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

IN RE: LEROY CAIN, JR.
BPR #006510, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Davidson County)

DOCKET No. 2015-2472-5-AJ

JUDGMENT OF THE HEARING PANEL

This matter came to be heard on February 8, 2016, for final hearing on the Board's Petition for Discipline before Mathew Potempa, Panel Chair; Michael Castellarian, Panel Member; and, Peter Sales, Panel Member. Leroy Cain, Jr., Respondent, (hereafter either Mr. Cain or Respondent), appeared, and Alan D. Johnson, Disciplinary Counsel, appeared for the Board. Based upon the Petition for Discipline, the Order for Default, arguments of Disciplinary Counsel and the Respondent, the Hearing Panel makes the following findings of facts and conclusions of law.

FINDINGS OF FACT

1. A Petition for Discipline, Docket No. 2015-2472-5-AJ, was filed on August 4, 2015.
2. The Petition was sent via regular and certified mail to Respondent's recent work address, as registered with the Board of Professional Responsibility, at 208 3rd Avenue North, 5th Floor, Nashville, Tennessee, 37201, and to his most recent home address as registered with the Board of Professional Responsibility.
3. On October 23, 2015, Disciplinary Counsel sent the Petition for Discipline to Mr.

Cain by email.

4. On November 5, 2015, Disciplinary Counsel received a phone call from Mr. Cain who acknowledged receipt of the Petition for Discipline by email, and Disciplinary Counsel sent Mr. Cain an email memorializing the substance of the phone call, which included Disciplinary Counsel's agreement to additional time to respond to the Petition.

5. On November 23, 2015, Mr. Cain sent Disciplinary Counsel an email requesting additional time to file an answer, and Disciplinary Counsel responded stating that Mr. Cain could file the answer on November 30, 2015.

6. Mr. Cain did not file a response to the Petition for Discipline, and on December 7, 2015, the Board filed a Motion for Default Judgment and that the Allegations Contained in the Petition for Discipline be Deemed Admitted.

7. Hearing Panel entered an Order for Default on December 21, 2015. As a result of the Order for Default, the allegations contained within the Petition are deemed admitted.

File No. 37561-5-KB -- Complaint of Ted Cain

8. The Complainant, Ted Cain, is the brother of the Respondent.

9. Mr. Cain represented his brother at mediation in an EEOC matter, and the case was settled in the amount of \$8,250.00.

10. Mr. Cain was to receive \$4,000.00 as a fee for the representation pursuant to an oral agreement.

11. The settlement check was sent to the Mr. Cain, and it was deposited into Mr. Cain's firm trust account on October 29, 2008.

12. Mr. Cain disbursed \$1,200.00 from the settlement proceeds to his brother in November and December, 2008.

13. By the end of December, 2008, Mr. Cain's trust account had a balance of \$377.27.

14. After Ted Cain filed a complaint against the Respondent, he submitted to a fee dispute arbitration through the Nashville Bar Association.

15. The arbitrators found that the Respondent was not entitled to the agreed upon \$4,000.00 fee, and either ordered the Respondent to refund his brother the \$4,000.00 fee, or the Respondent agreed to refund his brother the \$4,000.00 fee.

16. The Respondent did not refund the fee.

CONCLUSIONS OF LAW

17. Pursuant to Tenn. S. Ct. R. 9, § 3, the license to practice law in this state is a privilege and it is the duty of every recipient of that privilege to conduct himself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

18. Based upon the admitted facts alleged in the Petition for Discipline, and deemed admitted in the Order for Default, the Hearing Panel finds that Mr. Cain's actions violated Rules of Professional Conduct 1.15 (safekeeping property and funds) and 8.4 (a) (b) and (c) (misconduct).

19. When disciplinary violations are established by a preponderance of the evidence, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 15.4, Rule 9 of the Rules of the Supreme Court. The following ABA Standards are applicable:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

- 4.41 Disbarment is generally appropriate when:
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 5.11 Disbarment is generally appropriate when:
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Aggravating Factors

21. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:
- (a) Prior disciplinary offenses
 - (b) dishonest or selfish motive;
 - (h) vulnerability of victim;
 - (i) substantial experience in the practice of law, having been licensed in 1981, and;
 - (j) indifference to making restitution.

The Board submitted evidence (Collective Exhibit A) of the Respondent's disciplinary history which includes the following:

- Suspension – January 28, 2015 (Suspended for one (1) year and one (1) day for releasing purchase money to the seller of real estate without ensuring delivery of clear title.)
- Suspension – March 3, 2011 (Suspended for one (1) year, 4 months active and the remainder on probation, and five (5) hours additional CLE in trust accounting. Failing to comply with a Probate Court Order and comingling personal and trust funds.)

- Public Censure – January 12, 2007 (Accepting \$13,700.00 in fees to handle an estate without first seeking Court Approval)
- Suspension – June 27, 2005 (Suspended for nine (9) months for practicing law while on administrative suspension, failing to withdraw, misrepresentations to clients, courts, opposing counsel and BPR, accepting fees while suspended and disclosing confidences and neglecting clients)

JUDGMENT

Based on these findings of fact and conclusions of law, the ABA Standards that apply to the Rules of Professional Conduct violated, and the aggravating factors present, it is the judgment of the Panel that Mr. Cain shall be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 12.1. Further, the Panel finds that Mr. Cain must pay restitution, pursuant to Tenn. Sup. Ct. R. 9, § 12.7, to Ted Cain in the amount of \$7,050.00. Payment of restitution shall be a condition precedent to reinstatement. In the event restitution is made by the Tennessee Lawyers' Fund for Protection of Clients (TLFCP), Mr. Cain will be responsible for reimbursement of TLFCP in the same amount.

The costs of this cause, as set forth in Tenn. Sup. Ct. R. 9, § 31.3 (a) (2014), will be taxed to Mr. Cain following entry of this judgment pursuant to the procedures established in Tenn. Sup. Ct. R. 9, § 31.3 (a) (2014).

IT IS SO ORDERED:


Mathew Potempa, Panel Chair


Michael Castellarin, Panel Member


Peter Sales, Panel Member