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objections. Further, the facts as written by Relator, which are taken almost entirely from the parties' Agreed Stipulations, accurately depict what happened. In order to avoid repetition, Respondent will not re-hash the facts herein.

III. MITIGATION

Prior to the board hearing, the parties stipulated that respondent had no prior disciplinary record and that respondent was cooperative in the disciplinary process. (Agreed Stipulations at ¶¶ 53-54) In addition, the Board concluded that, based on clear and convincing evidence, "Respondent lack[ed] a dishonest or selfish motive." These mitigating factors are not challenged by Relator in its Objections.

IV. LAW AND ARGUMENT

Response to Proposition of Law I

The Board Correctly Determined that Respondent Did Not Violate DR 6-101 (A)(2) and DR 7-101(A)(1).

DR 6-101(A)(2) provides that a lawyer shall not handle a legal matter without preparation adequate under the circumstances. DR 7-101(A)(1) provides that a lawyer shall not intentionally fail to seek a client's lawful objectives. In the instant case, the Board correctly determined that neither of these rules were violated by Willard.

With regards to DR 6-101(A)(2), Respondent was not notified of the foreclosure action filed against the Chandlers until October 7, 2006, which is nearly two months after the court had entered a default judgment against the Chandlers. (Tr. 69-70). After being notified of the Willards' situation, he filed a motion to strike the Wells Fargo foreclosure complaint. (Stip. 44). At the hearing, Relator presented no testimony, evidence or argument that Respondent should have done something differently to prevent the foreclosure from going forward. Thus, the Board determined that there was no evidence that "there was anything else a 'better prepared' attorney

could have done.” (See Report at p. 10). Based on this evidence, the Board correctly determined that Respondent did not handle the matter without adequate preparation.

With regards to DR 7-101(A)(1), Relator argues that Respondent violated this rule because he never communicated with the Chandlers and as a result, the Chandlers lost their home. (See Objections at p. 8). However, as the Board correctly noted, when Respondent became aware of the Chandlers’ situation, it was already too late. At that point, a default judgment had already been rendered in the foreclosure action and there was nothing that Respondent could have done differently that would have staved off the foreclosure action. (See Report at p. 10.) Accordingly, the Board correctly determined that Respondent did not violate DR 7-101(A)(1) because there was no intentional failure to seek a client’s lawful objective.

Response to Proposition of Law I

The Board’s Proposed Sanction of a One Year Suspension, with the Entire Year Stayed, is Appropriate

When determining the appropriate sanction in a disciplinary case, this Court has developed the following factors to be considered: “the duties violated, the actual or potential injury caused, the attorney’s mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in similar cases.” *Stark County Bar Assn. v. Ake* (2006) 111 Ohio St.3d 266, 271, 855 N.E.2d 1206, 1210, 2006-Ohio-5704. Relator argues in its Objections that only six months of Respondent’s one year suspension should be stayed. However, based upon several mitigating factors as well as a similar sanction imposed by this Court in the factually similar case of *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 894 N.E.2d. 1210, 2008-Ohio-4541, establish why the Board’s proposed sanction is appropriate.

Perhaps most importantly, it is not even asserted that Respondent’s actions are worse than the misconduct in *Mullaney*. In fact, even Relator concedes that Mullaney “is virtually identical

to the case at bar...” (Relator’s Objections at p. 7) Additionally, the Board based its proposed sanction in large part on *Mullaney* because it had concluded that *Mullaney* “is almost identical to the instant case.” (Report at ¶55) Relator does not attempt to differentiate *Mullaney* or explain why Respondent’s actions warrant a harsher punishment than in *Mullaney*. Rather, Relator simply “disagrees with the sanctions imposed by *Mullaney*” and “requests the court to review *Mullaney*”. (Relator’s Objections at p. 7 and p. 9) However, the *Mullaney* decision is less than a year old and there is no sound reason to overrule it now.

In reality, the facts in *Mullaney* were actually worse (or more supportive of a greater sanction) than the facts of the instant case because the resulting harm was much greater than in the instant case. In *Mullaney*, 2,000 clients were affected, while only 28 were in the instant case. *Mullaney*, supra, at p. 414; Agreed Stipulations at ¶ 10. In *Mullaney*, evidence of harm was presented by the disciplinary counsel. *Mullaney*, supra, at p. 417. In the instant case, though Respondent admits he should have called the Chandlers, as the Board correctly noted, there is probably nothing that could have been done by Respondent to save the Chandlers’ house because the default judgment had already been rendered. (See Board’s Report at ¶ 55). Though Relator urges the court to overturn or review *Mullaney*, Relator offers no argument in support of its request. Given that the facts in *Mullaney* actually lend themselves to support a greater sanction than in the instant case, the Board’s recommended sanction of a one year stayed suspension in the instant case is more than appropriate.

Relator also points to the following cases in attempting to argue for a harsher sanction: *Cincinnati Bar Association v. Kathman*, 92 Ohio St.3d. 92, 748 N.E.2d. 1091, 2001-Ohio-157, *Disciplinary Counsel v. Wheatley*, 107 Ohio St.3d. 224, 837 N.E. 2d. 1188, 2005-Ohio-6266, *Columbus Bar Association v. Fishman*, 98 Ohio St.3d. 172, 781 N.E. 2d. 204, 2002-Ohio-7086.

However, these cases are all factually inapposite because they deal with attorneys affiliated with estate planning and trust organizations. In light of the factually identical case of *Mullaney*, these other decisions are less persuasive. Further, it should be noted that the mitigating factors in two of the cases cited to by Relator were lessened by the fact that the charged attorneys did not appreciate the nature of the wrongdoing. *Wheatley*, supra, at p. 232 (A lesser sanction was not warranted because respondent “did not readily acknowledge the established impropriety of his misconduct.”) *Fishman*, supra, at p. 175 (A lesser sanction was not warranted because the “respondent remains oblivious to the full significance of his unprofessional conduct.”)

In the instant case, Respondent was forthcoming and admitted his wrongdoing. In fact, several other mitigating factors weigh heavily in Respondent’s favor in the instant case. Prior to the hearing, the parties stipulated that Respondent has no prior disciplinary record and that Respondent “displayed a cooperative attitude during the proceedings.” (Stipulations at ¶¶ 53-54) In addition to the stipulations, based on the testimony, the Board determined that “the Respondent lack[ed] a dishonest or selfish motive.” (Report at ¶ 48)

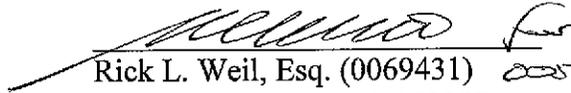
Due to these mitigating factors, as well as a similar sanction imposed by this Court in *Mullaney*, the Board’s proposed sanction of a one year stayed suspension is appropriate.

IV. CONCLUSION

Based on the foregoing, Respondent, John T. Willard, respectfully requests that this Honorable Court overrule Relator’s Objections to the Board of Commissioners on Grievances and Discipline’s Report and Recommendation. The Board correctly determined that Respondent’s actions did not violate DR 6-101 (A)(2) and/or DR 7-101(A)(1). Further, based on the nearly identical case of *Mullaney*, as well as Respondent’s cooperation in the disciplinary

process, lack of a prior disciplinary record and lack of a dishonest or selfish motive, the one year stayed suspension recommended by the Board should be accepted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

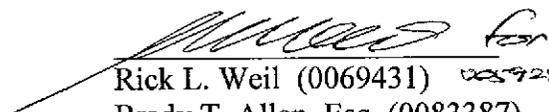
I hereby certify that a true and accurate copy of the foregoing has been served via

Ordinary U.S. Mail this 13 day of May, 2009, upon the following:

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