BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF
THE SUPREME COURT OF OHIO

In re: Complaint Against	)	CASE NO. 17-024
WENDY SUE ROSETT (0055870) 16781 Chagrin Boulevard, #304. Shaker Heights, Ohio 44120	)	
RESPONDENT	)	**COMPLAINT AND CERTIFICATE**
CLEVELAND METROPOLITAN BAR ASSOCIATION 1375 East Ninth Street, Floor 2 Cleveland, Ohio 44114-1253	)	**(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio)**
RELATOR	)	

Now comes the Relator, Cleveland Metropolitan Bar Association (hereinafter "Relator"), and alleges that Wendy Sue Rosett, an Attorney at Law, duly admitted to the practice of law is guilty of the following misconduct:

Background Facts

1. Wendy Sue Rosett, Ohio Supreme Court Attorney Registration Number 0055870 (hereinafter "Respondent"), was admitted to the practice of law in Ohio on November 18, 1991, and as such is subject to the Supreme Court Rules for the Government of the Bar of Ohio and the Rules of Professional Conduct. Respondent has prior discipline. She was suspended on November 3, 2015 for failure to file her attorney registration and reinstated a week later on November 10, 2015. She was also sanctioned by the Commission on Continuing Legal

Education on December 10, 2015 for failing to comply with continuing legal education requirements.

2. Respondent is a solo practitioner with a general practice based in her home in Cleveland Heights, Ohio. She also serves as a part-time Magistrate for the Shaker Heights Municipal Court.

3. The business mailing address Respondent uses for her private practice is that of the UPS Store in Shaker Heights, Ohio, which is 16781 Chagrin Boulevard, #304, Shaker Heights, Ohio 44120 (hereinafter "business address").

COUNT I

The Krahn Matter

4. On November 14, 2013, grievant Richard Krahn retained Respondent by written fee agreement to pursue claims for unpaid commissions against a company called Shippers Cartage & Distributions, Inc. for whom Mr. Krahn had worked as an independent contractor. The claims had previously been dismissed without prejudice under Civ. R. 41(A) by a prior attorney.

5. Respondent refiled Mr. Krahn's case on November 18, 2013 in the Cuyahoga County Court of Common Pleas, alleging claims for breach of contract, unjust enrichment, promissory estoppel, and conversion, but did not allege any claims under R.C. 1355.11, which allows independent contractors to recover statutory remedies for unpaid commissions, including treble damages and attorney's fees.

6. After a failed mediation, the Court's Alternative Dispute Resolution department set the case for arbitration. Respondent did not inform Mr. Krahn that he was waiving his right to trial by agreeing to go to arbitration.

7. The arbitration chair mailed a notice of arbitration with a date of Friday, June 6, 2014 (the "Arbitration notice") to defense counsel and to Respondent. The Arbitration notice directed to Respondent was mailed to "16781 Chargin [sic] Blvd. #304, Shaker Heights, Ohio, 44120."

8. On June 6, 2014, defense counsel appeared with his client for arbitration, but neither Respondent nor Mr. Krahn appeared. The ADR department tried to reach Respondent by phone, but was unable to do so as Respondent was scheduled to be at the Shaker Municipal Court on that date.

9. The arbitration went forward on June 6, 2014, and resulted in a decision in favor of the defendant.

10. On July 7, 2014, Respondent filed a one-page Motion for Reconsideration of the arbitration decision, which was denied by the Court on July 23, 2014.

11. Though Respondent and Mr. Krahn spoke by phone on either June 18 or 19 of 2014, Respondent did not inform Mr. Krahn at that time that the arbitration had taken place, or that it had resulted in a decision against him. Respondent claims she sent a letter to Mr. Krahn on July 30, 2014 fully informing him of the adverse decision and the events preceding it, and advising him to contact her immediately regarding an appeal; however, Mr. Krahn denies receiving any letter. According to Mr. Krahn, he and Respondent had no further contact until almost a year later, when he was able to arrange a face-to-face meeting with Respondent on July 29, 2015.

12. Though the fee agreement provided for monthly statements, Respondent did not submit any billing invoices to Mr. Krahn until Relator's Grievance Committee asked her to respond to Mr. Krahn's grievance.

13. During the course of her representation of Mr. Krahn, Respondent did not perform monthly reconciliations of her account, nor did she maintain a formal IOLTA ledger as to Mr. Krahn.

14. When the Court entered judgment against Mr. Krahn, the clerk's office sent a check for $74.50 to Respondent's business address as a refund for Mr. Krahn's costs. Respondent claims she never received the check, which was never cashed. The refund ultimately went to the state's unclaimed funds account.

15. Mr. Krahn subsequently obtained a default judgment against Respondent in the action styled *Richard L. Krahn v. Wendy Rosett*, South Euclid Mun. Ct. No. 2016CVH505 in the amount of $1,750.00, which was the amount Mr. Krahn alleged he had paid Respondent for her representation. The default judgment was entered on December 21, 2016. The docket indicates that a satisfaction of judgment was filed on March 20, 2017.

16. Respondent's conduct in Count I violated the following Ohio Rules of Professional Conduct:

(a) Prof. Cond. R. 1.1, which provides that "[a] lawyer shall provide competent representation to a client;"

(b) Prof. Cond. R. 1.3, which provides that "[a] lawyer shall act with *reasonable* diligence and promptness in representing a client;"

(c) Prof. Cond. R. 1.4(a)(1), which requires a lawyer to "promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required;"

(d) Prof. Cond. R. 1.15(a)(2), by failing to maintain a separate IOLTA ledger for Mr. Krahn; and

(e) Prof. Cond. R. 1.15(a)(5), by failing to perform monthly reconciliations.

COUNT II

The Sims Matter

17. Paragraphs 1 through 16 are hereby realleged as if fully rewritten herein.

18. In June of 2014, Respondent was retained by Larry Sims to represent him in a foreclosure action styled *U.S. Bank N.A. v. Larry Sims, et al.*, Cuyahoga C.P. No. CV-14-824847. At the time Mr. Sims retained Respondent, a motion for default judgment was pending against Mr. Sims, as he had not timely answered the complaint.

19. On June 9, 2014, Respondent made an appearance on behalf of Larry Sims and filed a motion for extension of time to answer the complaint. On June 10, 2014, the court granted Respondent's motion, setting a deadline of July 3, 2014. On June 17, 2014, the court also set a hearing on the motion for default judgment for July 16, 2014. The Magistrate's Order setting the hearing date, which appeared on the electronic docket, also directed the moving party to send notice of the date and time of the hearing to all parties.

20. On July 3, 2014, Respondent submitted an answer and counterclaim for filing through the Court's electronic filing system, but the filing was rejected because the wrong case number appeared in the caption. The Court sent electronic notice to Respondent of the rejection, but Respondent never filed a corrected pleading. As a result, Respondent failed to file a timely answer on behalf of Mr. Sims.

21. Respondent subsequently failed to appear at the default hearing scheduled for July 16, 2014, despite the fact that the hearing was noticed on the electronic docket. As a result, on July 18, 2014, the Magistrate issued a decision finding against Mr. Sims. Respondent filed an objection to the Magistrate's Decision arguing (among other things) that she had not seen the electronic "rejection" of the answer submitted on July 3, 2014, and that she had not received

paper notice of the default hearing. The Court overruled these objections, finding that the failure to appear at the default hearing was "a result of the neglect of Sims's counsel alone to review the Clerk's electronic notification of the default hearing date," and further observing that Respondent did not deny having received notice that the answer had been rejected.

22. The Court order adopting the Magistrate's Decision became final on September 9, 2014, when it was entered on the docket. Respondent filed a notice of appeal with the Eighth District, but filed it on October 10, 2014, which was one day after the 30 day period provided under App. R. 4(A)(1) had elapsed. As a result, the Eight District dismissed the appeal *sua sponte.*

23. Respondent subsequently filed a Rule 60(B) motion to set aside the default judgment. This motion was denied, in large part because it simply reiterated the arguments Respondent made in her initial objections to the magistrate's decision.

24. On December 1, 2014, the Clerk's office issued a refund check in the foreclosure action and mailed it to Respondent's business address. The check was never cashed, and the funds were sent to the state unclaimed funds account on December 1, 2015.

25. Respondent's conduct in Count II violated the following Ohio Rules of Professional Conduct:

(a) Prof. Cond. R. 1.1, which provides that "[a] lawyer shall provide competent representation to a client;" and

(b) Prof. Cond. R. 1.3, which provides that "[a] lawyer shall act with *reasonable* diligence and promptness in representing a client."

Count III

The Tezak Matter

26. Paragraphs 1 through 25 are hereby realleged as if fully rewritten herein.

27. In 2014, grievant Lynn Tezak retained Respondent to represent her in a foreclosure action styled *Bank of America NA v. Lynn Tezak, et al.,* Geauga C.P. No. 14F000448, in which Ms. Tezak was named as a defendant.

28. Ms. Tezak was served in that action on or around June 21, 2014. On July 15, 2014, Respondent filed a motion to refer the matter to mediation, and also filed a motion for an extension of time, up until August 14, 2014 in which to answer or otherwise respond to the complaint. Both motions were granted, and on August 11, 2014, the case was stayed pending mediation.

29. After the mediation was rescheduled several times, the case was scheduled for mediation on May 27, 2015. The notice issued and docketed by the mediator on May 6, 2015 stated that "Default judgment may be rendered or cases may be dismissed for want of prosecution after said date of assignment for failure of **parties and counsel** to appear." Respondent did not appear for the mediation.

30. On June 1, 2015, the presiding judge entered an order vacating the stay and returning the foreclosure to the active docket. The order also provided in bold that "**Any party who has not responded to another parties' pleading, motion or other filing due to the Mediation Stay has thirty (30) days from the date hereof in which to respond.**"

31. As of the date of the order vacating the stay, Respondent had not filed an answer or otherwise responded to the complaint, nor did she file one within the 30 days provided in the

June 1, 2015 order. Instead, on October 28, 2015, Respondent filed a renewed motion to refer to mediation and a second motion for leave to plead.

32. On November 16, 2015, the trial court entered an order stating that both motions would be denied unless the foreclosure plaintiff consented. The foreclosure plaintiff did not consent. Instead, following a January 6, 2016 pretrial that Respondent appears not to have attended, the plaintiff filed a motion for default judgment which was granted on January 19, 2016. A judgment was then entered against Ms. Tezak on February 23, 2016.

33. On April 4, 2016, the plaintiff filed a motion to vacate judgment indicating that it had received loss mitigation documentation as contemplated under Consumer Financial Protection Bureau regulations designed to protect residential mortgage borrowers.

34. Respondent's conduct in Count III violated the following Ohio Rules of Professional Conduct:

(a) Prof. Cond. R. 1.1, which provides that "[a] lawyer shall provide competent representation to a client;" and

(b) Prof. Cond. R. 1.3, which provides that "[a] lawyer shall act with *reasonable* diligence and promptness in representing a client."

Count IV

The Brooks Matter

35. Paragraphs 1 through 34 are hereby realleged as if fully rewritten herein.

36. Respondent represented Shayna Brooks in an eviction matter. Respondent has not been able to locate the written fee agreement for this representation, and Respondent and Ms. Brooks disagree as to the amount of the fee. Respondent states that the representation was for a flat fee of $500.00, while Ms. Brooks claims the fee was $1000.00. Regardless, both agree that

Ms. Brooks only paid $150.00 of the fee.

37. In September of 2015, Ms. Brooks needed money to pay rent. She sought a $700.00 payday loan but had no checking account in which the money could be deposited. Respondent agreed to let Ms. Brooks use Respondent's IOLTA account to deposit the payday loan money.

38. Pursuant to this agreement, a $700.00 wire transfer was made by the payday lender to Respondent's IOLTA account on September 11, 2015. Respondent wrote a $700 check to Ms. Brooks from her IOLTA account on the same day.

39. Respondent claims Ms. Brooks needed to take out another payday loan for the following payday. Respondent has said that she agreed to allow a second payday loan deposit of $700.00 to be made to her IOLTA account (the "second loan"). On September 18, 2015, ostensibly in anticipation of the deposit, Respondent then wrote three checks to Ms. Brooks for a total of $700.00, as follows:

- IOLTA Check No. 123, in the amount of $150.00;
- IOLTA Check No. 127, in the amount of $355.00; and
- A personal check for $195.00.

40. Respondent wrote "fee refund" in the memo line for each check, which she claims she did in order to indicate that she was "returning" funds that belonged to Ms. Brooks, but not that she was refunding a fee. Respondent has also represented that her reason for writing two separate checks from her IOLTA account in the amounts indicated was because the $150.00 in Check No. 123 reflected personal funds Respondent retained in the IOLTA account as a "minimum" balance to cover administrative charges.

41. The second deposit was never made to Respondent's IOLTA account. As a

result, when Check No. 127 in the amount of $355.00 was negotiated on September 21, 2015, it caused an overdraft, which the bank reported to the Office of Disciplinary Counsel.

42. On October 2, 2015, Respondent's arrangement with Ms. Brooks and the check cashing company led to a second overdraft, when the check cashing company attempted an automatic withdrawal of $885.06 from Respondent's IOLTA account.

43: Respondent's conduct in Count III violated Prof. Cond. R. 1.15 by failing to safeguard funds in IOLTA.

Count V

Conduct During Investigation

44. Paragraphs 1 through 43 are hereby realleged as if fully rewritten herein.

45. In the course of the investigation of Mr. Krahn's grievance, Respondent represented to Relator that she had not missed any other hearings or filing deadlines in 2013, 2014, or 2015. This representation was false, as further investigation revealed:

- Respondent missed two filing deadlines and failed to appear for a default judgment hearing on behalf of Larry Sims as described in Count II above;
- Respondent failed to appear for a mediation and failed to timely file an answer on behalf of Lynn Tezak as described in Count III above;
- Respondent failed to disclose missing an expert witness report deadline in *JP Morgan Chase Bank v. Lori S. Wittenberg*, Cuyahoga C.P. No. CV-12-781136; and
- Respondent failed to disclose missing the deadline to oppose a motion for summary judgment filed against her client in *Bayview Loan Servicing, LLC v. Sylvia R. Gibson*, Cuyahoga C.P. No. CV-14-824451.

46. Respondent's conduct in Count V violated Prof. Cond. R. 8.1(b), which provides that in the course of a disciplinary matter, a lawyer shall not fail to disclose a material fact in response to a demand for information from a disciplinary authority.

WHEREFORE, Relator prays that respondent be appropriately disciplined for her misconduct.

Respectfully Submitted,

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CERTIFICATE

The undersigned, **STEVEN L. WASSERMAN,** of the **CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE,** hereby certifies that **JORDAN D. LEBOVITZ** and **BRENDA M. JOHNSON** are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: May 11, 2017

Steven L. Wasserman, Chairperson
Certified Grievance Committee

Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, Section (10)

(E)(1) Content of the Complaint. A complaint filed with the Board shall be filed in the name of either disciplinary counsel or the bar association that sponsors the certified grievance committee, as relator. The complaint shall include all of the following:

(a) Allegations of specific misconduct including citations to the rules allegedly violated by the respondent, provided that neither the panel nor the Board shall be limited to the citation to the disciplinary rule in finding violations based on all the evidence if the respondent has fair notice of the charged misconduct;

(b) If applicable, an allegation of the nature and amount of restitution that may be owed by the respondent or a statement that the relator cannot make a good faith allegation without engaging in further discovery;

(c) A list of any discipline or suspensions previously imposed against the respondent and the nature of the prior discipline or suspension;

(d) The respondent's attorney registration number and his or her last known address;

(e) The signatures of one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator and, where applicable, by bar counsel;

(f) A written certification, signed by disciplinary counsel or the president or chair of the certified grievance committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court.