as compensation for legal work he did for respondent on this and other legal matters.

67. Also on February 23, 1996, respondent and Myster signed a nominee agreement. The agreement acknowledged that the security interest previously held by Bell was being assigned to Myster and that Myster held "legal title" to that interest. It also (a) granted respondent "the sole and exclusive right to make any and all decisions" regarding the interest, (b) provided that respondent was entitled to all profits and responsible for all costs associated with the interest and (c) granted respondent power of attorney to handle matters related to the interest. Cohen prepared the nominee agreement at respondent's direction.

68. At respondent's direction, Myster also prepared a "Lease" agreement between Myster and the Winbergs. The lease represented and warranted that Myster was the "lawful owner" of the car wash property and provided for the payment of future rent and \$16,850 in back rent. Respondent directed preparation of the lease as a means of recovering some payment from the Winbergs to offset his interest payments to DeBerg and directed Myster to present the lease to the Winbergs for signature. The Winbergs objected to the provision requiring the payment of \$16,850 in back rent and refused to sign the lease. However, the Winbergs made \$4,000 payments to Myster on March 14, 1996, and April 3, 1996, that the Winbergs annotated "Rent." Respondent received and deposited these payments to his own account.

69. Myster's involvement in the transaction was solely for the purposes of shielding respondent's interest in the property from the Winbergs, and shielding respondent's and the Winbergs' interests in the property from the tax authorities, with whom respondent continued to negotiate on the Winbergs' behalf.

70. On April 15, 1996, respondent wrote to the IRS on behalf of the Winbergs and J&R. In support of his request that the IRS discharge its lien against the car wash property, respondent stated that the Winbergs were indebted to Myster for \$140,000 (the approximate amount owed to Hennepin County for back real estate taxes and the original loan made by DeBerg) and would be entering into an agreement for deed in

lieu of foreclosure, thus relinquishing their ownership interest in the property, later that month. Respondent stated, "Therefore, since it is not in the IRS's interest to redeem Mr. Myster's position, we request that the tax lien be immediately discharged." In his letter, respondent made no mention of his own interest in the property. The letter contained a "Penalties of Perjury Statement" to be signed by the Winbergs that read:

Under penalties of perjury, I declare that I have examined this application, including any accompanying schedules, exhibits, affidavits and statements, and to the best of my knowledge and belief, it is true, correct and complete.

The Winbergs signed the letter at respondent's direction and respondent submitted the original to the IRS. Although the letter indicates that a copy was being provided to the DOR, the DOR did not receive a copy.

71. Later in April 1996, based on respondent's advice that it would shelter them from claims of the DOR and IRS, the Winbergs signed an agreement for deed in lieu of foreclosure, prepared by Cohen at respondent's direction, by which they transferred all of their interest in the car wash to Myster. Respondent signed the agreement as "Attorney in Fact" for Myster. The Winbergs also signed a quit claim deed and bill of sale on May 8, 1996, to effect the transfer. Respondent did not arrange for the recording of the agreement for deed in lieu of foreclosure, quit claim deed and bill of sale until November 26, 1996.

72. In approximately early May 1996, Robert Mack, owner of Crown CoCo, Inc., and his son visited the car wash and spoke with Robert Winberg. Mack introduced himself, asked to talk to the owner of the car wash and expressed interest in purchasing the car wash. Winberg responded that he was not sure who owned the car wash at that time, but would contact his lawyer. Mack left his business card with Winberg.

73. Winberg called respondent and told him of his conversation with Mack. Respondent asked for Mack's name and telephone number and told Winberg he would talk to Myster about a possible sale.

74. Respondent later called Winberg and stated that he had negotiated a sale to Crown CoCo and that a closing had been scheduled. In a subsequent conversation, respondent falsely stated to Winberg that because Myster had many judgments or liens against him, the sale could not close with Myster as the owner. Respondent proposed that Myster's interest be assigned to respondent, who would then complete the sale to Crown CoCo.

75. In June 1996, Crown CoCo signed an agreement to purchase the car wash property. Crown CoCo paid \$5,000 in earnest money and agreed to a total purchase price of \$265,000.

76. On June 3, 1996, for the purpose of facilitating the sale of the car wash, Myster signed an assignment prepared by Cohen by which Myster transferred his interest in the car wash to respondent.

77. Also on June 3, 1996, the Morris, Carlson & Hoelscher law firm (a successor to Morris, Fuller & Seaver) filed a notice of attorney's lien against the car wash property for legal services it provided to the Winbergs during the period April through June 1995. Respondent acknowledges having had some discussions with the Morris firm regarding the lien.

78. On June 7, 1996, respondent obtained from Beaudry Oil and Services, Inc., (Beaudry) a mortgage creditor of the Winbergs, a satisfaction of mortgage. Beaudry provided the satisfaction based on receipt of a portion of the total mortgage obligation. The following language appears in the satisfaction document:

This satisfaction is given to release the Mortgage lien only; the underlying debt has not been paid in full. Beaudry Oil and Service, Inc. reserves all right to pursue collection of the underlying Note/debt.

Thus, the Winbergs and/or J&R remained obligated to Beaudry for the balance of the underlying obligation.

79. On July 2, 1996, the IRS issued to the Winbergs certificates of discharge of property from federal tax liens, reflecting its determination that the IRS's interest in the car wash property "is now valueless."

80. On July 8, 1996, respondent wrote to the Winbergs setting forth the history of his representation and handling of car wash matters to that point. Respondent stated:

To preserve your right to possibly purchase or lease the New Hope Car Wash, we found somebody willing to purchase the Norwest Bank's mortgage and various security interests. As you know, this was Mr. Doug Bell who had an oil jobber friend in and investor in South Dakota. It seemed like a good fit until Mr. Bell's schedule got so busy he didn't have time to deal with the Car Wash.

\* \* \*

As a result of these events, we had little choice but to sell the Car Wash. Because the IRS has, as you know, required you to divest yourself of all ownership interest in the New Hope Car Wash in order to obtain the hoped for settlement we have negotiated for you, and due to all the other facts stated in this letter, we do not believe that my holding the loans, mortgage and security interests conflict with my representation of J&R Petroleum and both of you.

\* \* \*

By signing this letter, each of you hereby consents to the representation by my firm in connection with the matters discussed above, and each of you hereby agrees that at no time will such representation be construed, claimed, or deemed to be a breach of any fiduciary relationship, a conflict of interest, or a violation of any other obligation to any party, despite my taking over Mr. Myster's position. We encourage you to seek separate counsel in order to make an independent informed decision.

(Respondent states that the settlement negotiated with the IRS was \$10,000 on a debt of more than \$250,000.) This was the first time respondent disclosed to the Winbergs that he had acquired an interest in the car wash property. Respondent made no oral or written disclosures of that fact prior to his July 8, 1996, letter and made no mention of any prior such disclosures in his letter. The Winbergs did not sign and return the letter.

81. On July 19, 1996, at respondent's advice that it was necessary to advance settlement with the DOR and IRS, the Winbergs signed a quit claim deed by which they transferred all of their interest in the car wash to respondent. Respondent did not arrange for the recording of this document until November 26, 1996.

82. On August 28, 1996, in anticipation of the closing of the Crown CoCo sale, Myster signed various assignments by which he transferred all of his remaining interest in the car wash to respondent. Respondent did not arrange for the recording of the documents effecting the transfer to him until November 26, 1996.

83. Respondent was also representing the Winbergs in the sale of a gas station they owned in Buffalo, Minnesota. By August 31, 1996, the Buffalo gas station had been sold. Respondent accepted a \$20,000 promissory note from Mitch Rayl, one of the purchasers of the gas station, in partial satisfaction of fees owed to him by the Winbergs. (Respondent states that he received a legal opinion regarding the creditor priorities between the IRS and DOR. The legal opinion indicated that had the Winbergs received the sale proceeds, the IRS would have been entitled to them.)

84. On September 3, 1996, the sale to Crown CoCo was completed. Respondent received approximately \$131,000 from the sale, from which he paid approximately \$42,000 to DeBerg and approximately \$45,000 to Michael Cohen. Respondent netted approximately \$38,000 from the sale of the car wash.

85. The DOR issued a Determination and Order assessing respondent with successor liability for the Winbergs' tax obligations based on its conclusion that he "must have purchased [the car wash property] from J&R Petroleum and Robert Winberg."

86. Respondent, in attempting to convince the DOR that he should not have successor liability, gave his attorney, Robert Black, who leased office space from respondent, confidential information about the Winbergs' dealings with Norwest Bank and their financial situation, which Black then disclosed to the DOR. Specifically, on

December 30, 1996, Black wrote to James Neher, the assistant attorney general handling the matter on the DOR's behalf. Black stated that respondent purchased only mortgages and security interests originally held by Norwest and argued that respondent should not be subject to successor liability. Black related generally the history of the Winbergs' and J&R's payments on the Norwest notes and stated that Norwest:

[W]as extremely concerned both about the nonpayment and the value of the underlying security for these loans.

By mid-December 1995, . . . the Bank decided it had only two options. First, the Bank was willing to sell its secured position with respect to the Property or, second, immediately foreclose on its secured position in the Property.

87. In response to the DOR's request for documents and a description of the dollar amount owed to the bank pursuant to the Winberg Note and the J&R Note, Black enclosed with his letter a print-out obtained from Norwest Bank regarding both of the loans.

88. On January 15, 1997, Black again wrote to Neher in response to Neher's request for additional information. Black declined to provide information regarding amounts paid by the various assignees and the ultimate disposition of amounts received by respondent, claiming that this information was irrelevant.

89. Respondent's billing statements to the Winbergs reflect time entries for his work in dealing with the DOR's claim of successor liability. The DOR's claim of successor liability was unsuccessful, and the Winbergs did not pay for these legal services.

90. On September 1, 1997, the Winbergs notified respondent that his services were terminated. During the period January 1995 to September 1997, the Winbergs paid respondent at least \$13,000 in legal fees for his work on car wash matters.

91. Respondent's guilty plea to one count of felony mail fraud in connection with his representation of the Christianson Trust violated Rules 1.4, 1.8(a), and 8.4(b), (c) and (d), MRPC.

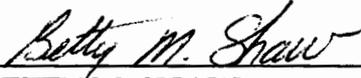
92. Respondent's conduct in the Senior Cottages/Millennium Properties, Other Lenders, and Winberg matters violated Rules 1.4, 1.5, 1.6, 1.8(a) and 8.4(c) and (d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or imposing other appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: March 6, 2003.

  
KENNETH L. JORGENSEN  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
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and

  
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