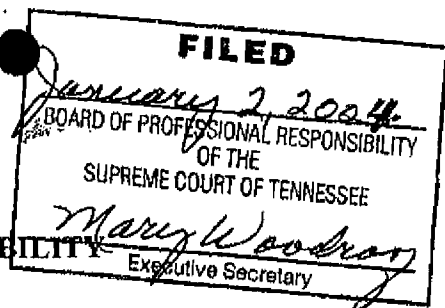


IN DISCIPLINARY DISTRICT VI
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: **ROBERT D. BENSON, BPR #97**
 Respondent an Attorney
 Licensed and
 Admitted to the Practice of
 Law in Tennessee
 (Williamson County)

DOCKET NO.: 2003-1379-6-SG

JUDGMENT OF THE HEARING COMMITTEE

This cause came to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on December 18, 2003. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. This Hearing Committee, Jill B. Nolan, Chair, David A. Kozlowski, and Charles L. Johnson, II, makes the following findings of fact and submits its judgment in this cause as follows:

I. STATEMENT OF THE CASE

1. A Petition for Discipline was filed on June 26, 2003, charging the Respondent with violation of disciplinary rules.
2. The Respondent was served by mailing a copy by regular and certified mail to the Respondent's last known address. The Petition was returned to the Board of Professional Responsibility marked "moved left no address, unable to forward, return to sender."

3. A Motion for Default Judgment and that charges in Petition for Discipline be deemed admitted was filed on August 22, 2003. A Default Judgment was entered against the Respondent by this Hearing Panel on October 9, 2003.

4. Subsequently, the Respondent was located and was served with a copy of the Default Judgment, and all prior pleadings in the matter, including the Motion to Set. Service was made via FedEx priority delivery on November 3, 2003.

5. The Notice of Hearing was filed on November 24, 2003, and sent to the Respondent at the address at which he was previously served, and he refused service. The hearing was scheduled for December 18, 2003, and the Hearing Panel makes the following findings of fact.

II. FINDINGS OF FACT

1. On October 16, 2000, the U.S. Bankruptcy Court for the Middle District of Tennessee entered an Order in the Lindsey Keith Tays bankruptcy case approving the Respondent's employment to represent Mr. Tays to recover insurance proceeds for Mr. Tays.

2. On May 10, 2001, the Respondent filed a lawsuit in the U.S. District Court for the Middle District of Tennessee on behalf of Mr. Tays against Hanover Insurance Company.

3. On October 26, 2001, the U.S. District Court entered the stipulated Order to disburse interpled funds directing the clerk to issue a check in the amount of \$313,657.68 payable to the bankruptcy estate of Lindsey Keith Tays, Docket No. 99-10850-MH3-13.

4. The U.S. District Court's October 26, 2001, Order further provided that claims, if any, against these funds "shall be reserved to the bankruptcy action."

5. The Clerk of the United States District Court then issued a check dated October 26, 2001, in the amount of \$313,657.68 payable to the order of the "Bankruptcy Estate of Lindsey Keith Tays, Docket No. 99-10850-MH3-13."

6. The Respondent endorsed this \$313,657.68 check as follows:

Robert D. Benson, POA
Attorney for
Lindsey Keith Tays
Henry Hildebrand, Trustee
Bankruptcy Estate of Lindsey
Keith Tays, No. 99-10850-MH3-13

7. The Respondent presented this check for payment on October 31, 2001, to the Wells Fargo Bank in Tempe, Arizona.

8. At the time the Respondent endorsed this check, the Respondent did not have Henry Hildebrand, Trustee's, authority to endorse his signature and did not have authority to represent the Trustee with regard to these funds.

9. The Bankruptcy Court subsequently entered an Order dismissing the bankruptcy case on February 5, 2002.

10. Henry Hildebrand, Trustee, did not learn of the Respondent's endorsement of this check until after the Tays' bankruptcy case had been dismissed.

11. Henry Hildebrand, Trustee, sent the Respondent a letter dated April 9, 2002, wherein Mr. Hildebrand advised the Respondent that he had no authorization to endorse the check in Mr. Hildebrand's name.

12. On June 27, 2002, the Bankruptcy Court entered an Order granting Henry Hildebrand, Trustee's, Motion to delay closing of the Tays bankruptcy case and requiring the Respondent to turn over the property of the estate to Henry Hildebrand.

13. The June 27, 2002, Bankruptcy Court Order required in part: "Robert D. Benson [the Respondent herein] shall immediately, but no later than five business days from the entry of this Order, deliver the funds referenced in paragraph number 1 of this Order to the standing trustee in good and negotiable funds."

14. The Respondent failed to comply with this June 27, 2002, Order.

15. On July 3, 2002, the Respondent filed a Notice of Objection, Motion to Stay, Alter or Amend and Motion to Reconsider Order delaying closing of the case, transferring funds and providing for recommendation.

16. On September 3, 2002, the Bankruptcy Court held a hearing on the Respondent's Motion to Alter or Amend. On October 1, 2002, the Bankruptcy Court entered an Order granting a portion of the Respondent's Motion relative to an award of interest but in all other respects the Court denied the relief sought by the Respondent.

17. The Respondent failed to comply with the Court's October 1, 2002, Order.

18. On November 18, 2002, the Bankruptcy Court entered an Order finding the Respondent in contempt based upon the Respondent's failure to turn over the property to Henry Hildebrand, Trustee.

19. In this November 18, 2002, Order, the Court allowed the Respondent until December 2, 2002, to purge himself of the contempt by delivering the funds to Henry Hildebrand, Trustee.

20. As of December 18, 2003, the Respondent has neither purged himself of the contempt nor turned over these funds.

21. The Respondent had another Complaint filed against him by Jill and Hossein Ghodrat, File No. 25979-6-SG. The Ghodrats had retained the Respondent sometime around September, 2003, to represent them.

22. On November 21, 2002, the Ghodrats paid the Respondent a \$20,000.00 retainer.

23. \$5,000.00 of the \$20,000.00 paid by the Ghodrats to the Respondent was to be forwarded by the Respondent to Georgia counsel for the Ghodrats' defense in a pending federal case in Georgia involving them.

24. The Respondent failed to remit this \$5,000.00 to Georgia counsel for the Ghodrats.

25. The Ghodrats paid the Respondent \$3,000.00 for costs. The Respondent's itemized statement reflects the Respondent only incurred costs in this matter totaling \$862.80.

26. The Respondent has not refunded any of the \$20,000.00 to the Ghodrats, nor has the Respondent refunded any of the \$3,000.00 to them.

27. The Respondent abandoned his practice and the Ghodrats were unable to reach the Respondent after approximately January 1, 2003.

28. By letter dated February 26, 2003, the Respondent misrepresented to Disciplinary Counsel for the Board that the Respondent returned the Ghodrat's files to Gordon, Martin law office when in fact he did not.

III. CONCLUSIONS OF LAW

The Board contends that the Respondent has violated the following Disciplinary Rules: 1) DR 1-102(A)(1)(3)(4)(5)(6), stating that a lawyer shall not violate a Disciplinary Rule; engage in illegal conduct involving moral turpitude; engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; engage in conduct that is prejudicial to the administration of justice; engage in any other conduct that adversely reflects on his fitness to practice law; 2) DR 6-101(A)(3), failing to act competently by neglecting a legal matter entrusted to the lawyer; 3) DR 7-101(A)(1)(2)(3)(4), representing a client zealously with diligence and promptness, keeping a client reasonably informed, and complying with reasonable requests for communication or information; explaining matters to the client so they can make informed decisions regarding the representation; and being punctual in fulfilling all professional commitments and treating clients with courtesy and consideration, and not causing prejudice or damage to the client during the professional relationship; and 4) DR 9-102(A)(B); preserving identity of funds and property of a client, of the Code of Professional Responsibility.

The Hearing Committee finds that the Respondent violated DR 1-102(A)(1)(3)(4)(5)(6); DR 6-101(A)(3); DR 7-101(A)(1)(2)(3)(4); and DR 9-102(A)(B).

IV. FACT FINDING OF AGGRAVATING CIRCUMSTANCES

The Hearing Committee finds the following aggravating circumstances exist in this matter:

1. The Respondent's dishonest motive is an aggravating circumstance.

2. The Respondent's pattern of misconduct and multiple offenses are aggravating circumstances.

3. The Respondent's bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules and orders, particularly the Order of the Bankruptcy Court, is an aggravating circumstance.

4. The Respondent's submission of false evidence, false statements or other deceptive practices during the disciplinary process is an aggravating circumstance.

5. The Respondent's refusal to acknowledge the wrongful nature of his conduct is an aggravating circumstance.

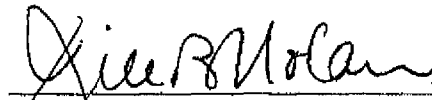
V. JUDGMENT

It is, therefore, ORDERED by the Hearing Committee that the Respondent, Robert D. Benson, be DISBARRED from the practice of law.

Further, it is ORDERED that the Respondent, Robert D. Benson, should make restitution to both Complainants with Judgments or valid claims.

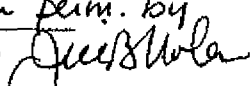
It is further ORDERED that if Respondent ever seeks readmission to the Bar, he should be required to make restitution to the United States Bankruptcy Court for the middle District of Tennessee and to the Ghodrats.

This 31st day of December, 2003.




Jill B. Nolan, BPR No. 015352
Chair

This 31st day of December, 2003.

David A. Kozlowski with perm. by
David A. Kozlowski, BPR No. 003873 

This 31st day of December, 2003.


Charles L. Johnson, II, BPR No. 005787