

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Attorney at Law

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Edward W. Harness (“Harness”) was admitted to the practice of law in Wisconsin on May 22, 2000 (State Bar ID no. 1030509). Harness’ State Bar address of record is 609 W. Jefferson St., Louisville KY, 40202. His law license is active and in good standing. Susan Perkins (“Perkins”) retained Harness sometime in the spring of 2013. Harness filed Perkins’ bankruptcy on May 30, 2013, in the Eastern District of Wisconsin, U.S. Bankruptcy Court, Case No. 13-27476-svk. The five-year bankruptcy period began on November 1, 2014.

In 2015, Perkins was making monthly mortgage payments to Bank of America. On March 29, 2015, she received a “Notice of Change of Address” from the Bankruptcy Court stating she should send her payments to Nationstar Mortgage. The Account Number listed on that document ended in “5012”. Perkins did not notice this at the time, but that is the account number for her daughter’s mortgage.

In June 2015, Perkins learned that her daughter’s mortgage had been transferred from Bank of America to Nationstar Mortgage. Perkins contacted Nationstar who informed her that her April and May 2015 payments had been applied to her daughter’s account. Perkins called Harness to explain the situation and left a message with the contact information to reach Nationstar. She requested Harness take steps to correct the error with the court and have her April and May payments applied to her account.

A week later, Perkins called Nationstar and learned Harness had not contacted them. Perkins called Harness who informed Perkins that he had called Nationstar, had been placed on hold, and did not have time to wait. Harness continued to ignore Perkins' requests to contact Nationstar and took no actions. On July 1, 2015, Perkin's new Mortgage servicer became Seterus Inc. (Seterus). Perkins believes at least two mortgage payments were misapplied to her daughter's account. Perkins was unable to transfer those payments to her own account. Perkins believes her daughter's account information was mistakenly provided to the court by Harness.

In his response, Harness informed OLR that it is not plausible that the actions of the bankruptcy caused misapplication of payments. He also stated that the mortgage company did not list those payments as missed in their claim for post-petition missed payments.

In August 2015, Perkins called Nationstar and learned that Harness had not yet contacted Nationstar to resolve the misapplied payments. Perkins received their fax number for Harness to give authorization for Perkins to speak with Nationstar directly. Perkins faxed that information to Harness. Harness did not complete or fax the authorization.

In December 2015, Perkins called Harness twice and left a message each time. Harness did not return those calls.

In August 2016, Perkins had health problems and was placed on bed rest. Fearing that she may not be able to make her payments on time, Perkins first attempted to contact Seterus. Seterus informed Perkins they did not have permission from Harness to speak with her.

In September 2016, Perkins called Harness and left a message stating she was again trying to get the payments she believed had been misapplied released. She also informed Harness she was on bedrest and could not work or drive for three months. Harness did not return that call.

In October 2016, Perkins called Harness and left a message informing Harness she made her October payment with only \$600.00 in the bank and desperately needed the misapplied payments resolved. Perkins made her October 2016 mortgage payment by check which cleared on October 13, 2016. Perkins states that this was the last of her available funds. Harness did not return that call.

In November 2016, Perkins called Harness and left a message informing Harness the doctor would not let her go back to work or drive yet. Harness did not return that call. In November 2016, Perkins requested a family friend and retired attorney, Gerald Wilcox, call Harness on her behalf. Harness spoke with Mr. Wilcox and indicated he would contact Nationstar to release any misapplied funds. Mr. Wilcox made follow-up calls to Harness but did not succeed in speaking to him a second time. Harness still did not contact Nationstar regarding the misapplied funds.

Throughout 2016, Perkins continued to try to contact Harness for assistance in releasing payments from her daughter's account and received no response from Harness. Perkins states that Harness rarely returned her calls or messages. Perkins states that between June 2016 and December 2016, there was no communication from Harness to Perkins. Harness states he did his best to explain matters to Perkins but she would call repeatedly with identical questions. If he had already explained matters to her he would not do so a second or third time.

On November 23, 2016, Seterus filed Motion for Relief from Stay and Abandonment. The motion states that Perkins failed to make payments as they came due on October 1, 2016 and November 1, 2016. The motion contains exhibits, including an affidavit from a Seterus employee stating that there were two missed payments between October 1, 2016 and November 1, 2016. Perkins wrote a letter to the court, received November 30, 2016, where she attempted to explain

the misapplied payments. That letter also explained that she was hospitalized and unable to work. The letter does not mention an October 2016 payment. The court wrote Perkins on December 1, 2016, and explained that they would not take action on her letter because she was represented. Harness was cc'd on this letter.

On December 4, 2016, Harness filed an Objection to Seterus' motion. It stated that Perkins had been hospitalized, is recovering, and believes she can begin making regular mortgage payments. On December 5, 2016, the court scheduled a hearing on the issue for December 20, 2016 and notified the parties.

After receiving the notice of the hearing, Perkins again attempted to contact Harness. Harness responded a week before the hearing and asked why Perkins was behind on her payments. Perkins told Harness if he would have responded to her calls he would have been aware of the situation. Harness instructed Perkins not to make any more payments for November or December. Harness informed Perkins the November and December payments would be refigured and included in the new mortgage and payment amount. Perkins told Harness she had made the October 2016 payment. Perkins was unable to attend the hearing as her health did not allow her to drive.

Harness appeared at the December 20, 2016 hearing. The hearing lasted approximately two minutes and twenty-five seconds. The attorney for Seterus explained the parties had an agreement that October, November, and December payments were missed. Harness confirmed that was correct, despite the fact that Perkins had informed him that she made the October 2016 payment.

On December 22, 2016, the court issued an order denying Seterus' Motion. As part of that order, Seterus was allowed to file a supplemental claim comprised of the monthly mortgage

payments for October 1, 2016, November 1, 2016, and December 1, 2016 plus attorney's fees and costs. The amount granted for October was \$1,122.86. The trustee was directed to disburse estate funds to pay the supplemental claim. Perkins was ordered to pay \$341.00 per month to the trustee. This was an increase from the \$265.29 monthly payments Perkins was ordered to pay in the June 21, 2013 court order.

In 2017 and 2018, Perkins realized that Harness was not going to provide the help she had requested. Perkins focused on managing the bankruptcy herself. She also communicated and worked primarily with the Trustee to make sure she fulfilled her obligations under the bankruptcy. In October 2018, Perkins learned from the Bankruptcy Trustee that Harness' office was no longer located in Wisconsin. She did not know if his contact information had changed or was the same. She called twice and left two messages. Harness did not return these calls.

On October 9, 2019, the Trustee filed the Notice of Final Cure Payment as it relates to Seterus. That document notes that the mortgage is paid directly by the debtor, Perkins. It also states that Seterus' final claim was \$4,224.66 and was paid by the trustee. On October 25, 2019, Nationstar, now d/b/a Mr. Cooper, filed a Response to the Notice of Final Cure Payment. That document asserted that Perkins was not current on post-petition payments and owed \$4,025.57. On December 16, 2019, Harness filed Motion for Entry of Chapter 13 Discharge.

On January 14, 2020, there was a hearing to discuss the Motion For Entry of Chapter 13 Discharge. The judge noted Nationstar filed a response to the Notice of Final Cure. The judge directed Harness to file a motion under 3002.1(h) on or before January 21, 2020. The lender(s) could then respond to that motion.

On January 20, 2020, Harness filed a Motion to Determine Final Cure and Mortgage Payment under Rule 3002.1. That document was withdrawn because it was filed without an

attachment to motion. On January 20, 2020, Harness filed a second Motion to Determine Final Cure and Mortgage Payment under Rule 3002.1. That document was withdrawn because the wrong motion was filed. On January 27, 2020, Harness filed a third Motion to Determine Final Cure and Mortgage Payment under Rule 3002.1. That document asserted Perkins made all post-petition mortgage payments to Nationstar.

On February 21, 2020, Nationstar (d/b/a Mr. Cooper) objected to the 3002.1(h) motion, stating that debtor's motion did not include an affidavit from the debtor that all required payments had been made, did not include evidence of payments made, and was untimely filed.

On March 17, 2020, at a hearing to discuss the motion and the objection, the judge indicated that even if she considered a motion untimely, she has an independent responsibility to determine if the bankruptcy should be discharged and whether Perkins is current as of October 9, 2019. Nationstar's attorney alleged \$4,025.57 was owed for missed payments from July 2019 through October 2019. Harness replied that Perkins believes Nationstar misapplied payments to Perkin's daughter's account. Harness also stated that Perkins had obtained five years of payment history and can provide proof of payment. At the hearing, the judge also addressed the way servicers apply payments, noting that they credit payments to "most passed due" so, for example, the July 2019 date doesn't necessarily mean the payment was missed that month. Perkins expressed concern that the trustee had discharged some four thousand dollars to Seterus and that she is now going to be double charged. The judge directed both parties to exchange information and try to reach consensus on if Perkins was current. The judge also noted that as Perkins continues to make payments they might reach "Current as of October 9th, 2019" that way. Perkins and Harness understood that there does not have to be an exact determination regarding what happened to each payment to achieve the discharge.

On April 21, 2020, the hearing was continued. Nationstar's attorney indicated he didn't receive debtor's proof of payment but based on review of their records it looked like Perkins may be current and requested two weeks to determine if she was. Harness stated he was able to get information from Perkins and asserted the account was current as of October 9, 2019. The judge discussed that there may not be an additional hearing if Nationstar determined Perkins was current as of that October 9, 2019 date.

On May 1, 2020, the creditor Nationstar (d/b/a Mr. Cooper) filed an amended Response to Notice of Final Cure Payment. That document states that Perkins was current through November 1, 2019. On May 1, 2020, Perkins also submitted a document to the court detailing notes, statements and descriptions of payments, as well as information relating the payments that were possibly misapplied to her daughter's account.

On May 5, 2020, the court called the hearing. Atty. Harness was not present, later indicating to OLR he believed that the matter would resolve without the need for another hearing when the creditor filed the Amended Response. The Judge asked if Perkins would like to proceed without Harness and enter the discharge. Perkins declined.

On May 18, 2020, Perkins submitted another document to the court. This document discussed what Perkins describes as "two primary issues". First, Perkins references a recent statement from Nationstar that states she is in arrears by \$4,624.44 and expressed a fear that Nationstar will consider her in arrears after her bankruptcy is discharged. The second issue is that Perkins believes she has overpaid both because of the misapplied payments to her daughter's account and because she made the October 2016 payment.

On May 19, 2020, the court continued the hearing. Harness highlighted that Perkins is concerned that her balance still shows her as owing money, however, Harness thought Perkins

was current and did not overpay. The judge stated she will enter order for discharge and that Harness has the normal time limits to file a motion to continue litigation on the issue of whether Perkins has overpaid. The Judge provided the deadline is twenty-one days after the Amended Response to Notice of Final Cure Payment.

Harness did not file any additional motions regarding whether Perkins had overpaid. On May 21, 2020, the Order Deeming Debtor Has Made All Post-Petition Payments As Required Under the Plan was filed, ordering that Perkins was deemed current on her post-petition payments to Nationstar through October 9, 2019 the date of the Notice of Completion of Plan. On May 22, 2020, a separate Order of Discharge was filed granting a discharge of Perkin's bankruptcy. On June 12, 2020, the court filed an Order Approving Trustee's Final Account, Discharging the Trustee, and Closing the Chapter 13 Case.

On July 1, 2020, Attorney Rollie Hanson (Hanson), on behalf of Perkins, emailed Harness and requested Perkin's file. Perkins retained Hanson because the mortgage servicer was pursuing Perkins for an arrearage that should have been cured in the Chapter 13. Hanson included a file release/transfer form signed by Perkins. Hanson followed up by email on July 8, 2020, called Harness' phone number listed on Wisbar twice, and left Harness voicemails asking for the file. Harness did not respond to any of Hanson's attempts at obtaining Perkin's file. On February 23, 2021, Perkins filed a grievance with OLR.

On July 9, 2021, OLR provided Harness with a copy of the emails Hanson had sent requesting the file. Harness respond on July 10, 2021, that he had located the email from Hanson and will send the file. Harness also explained that "a few years ago" his account was hacked and some emails were routed to the trash file instead of the inbox.



On September 1, 2021, Hanson informed OLR that Harness had sent him the electronic documents, “basically whatever was file[d] with the Bankruptcy Court.” Hanson indicated he received no notes regarding client meetings, phone conferences with Perkins or the mortgage servicer, and no email records of any kind.

By failing to respond to email and telephone attempts by Attorney Hanson to request the file for over a year, and then providing an incomplete file, Attorney Harness violated SCR 20:1.16(d) which states, “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.”

By taking no action regarding misapplied payments for the entirety of the five-year bankruptcy period despite acknowledging the problem in court, by not signing an authorization allowing Perkins to attempt to remedy the misapplied payments on her own, and by taking no action regarding Perkin’s assertion she was charged for October 2016 twice, Attorney Harness violated SCR 20:1.3 which states, “a lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to raise, either in court or with the creditor’s attorneys, that Perkins made her October 2016 payment and otherwise mishandling Perkins’ Bankruptcy over a multi-year period, Attorney Harness violated SCR 20:1.1 which states, “A lawyer shall provide competent representation to a client.”

By not communicating with Perkins about how the bankruptcy process could address or resolve her problems with misapplied payments, Attorney Harness violated SCR 1.4(a)(2) which

