



STATE OF CONNECTICUT
JUDICIAL BRANCH

**NEW HAVEN J.D. GRIEVANCE PANEL
FOR THE TOWNS OF BETHANY,
NEW HAVEN & WOODBRIDGE**

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November 12, 2007

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Gabriel H. Cusanelli, Esq.
550 East Main Street, #31
Branford, Connecticut 06405

Re: Grievance Complaint # 07-0544, New Haven Judicial District vs. Cusanelli

GRIEVANCE PANEL FINDING OF PROBABLE CAUSE

Dear Attorney Welch. and Attorney Cusanelli:

Pursuant to Practice Book §2-32 and Rule 1 of the Grievance Panel Rules of Procedure, the Grievance Panel for Bethany, New Haven and Woodbridge (hereinafter, "Grievance Panel") has completed its investigation of the above referenced grievance complaint. **At a meeting of the Grievance Panel held on October 31, 2007, the Grievance Panel determined that probable cause of misconduct existed as set forth below.** The Grievance Panel made its determination based upon the written record and without the need for a hearing.

The Grievance Panel determined that the respondent was appointed as executor of the Estate of Margaret Amrich pursuant to the terms of her will. An asset included in the estate was real property located at 18 Cottage Street, New Haven, Connecticut. The residual beneficiary of the estate was the Community Foundation of Greater New Haven, Inc. for the benefit of sick children. In the course of his duty as executor, the respondent had the real property appraised. That appraisal valued the property at \$200,000.00. As the respondent was dissatisfied with value set forth in the

appraisal, he had another appraiser value the property. The second appraisal valued the property at \$255,000.00 to \$259,000.00. That information was told to the Community Foundation of Greater New Haven, Inc. and the property was listed for sale with Sacco-Vollero Realty Group, LLC of Orange, Connecticut. In response to the listing Salvatore Brancati and Mark Perez expressed an interest in purchasing the property. However, both Mr. Brancati and Mr. Perez were former clients of the respondent. On September 7, 2005, the respondent as executor signed a contract with a limited liability company, Maritime Consulting, LLC, which was owned by Messrs. Brancati and Perez agreeing to sell the property to them at a purchase price of \$250,000.00. The real estate contract did not contain any financing contingency and provided that time was of the essence. At some point, Messrs. Brancati and Perez began making repairs to the property and using the property as an office. Although the closing was scheduled for October 31, 2006, the actual closing was delayed by the buyers. In March of 2007, the respondent served a notice to quit upon the buyers. Eventually a closing occurred on April 12, 2007. As a result of the delay in closing the estate, the Probate Court held a hearing upon a petition to remove the respondent as executor. That hearing was continued and on February 7, 2007 the respondent filed a final accounting. On March 26, 2007 the respondent resigned as executor, voluntarily returned legal fees in the amount of \$6,500.00, waived payment of any legal fees and executor's fees and reimbursed the estate \$6,188.00, which represented interest on the proceeds of sale for the period October 31, 2005 through December 14, 2006, the date the proceeds were invested. The buyer of the property made substantial improvements and subsequently sold the property in October, 2006 for \$368,000.00. Recently, the buyer of the property reached a settlement of the estate's claim in the Probate Court wherein Messrs. Brancati and Perez paid the estate \$15,000.00.

From all of the evidence presented, the sale of the property was proper and for fair market value. The delay in the closing was not as a result of the respondent's action. Rather, it appears that Messrs. Brancati and Perez simply delayed the closing and used their inspection rights to begin using the property. Certainly, the respondent's actions in resigning, reimbursing fees, making no further claim and reimbursing lost interest were commendable. However, at the time that the contract was entered the respondent had a potential conflict of interest. He should have disclosed the prior representation to the Probate Court and allowed the Probate Court to determine if the transaction was in the best interest of the estate. In all likelihood, had the respondent disclosed the conflict, the court would have determined that the contract was for fair market value and approved the sale.

The Grievance Panel concludes that there is probable cause that the respondent violated Rules 1.4 (a) and (b) of the Rules of Professional Conduct in that the respondent did not disclose to the probate court that the anticipated buyers of the real property were his former clients, and therefore he did not keep his client reasonably informed about the potential conflict of interest and therefore, the client could not make an informed decision. Also, the Grievance Panel concludes that there is probable cause that the respondent violated Rules 1.7 (a) of the Rules of Professional Conduct in that the respondent did not disclose to or discuss with the probate court the fact that the anticipated buyers of the real property were his former clients.

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Decision

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Pursuant to Practice Book §2-32 (i) this letter and a copy of the Grievance Panel's record are being filed with the Statewide Grievance Panel and Disciplinary Counsel's Office. A hearing will be conducted before the Statewide Grievance Committee in accordance with Practice Book § 2-35 (c). You will be contacted in writing by the Statewide Grievance Committee regarding the time and place of the hearing.

Very truly yours,

Michael A. Georgetti
Counsel to the Panel
MAG/rc

Cc: Statewide Grievance Committee
Chief Disciplinary Counsel