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a hearing and may order the record sealed if it makes findings that the juvenile has been "rehabilitated to a satisfactory degree."[13] In this case, the juvenile court's order requiring the record to be sealed recites that no objections were received, but there is no indication in the order or elsewhere in the record that the county attorney was ever given the required notice of the proceeding to seal the record.

Accordingly, we conclude that the juvenile court erred in ordering that the record be sealed, because (1) the order did not include a finding that the juvenile had satisfactorily completed her probation and (2) the county attorney was not given the required notice of the proceeding to seal the record. We therefore vacate the order sealing Candice's juvenile record.

ORDER VACATED.

[13] § 43-2,108.04(4) and (5).

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. JOEL W. PHILLIPS, RESPONDENT.

824 N.W.2d 376

Filed December 21, 2012. No. S-12-481.

Original action. Judgment of public reprimand.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

PER CURIAM.

INTRODUCTION

Respondent, Joel W. Phillips, was admitted to the practice of law in the State of Nebraska on September 28, 1995. At all relevant times, he was engaged in the private practice of law in Wallace, Nebraska. On May 31, 2012, the Counsel for Discipline of the Nebraska Supreme Court filed formal charges consisting of one count against respondent. In the one count, it was alleged that by his conduct, respondent had violated his

oath of office as an attorney, Neb. Rev. Stat. § 7-104 (Reissue 2007), and Neb. Ct. R. of Prof. Cond. §§ 3-501.4 (communications), 3-501.5 (fees), 3-508.1 (bar admission and disciplinary matters), and 3-508.4 (misconduct).

On November 6, 2012, respondent filed a conditional admission pursuant to Neb. Ct. R. § 3-313 of the disciplinary rules, in which he knowingly chose not to challenge or contest the truth of the matters set forth in the formal charges and waived all proceedings against him in connection therewith in exchange for a judgment of public reprimand. Further, respondent agreed to pay all the costs in this case, including the fees and expenses of the referee, if any. Finally, respondent agreed to be enjoined from engaging in any act that would violate the Nebraska Real Estate License Act, Neb. Rev. Stat. §§ 81-885.01 to 81-885.55 (Reissue 2008 & Supp. 2009).

The proposed conditional admission included a declaration by the Counsel for Discipline, stating that respondent's request for public reprimand is appropriate.

Upon due consideration, we approve the conditional admission and order that respondent be publicly reprimanded.

FACTS

The formal charges state that on November 28, 1988, Herbert Hasenauer created a revocable trust. The primary asset of the trust was farm ground located in Lincoln County, Nebraska. Upon the death of both Herbert and his wife, Eunice Hasenauer, the assets of the trust were to be managed for a period of 4 years, with the net income to be distributed to Herbert's four children: Verlaine M. Weir, Herbert C. Hasenauer (Clinton), Eunice J. Kilgore, and Leonard E. Hasenauer. The four children were named as the ultimate equal beneficiaries upon the termination of the trust.

On October 24, 2001, Herbert amended the trust to make it an irrevocable trust. Herbert designated his son Clinton and his wife, Eunice, as cotrustees.

On August 28, 2002, Herbert died and was survived by his wife, Eunice. From that point forward, the trust property was held and used for the benefit of Eunice. On May 15, 2008, Eunice died. Clinton continued to serve as trustee of the trust.

Pursuant to the trust, Clinton as trustee was to continue to manage the trust for 4 years from the date of Eunice's death. At the end of the 4 years, for 60 days, Clinton was to have the option to purchase the real property at a price agreeable to the majority of the adult beneficiaries of the trust. If the beneficiaries of the trust could not agree on the price, then the price was to be determined by arbitration. If Clinton did not then exercise his option to purchase the real property at the arbitration price, the real property was to be sold at public or private sale on terms satisfactory to the trustee, considered with regard to the best interests of all the beneficiaries. Once the real property was sold and converted to cash, the trust was to be dissolved, with each beneficiary receiving an equal one-fourth distribution.

Prior to the expiration of the 4-year waiting period, the four siblings decided to terminate the trust and distribute the real property, which consisted of five separate parcels. It was agreed that Clinton would receive parcels 2, 4, and 5 at agreed-upon values and that the other three siblings would receive parcels 1 and 3, which were to be sold to third parties. Clinton would make a cash payment to his siblings so that the final distribution resulted in each sibling receiving one-fourth of the total value of the trust property.

In or about December 2009, Clinton contacted LaVern Friesen about purchasing parcels 1 and 3. Friesen and Clinton entered into an oral agreement whereby they would each obtain appraisals for parcels 1 and 3, and the purchase price would be the average of the two appraisals. After Friesen's appraisal was low, $325,000, Clinton decided to seek other offers.

The formal charges state that respondent was a long-time friend of the Hasenauer family, and Clinton's family in particular. Clinton spoke to respondent about the sale of the property to Friesen. Respondent assured Clinton that he had buyers available who would pay more than $325,000 per parcel. Although respondent was licensed to practice law in Nebraska, he was not a licensed real estate broker, associate broker, or salesperson as defined by the Nebraska Real Estate License Act.

On February 8, 2010, based upon his discussions with Clinton, respondent sent a solicitation letter to Clinton and his wife, Mary Hasenauer, asking to be hired to find purchasers for one of the parcels owned by the trust and another quarter section of land not owned by the trust, and to perform legal services ancillary thereto. According to the formal charges, respondent's letter further stated, in part:

> "Please note, I have proposed to do these sales on a commission basis as set forth in the agreement. Critically, this means I find the buyer, handle all negotiations, assist the buyer if necessary in obtaining financing, draw up all contracts and instrument[s] and in short, represent you fully.
>
> "As you and [Friesen] have already reached a tentative agreement on the NE1/4 of 14-9-34, [parcel 3] I will be acting as your attorney only and bill my hourly rate. However, if the two of you do not reach a final agreement I would be willing to waive my bill in exchange for you allowing me to sell the ground under the same terms as the two parcels listed in the enclosed representation agreement. Again, I am confident that I can sell this land at a price very favorable to you."

The agreement referenced in respondent's letter is entitled "Retention Letter."

The retention letter states that the agreement is between Clinton and Mary, husband and wife, as clients and the Phillips Law Office as attorneys. According to the formal charges, the agreement states in part:

> "Client hereby retains Attorneys to represent [the client] exclusively with the sale of certain agricultural parcels owned by the client. Said parcels legally described as follows:
>
> "1. [NE1/4, 30-10-34] Lincoln County Nebraska. [not owned by the Trust]
>
> "2. [SE1/4, 29-9-33] Lincoln County, Nebraska. [Parcel 3 of the Trust]
>
> "Attorneys shall receive as compensation for said representation the sum of 5.5% of the gross sale. Attorneys

shall be responsible for locating potential buyer(s), negotiating with said buyer(s), the preparation of the purchase contract(s), deed(s) and Form(s) 521 . . . ."

At the time respondent sent the solicitation letter and the retention letter to Clinton and Mary, item No. 1 listed in the retention letter, "NE1/4, 30-10-34," was not owned by the trust. At the time respondent sent the solicitation letter and the retention letter to Clinton and Mary, item No. 2 listed in the retention letter, "Parcel 3 of the Trust," was owned by the trust for which Clinton was the trustee. Since parcel 3 was owned by the trust, Clinton and Mary had no right to sell parcel 3 in their individual capacities.

The retention letter further stated:

> "Client expressly agrees that this agreement shall constitute an exclusive right to sell said land granted to the Attorneys. Client agrees that they shall enter into no other agreement granting a right to sell or enter into any agreement to sell said land, other than as presented to the Client by the Attorneys for the term of this agreement. The term of this exclusive right to sell shall be for a period of six (6) months from the date of this agreement. If the land has not sold within said time the Client and Attorneys may mutually agree to an extension of this agreement for an additional term of six (6) months by executing a written addendum to this agreement.
>
> "**Listing Price**: Client agrees to sell the parcels of land and have authorized Attorneys to accept any offer to purchase for the following price[s]:
>
> "1. NE1/4 30-10-34 $500,000
>
> "2. SE1/4 29-9-33 $500,000
>
> "Attorneys agrees (sic) to submit all other offers to the Client for [the Client's] approval."

On February 12, 2010, Clinton and his three siblings met with respondent at respondent's office to discuss the dissolution of the trust. Respondent was informed of the siblings' plan to distribute the five parcels held in the trust as set forth above. At that time, respondent told the four siblings that he had potential buyers willing to pay between $400,000 to $500,000 per parcel, which was greater than the $325,000 that

had been offered by Friesen. Based upon respondent's assurance that he had buyers in hand willing to pay substantially more than Friesen, the four siblings agreed that respondent could arrange the sales and be paid a commission of 5 percent, rather than the 5.5 percent offered by respondent. On March 2, Clinton and Mary signed the retention letter in their personal capacity after reducing the compensation amount to 5 percent of the gross sale.

Respondent claims that he contacted several potential buyers for the real estate and received several offers which he claims were relayed to Clinton. Respondent claims that on March 12, 2010, he advised Clinton of offers from a "Mr. Clough" and a "Mr. Kuhlman." Clough allegedly offered to purchase the land for $425,000 per parcel. Kuhlman offered to purchase parcel 1 for $325,000 and parcel 3 for $375,000. None of those offers were submitted to Clinton in writing.

Clinton denies that respondent provided him with any offers. By March 15, 2010, no written offers had been received by Clinton from respondent. However, Friesen and Clint Sheets, a man hired by Friesen, directly offered to Clinton to purchase one parcel each for $355,000 per parcel.

Clinton notified respondent of these offers and directed respondent to prepare the purchase agreements for Friesen to purchase parcel 3 and Sheets to purchase parcel 1. Friesen signed the purchase agreement on March 15, 2010, and Sheets signed the purchase agreement on March 16. Closing of the sales of the real estate to Friesen and Sheets were to be held on April 22.

Prior to closing, parcels 1 and 3 of the trust were transferred to Leonard, Verlaine, and Kilgore, pursuant to a written agreement, drafted by counsel other than respondent, between the four siblings to dissolve the trust and to distribute the trust property. Parcels 1 and 3 were then sold by the three siblings personally to Sheets and Friesen, respectively. Respondent did not have a written or oral fee agreement with Leonard, Verlaine, and Kilgore for the sale of parcels 1 and 3 prior to the closing on April 22, 2010.

At the closing on April 22, 2010, respondent insisted that he receive a commission of 5 percent of the gross sale price

on each parcel, totaling $35,500. Leonard objected to these fees, because Friesen had already offered to purchase the real estate prior to respondent's involvement in the matter and because Sheets was brought into the negotiations by Friesen, not respondent.

Respondent insisted that his fees be withheld from the sale proceeds; otherwise, the sale would not close. Under duress, Leonard, Verlaine, and Kilgore signed the settlement statements allocating the 5-percent commissions to respondent on both sales.

After the closing and receipt by respondent of the 5-percent commissions, respondent received correspondence from Leonard, and later from Leonard and Clinton's attorney, objecting to the fees respondent received. Respondent was asked to provide an itemized accounting of the time he put into the real estate matter regarding the trust. Respondent refused to do so.

On September 21, 2010, Clinton, Leonard, Verlaine, and Kilgore filed a grievance against respondent regarding the fees he collected from the sale of the trust property. In his September 30 response to the grievance, respondent asserted that his "contingency fee" of 5 percent was reasonable, because brokers typically charge a commission of 6 to 7 percent for the sale of real estate.

On November 16, 2010, the Assistant Counsel for Discipline sent a letter to respondent asking him to provide an itemized statement of his time working on the Hasenauer trust real estate matters. Respondent was also asked to provide detailed information of all offers he received for the purchase of the real property owned by the trust. In his November 30 response, respondent provided a partial itemized statement of his time; however, respondent refused to provide the names of the potential buyers he contacted on behalf of Clinton. Respondent asserted that Clinton was not entitled to his "buyers list."

On December 9, 2010, the Assistant Counsel for Discipline sent a letter to respondent stating that respondent had a duty to provide to his client Clinton a detailed statement of all offers made for the trust property. After retaining counsel,

respondent provided the requested information on January 6, 2011.

Section 81-885.02 of the Nebraska Revised Statutes provides:

> After September 2, 1973, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself or herself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker, associate broker, or real estate salesperson within this state without first obtaining a license as such broker, associate broker, or salesperson, as provided in the Nebraska Real Estate License Act, unless he or she is exempted from obtaining a license under section 81-885.04.

Respondent does not fit within § 81-885.04, which provides:

> Except as to the requirements with respect to the subdivision of land, the Nebraska Real Estate License Act shall not apply to:
>
> (1) Any person, partnership, limited liability company, or corporation who as owner or lessor shall perform any of the acts described in subdivision (2) of section 81-885.01 with reference to property owned or leased by him, her, or it or to the regular employees thereof, with respect to the property so owned or leased, when such acts are performed in the regular course of or as an incident to the management, sale, or other disposition of such property and the investment therein, except that such regular employees shall not perform any of the acts described in such subdivision in connection with a vocation of selling or leasing any real estate or improvements thereon;
>
> (2) Any attorney in fact under a duly executed power of attorney to convey real estate from the owner or lessor or the services rendered by any attorney at law in the performance of his or her duty as such attorney at law;
>
> (3) Any person acting as receiver, trustee in bankruptcy, personal representative, conservator, or guardian or while acting under a court order or under the authority of a will or of a trust instrument or as a witness in any

judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency;

(4) Any person acting as the resident manager of an apartment building, duplex, apartment complex, or court, when such resident manager resides on the premises and is engaged in the leasing of property in connection with his or her employment, or any employee, parent, child, brother, or sister of the owner or any employee of a licensed broker who manages rental property for the owner of such property;

(5) Any officer or employee of a federal agency in the conduct of his or her official duties;

(6) Any officer or employee of the state government or any political subdivision thereof performing his or her official duties for real estate tax purposes or performing his or her official duties related to the acquisition of any interest in real property when the interest is being acquired for a public purpose;

(7) Any person or any employee thereof who renders an estimate or opinion of value of real estate or any interest therein when such estimate or opinion of value is for the purpose of real estate taxation; or

(8) Any person who, for himself or herself or for others, purchases or sells oil, gas, or mineral leases or performs any activities related to the purchase or sale of such leases.

Section 81-885.45 provides: "Any person or subdivider acting as a broker, salesperson, or subdivider without having first obtained the required license or subdivision certificate or while his or her license or subdivision certificate is under suspension shall be guilty of a Class II misdemeanor."

The formal charges allege that it was a violation of the foregoing statutes for respondent to charge a commission to broker the sale of the trust property because he was not authorized to do so under the Nebraska Real Estate License At. As such, the formal charges allege that respondent was to be directed to disgorge the entire $35,000 fee he received. The record

reflects that these funds have been returned or otherwise accounted for.

The formal charges allege that respondent's actions constitute violations of his oath of office as an attorney as provided by § 7-104 and professional conduct rules §§ 3-501.4, 3-501.5, 3-508.1, and 3-508.4.

ANALYSIS

Section 3-313, which is a component of our rules governing procedures regarding attorney discipline, provides in pertinent part:

> (B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

Pursuant to § 3-313, and given the conditional admission, we find that respondent knowingly does not challenge or contest the matters set forth in the formal charges. We further determine that by his conduct, respondent violated conduct rules §§ 3-501.4, 3-501.5, 3-508.1, and 3-508.4, as well as his oath of office as an attorney licensed to practice law in the State of Nebraska. Respondent has waived all additional proceedings against him in connection herewith. Upon due consideration,

the court approves the conditional admission and enters the orders as indicated below.

CONCLUSION

Respondent is publicly reprimanded. Respondent is directed to pay costs and expenses in accordance with Neb. Ct. R. §§ 3-310(P) and 3-323(B) within 60 days after the order imposing costs and expenses, if any, is entered by the court.

JUDGMENT OF PUBLIC REPRIMAND.