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

BOARD OF PROFESSIONAL
RESPONSIBILITY

RECEIVED

IN RE: JAMES CARL COPE,
BPR #3340, Respondent,
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Rutherford County)

DOCKET NO. 2016-2647-4-KH(22.3)

FINAL ORDER OF DISCIPLINE

THIS CAUSE came to be heard on the 12th and 18th days of April, 2017, for a formal disciplinary hearing before a duly appointed Hearing Panel upon a Petition for Final Discipline filed by the Board of Professional Responsibility ("Board") against James Carl Cope, Respondent, pursuant to Tenn. Sup. Ct. R. 9, § 22.3, and the October 25, 2016, Order of Enforcement of the Supreme Court of Tennessee directing the institution of this formal proceeding in which the sole issue to be determined by the Hearing Panel shall be the extent of the final discipline of Respondent James C. Cope following his entry of a plea of guilty to a serious crime, *i.e.* insider trading in violation of 15 U.S.C. § 78(b) and 17 C.F.R. § 240.10b-5.

At the formal disciplinary hearing, the Board presented testimony from the Respondent and introduced Exhibits 1-5. The Respondent presented testimony from eight (8) witnesses, including himself, and introduced Exhibits 6-16. The record was held open until April 28, 2017 for both sides to submit proposed findings of fact, to which both parties complied. Based upon the evidence and testimony presented, the hearing panel makes the

following findings of fact and conclusions of law.

FINDINGS OF FACT

On October 21, 2016, Respondent entered into a voluntary plea of guilty to one count of insider trading, pursuant to 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, in the United States District Court for the Middle District of Tennessee, Nashville Division, in the matter of *United States of America v. James Cope*, No. 3:16-cr-00210. The Supreme Court of Tennessee's Order of Enforcement, entered October 25, 2016, suspended Respondent from the practice of law pursuant to Tenn. Sup. Ct. R. 9 § 22.3. On November 7, 2016, the Board filed a Petition for Final Discipline in this matter. On December 9, 2016, the United States District Court for the Middle District of Tennessee accepted Respondent's plea of guilty and sentenced him to twenty-four months of probation, the first nine months of which required home confinement, fined Respondent \$200,000.00 and ordered Respondent to pay \$100.00 as a special assessment. The \$200,000.00 fine and the \$100.00 special assessment have been paid by Respondent.

The panel finds it is undisputed that the underlying facts of the insider trading conviction of the Respondent relate to the purchase of 6,179 shares Avenue Bank stock purchased by the Respondent on January 5, 2016, and an additional 4,000 shares of Avenue Bank stock purchased on January 11, 2016.

The panel finds it is undisputed that said stock purchases were made while the Respondent was a member of the Board of Directors of Pinnacle Financial Partners ("Pinnacle"), serving as Chair of the Pinnacle Board of Directors Compensation Committee. Respondent had previously served as Lead Director for Pinnacle and had twenty years of bank board experience overall. It is undisputed that at all times that the

Respondent served in the aforementioned capacities with Pinnacle, Pinnacle maintained and enforced a policy prohibiting insider trading by its employees and directors. The Respondent admits that on or about January 12, 2015, he signed a certification acknowledging that he had reviewed Pinnacle's Trading Policy and Insider Trading Statement and certifying that he would comply with these policies. The Respondent admitted that in October 2015, he attended training on the subject of insider trading. As an attendee, Respondent was reminded that inside information is "...[m]aterial, nonpublic information you learn about Pinnacle... or another public company while serving as a director, officer, or employee of Pinnacle."

The panel finds that the Respondent admitted that in the course and scope of his position at Pinnacle that he received confidential, non-public information concerning Pinnacle and several other publicly-traded companies. The Respondent admitted that on December 1, 2015, he was informed at a meeting of the Executive Committee of the Board of Directors that the Pinnacle CEO had initiated discussions about acquisition of Avenue Bank ("Avenue"), another publicly traded company.

It was undisputed that on January 5, 2016, the Respondent was present for an Executive Committee Meeting of the Pinnacle Board of Directors where Pinnacle executives, including the CEO, briefed the Executive Committee on the potential acquisition of Avenue Bank. Per the testimony of the Respondent, the acquisition discussions included Pinnacle actively continuing those discussions after the meeting by having an investment bank reach out to Avenue Bank for further discussion of the acquisition. The Respondent admitted that the information discussed at the meeting

included details about potential price per share for Avenue stock. It is admitted by the Respondent, from the discussions at the meeting, that the members present, including the Respondent, expressed favor in the acquisition of Avenue Bank.

The Respondent testified that some of the discussions among the Executive Committee at the January 5, 2016, meeting also included reference to the contents of a SunTrust Robinson Humphrey Report, marked as Exhibit 6, specifically pages 24-25 of the 67 page report, and how the report “made a lot of sense” in the words of the Respondent, in reference to Pinnacle acquiring Avenue Bank. While Exhibit 6 is a report made available to the public, dated November 23, 2015, and had been available to the public, the Respondent admitted that he had received and reviewed the report well prior to the January 5th Executive Committee meeting and that he did not make any transactions based upon Exhibit 6 alone after viewing the same. The Respondent candidly admitted it was only after private nonpublic meetings wherein Pinnacle had actively engaged in, and were following through on more, discussions of acquiring Avenue Bank that the Respondent engaged in trade purchases for Avenue stock.

It is undisputed that after cessation of the Executive Committee meeting of the Pinnacle Board of Directors on January 5, 2016, that the Respondent purchased 6,179 shares of Avenue stock on the basis of material, non-public information that he obtained no later than the Pinnacle Executive Committee meeting on January 5, 2016. This stock purchase was accomplished by the Respondent placing multiple limit orders, approximately nine, at various price amounts throughout the morning of January 5, 2016, designed to achieve purchase at the lowest price per share for Avenue stock. The Respondent admitted it was his intention to

purchase approximately 10,000 shares of Avenue Stock using the limit orders the morning of January 5, 2016.

The Respondent left the country to travel to Ecuador the afternoon of January 5, 2016, after placing the limit orders, and did not return to the United States until January 11, 2016. Respondent did not take his cell phone on this trip. After returning to the United States, the Respondent checked the limit orders previously made on the 5th to determine the number of shares purchased. After discovering that only 6,179 shares were purchased using the limit orders on January 5, 2016, the Respondent purchased the additional 4,000 shares on January 11, 2016. The panel finds that the purchase of 4,000 shares on January 11th was completed with the same intent and information as the transactions on January 5th and was apart of one underlying objective. The panel does not find that these are multiple acts or a pattern of behavior based upon the overall evidence.

It is undisputed that the Respondent made these transactions in his own name, from his personal TD Ameritrade trading account. The panel finds that the Respondent purchased the Avenue stock using the same practice he would normally use in making any other ordinary transaction. The Respondent day trades using his TD Ameritrade account regularly. The panel finds there was no attempt by the Respondent to hide his purchase or intent to purchase the shares of Avenue stock on January 5th and January 11th. There is likewise no evidence that the Respondent shared the nonpublic information he learned with others in an effort to conspire in purchasing or profiting from stock purchased in a secreted manner. The transparency in how these transactions were completed supports the Respondent's ultimate explanation about the purchases and the panel finds him credible in that regard.

The Respondent readily admits his error in trading on nonpublic information and the gravity of the decision in hindsight. The Respondent in frank reflection on his actions admits he deceived himself into thinking that the Avenue stock purchase was okay at the time he completed the transaction – perhaps because general discussions between Pinnacle and Avenue had not yet reached the formal offer stage, or perhaps because the idea of the merger was based initially upon the public report of Exhibit 6. Regardless, the Respondent himself is genuinely perplexed as to how he could have justified the act and how he personally cannot wrap his head about what he was thinking, and the effect that one decision on January 5, 2016, has affected first and foremost his family; but at the same time, utterly wrecked what appears to be an otherwise impeccable 42 year legal career, resulting in a criminal conviction, serious financial repercussions, personal shame and embarrassment.

While it is admitted that the stock purchases of the Respondent was made for personal gain, the proof is undisputed that the actual gain was approximately \$56,000.00. The gains from the illegal stock trade has been forfeited with interest per Exhibit 9, which are in addition to other penalties expected in settling the civil action with the Securities and Exchange Commission (S.E.C.) as further reflected in Exhibit 9, and in addition the criminal penalties and punishment incurred by Exhibit 4. The hearing panel considers the actual gains resulting from the illegal stock purchases compellingly meager in comparison to entire circumstances. The panel finds the Respondent credible in his testimony and that the actual gain supports his explanation about his motives and intent when engaging in the initial stock purchase. The hearing panel notes that the personal gain from the illegal stock purchases is a fraction of the annual income actually earned by the Respondent in serving in his capacity on the Pinnacle

Board of Directors, not to mention his earnings from the legal profession. The panel finds these facts are important to the threshold determination of this hearing panel in administering discipline wherein the goal is to “protect the public” and whether and to what extent the public needs to be protected in the future from the Respondent.

The panel finds the Respondent’s thinking was clearly clouded by careless aforethought; but, convinced this one action and decision by the Respondent is not a true defining reflection of the Respondent as a person or a lawyer. Based upon the testimony of the Respondent, the hearing panel finds his own personal soul searching genuine. The panel finds that the insider trading act is an act of dishonesty, which is concerning for the legal profession in general that must be taken seriously; but, the panel also finds based upon the evidence this is an isolated incident by the Respondent. The Respondent by all evidence has no other concerning behavior that would indicate this isolated incident behavior would be repeated; or that the Respondent would engage in similar or other dishonest behavior, personally or as an attorney; or that this isolated behavior is a continuing concern to the public in executing the duties and responsibilities as a lawyer. It is undisputed that the Respondent has no prior disciplinary history in his 42 years of legal practice. By all accounts the Respondent has enjoyed a long and prosperous career built on years of hard work and dedication to the practice of law.

The hearing panel heard testimony presented by the Respondent from esteemed members of the legal community including, Senior Judge Don Ash (appearing under subpoena); Honorable Bill Harbison, Rutherford County Circuit Judge Mark Rogers (appearing under subpoena); Retired Senior Judge Steve Daniel (appearing under subpoena), and the Honorable John T. Bobo. The hearing panel also heard testimony from Dr. Sydney McPhee, President of Middle Tennessee State University, and Mayor of Rutherford County, Earnest Burgess. All

witnesses were aware of the federal criminal conviction to insider trading against the Respondent, though most had not personally discussed the facts with the Respondent, the public reporting on the same by media and newspapers did not leave much to the imagination as to the facts.

By all accounts from the testimony of these respected witnesses in the legal community, the Respondent has a reputation of delivering excellent legal advice and representation, as well as being honest and ethical in the execution of his obligations and responsibilities as an attorney. While all the witnesses admitted they were “surprised”, or “blown away” by the insider trading conviction, the ultimate effect on the Respondent’s character and reputation in the legal community, or faith that he could be trusted to continue to exercise ethical and honest acts as an attorney, was unwavering. He has general reputation for truthfulness and honesty in the community as demonstrated by all witnesses. Admittedly, some witnesses are not privy to whether there has been a change in the general community reputation as a result of the guilty plea; but, the impact upon his reputation, particularly in the legal community, remains largely intact in part because of the lack of a pattern of irresponsible, unethical or dishonest behavior and the apparent isolated nature of the actions leading to the conviction.

The Respondent has been licensed in the State of Tennessee since 1974 and is currently 69 years of age. The Respondent had no prior disciplinary history.

CONCLUSIONS OF LAW

The sole issue for this hearing panel is the imposition of final discipline. In determining the appropriate disciplinary sanction, the hearing panel is required to consider the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards). *Hanzelik v. Bd. of Prof' Responsibility of Supreme Court*, 380 S.W.3d 669, 681 (Tenn.

2012). The ABA Standards promote the consideration of all factors relevant to imposing the appropriate level of sanction in an individual case. *Hanzelik*, 380 S.W.3d at 681 (Tenn. 2012).

In *Cowan*, 388 S.W.3d at 271, the Tennessee Supreme Court directed that the role of the Panel is to protect the public in the future, not to punish the Respondent attorney. This directive is also embodied in the commentary to ABA Standard 1.1, Purpose of Lawyer Discipline Proceedings, which states the following:

While courts express their views on the purpose of lawyer sanctions somewhat differently, an examination of reported cases reveals surprising accord as to the basic purpose of discipline. As identified by the courts, the primary purpose is to protect the public. Second, the courts cite the need to protect the integrity of the legal system, and to insure the administration of justice. Another purpose is to deter further unethical conduct and, where appropriate, to rehabilitate the lawyer. A final purpose of imposing sanctions is to educate other lawyers and the public, thereby deterring unethical behavior among all members of the profession. As the courts have noted, while sanctions imposed on a lawyer obviously have a punitive aspect, nonetheless, it is not the purpose to impose such sanctions for punishment.

Therefore, this Panel must consider the facts in this case, apply the ABA Standards, and weigh the applicable mitigating and aggravating factors as directed by and in accordance with the ABA Standards in determining appropriate sanction to protect the public.

ABA Standard 5.11, Failure to Maintain Personal Integrity, is an appropriate standard to be considered by the hearing panel and states in relevant party,

Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud,

extortion, misappropriation ... ;

or

(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.

ABA Standard 5.12 states:

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

It is already established that this is a case of serious criminal conduct pursuant to Tenn. Sup. Ct. R. 9, § 22 and this hearing panel concludes that the type of serious criminal conduct at issue in this case, insider trading using confidential, non-public information, is conduct involving dishonesty, deceit, and misrepresentation, which primarily affects the integrity of the legal system. Considering the ABA standards, disbarment is the generally appropriate presumptive discipline, absent aggravating or mitigating circumstances.

ABA Standard 5.1 specifically provides that *absent* aggravating or *mitigating* circumstances, upon application of the factors set out in [ABA] Standard 3.0, the sanctions stated in 5.11 or 5.12 are *generally appropriate* in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit or misrepresentation. Therefore, this hearing panel considers aggravating and mitigating factors, pursuant to ABA Standards 9.22 and 9.32 in deciding what discipline should be imposed in accordance with ABA Standard 5.1 and 9.1.

The aggravating circumstances in ABA Standard 9.22 argued by the Board are:

9.22(b) dishonest or selfish motive;

9.22(c) a pattern of misconduct;

9.22(d) multiple offenses; and

9.22(i) substantial experience in the practice of law.

The panel finds that aggravating factors (b) and (i) are applicable; however, the panel finds that the Board has failed to establish factor (c), a pattern of misconduct, and factor (d), multiple offenses. The panel finds that the use of multiple limit orders to complete the one objective of purchasing a certain number of shares does not equal multiple offenses or a pattern as each limit order was in furtherance of one objective. While the acts occurred technically on two separate dates, January 5th and 11th, the panel finds that the Respondent's acts on the 11th was completed with the same information and intention that he had on January 5, 2016. The inapplicability of factors (c) and (d) are further supported by the fact that the Respondent was charged with one count of insider trading, as charged in the Information filed in the United States District Court for the Middle District of Tennessee, Exhibit 1. Respondent thereafter plead guilty to the single count in the Information.

However, the Respondent is an experienced attorney, who knew better than to engage in a dishonest act that breached a fiduciary duty to Pinnacle. He was at minimum careless and selfish in his aforethought.

The mitigating circumstances in ABA Standard 9.32 advanced by Respondent include, but are not limited to:

9.32(a) absence of a prior disciplinary record;

9.32(d) timely good faith effort to make restitution or to rectify consequences of
~~misconduct;~~

~~9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;~~

9.32(g) character or reputation;

9.32(k) imposition of other penalties or sanctions;

9.32(l) remorse.

The Respondent has advanced a total of twelve (12) mitigating factors citing ABA Standard 9.31 arguing the panel may consider any considerations or factors that may justify a reduction in the degree of discipline imposed. This panel does note that the Respondent has received other significant penalties and sanctions both through the SEC action and the criminal conviction as reflected in Exhibits 4 and 9, which has resulted in essentially compelled restitution and sanctions under Standard 9.4, which are neither aggravating or mitigating circumstances. As a result the panel, considering the *Cowan* case, this panel is unconvinced that factor 9.32(d) and (k) are appropriate mitigating factors. It is not lost on this panel that the Respondent will never again have the ability to sit on a board or be in a position of having private nonpublic information as such opportunity, presuming it was ever offered again, has been forfeited by the Respondent.

The panel does find that mitigating factors (a); (e); (g) and (l) are applicable in the case at bar based upon the findings facts. The panel notes in reference to factor (g) that “[t]he status of the witnesses vouching for the wrongdoing lawyer matters as well; members of the legal community are held in particularly high esteem in [disciplinary] proceedings, and when the lawyer cannot get a member of the legal community to vouch for this or her integrity, such an

absence is sometimes considered to partially deflate whatever character does exist.”¹ Such was not an issue in the case at bar, in fact, it was quite the contrary.

The seriousness of the fiduciary breach by the Respondent and the how the act itself reflects on integrity of the legal system is the overriding concern to this panel; however, the same is tempered somewhat by the undisputed fact that the act of insider trading by the Respondent was limited to this one particular incident in the Respondent purchasing stock in Avenue Bank. The mitigating factors clearly outweigh aggravating factors and the additional mitigating factors justify a deviation from the generally appropriate discipline of disbarment as the public is sufficiently protected by a discipline of a suspension for a period of twenty- five (25) months retroactive to the date of the Order of Enforcement on October 25, 2016, which also coincides with the completion of the Respondent’s federal sentence for insider trading per Exhibit 4.

In administering discipline, the panel is guided by the goal that the purpose of disciplinary proceedings is to protect the public not to punish the Respondent. The panel further finds this discipline is consistent with other legal precedent where courts have found disbarment recommended under Standard 5.11 too severe, even for serious criminal conduct, especially when presented with significant mitigating evidence and other compelling factors. *See, e.g., People v. Hanks*, 967 P.2d 141 (Colo. 1998)(while disbarment presumptive sanction under Standard 5.11(b) for operating an investment company in a way that involved violations of federal securities law, court accepted recommendation of inquiry penal for two year suspension given mitigating factors); *In re Neisner*, 16 A.3d 587 (Vt. 2010)(two year suspension ordered after lawyers felony convictions for, inter alia, giving false information to police authorities

¹ Quoting, David Luty, *In the Matter of Mitigation: The Necessity of a Less Discretionary Standard for Sanctioning Lawyers Found Guilty of Intentionally Misappropriating Client Property*, 32 Hofstra L. Rev. 999, *1020 (2004).

arising from lawyer's involvement in an automobile accident and initially persuading his wife to falsely claim she had been driving, court noting disbarment was presumptive sanction under Standard 5.11 but nonetheless held suspension warranted in light of mitigating factors, including acknowledgement of alcoholism and subsequent rehabilitation); *In re Disciplinary Proceedings Against Christopher*, 105 P.3d 976 (Wash. 2005)(mitigating factors along with consideration of unanimity and proportionality justified departure from presumptive sanction under Standard 5.11(b) and imposition of 18-month suspension on lawyer to falsified court documents and forced secretary's signature to hide lawyer's mishandling of client matter; *In re Disciplinary Proceedings Against George*, 746 N.W.2d 236 (Wis.2008)(suspension of four years and three months imposed, instead of presumptive sanction of disbarment under Standard 5.11, inter alia, on former states senator convicted of felony misuse of federal program funds in light of lack of prior disciplinary record, long record of public service, and real prospect for rehabilitation).

The panel realizes that there are varying cases of varying discipline administered; but, based upon the facts and circumstances of this case, consideration of the ABA rules and precedent, a suspension of twenty-five (25) months retroactive to the date of the Order of Enforcement on October 25, 2016 is the appropriate discipline.

JUDGMENT

Based upon the findings of fact and conclusions of law, it is the unanimous judgment of this hearing panel that the Respondent be suspended from the practice of law for twenty-five (25) months retroactive to the date of the Order of Enforcement on October 25, 2016.

IT IS SO ORDERED THIS THE 24th DAY OF MAY, 2017.

FOR THE PANEL:



MELANIE R. BEAN, PANEL CHAIR

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order has been sent via United States Mail, postage prepaid to, and courtesy copy by Electronic mail,

Jon D. Ross,
Counsel for Respondent
150 4th Avenue North, Ste 2000
Nashville, Tennessee 37219

Krisann Hodges
Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive, Suite 220
Brentwood, Tennessee 37027

This the 24th day of March, 2017.



MELANIE R. BEAN, PANEL CHAIR

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, James Carl Cope, 1502 Georgetown Court, Murfreesboro, TN 37129, and his counsel, Jon D. Ross, 150 4th Avenue North, Suite 2000, Nashville, TN 37219, by U.S. First Class Mail, and hand-delivered to Krisann Hodges, Deputy Chief Disciplinary Counsel, on this the 24th day of May, 2017.



Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.