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IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

BOARD OF PROFESSIONAL )  
RESPONSIBILITY OF THE )  
SUPREME COURT )  
OF TENNESSEE, )  
Petitioner, )  
v. )  
KEVIN L. FEATHERSTON. )

No. 07-1065

FINDINGS AND CONCLUSIONS

This cause came to be heard on the 17th day of July 2008, before Jon Kerry Blackwood, Senior Judge, sitting by designation upon the Writ of Certiorari filed by the Board of Professional Responsibility and the entire Record in this cause.

Kevin Featherston was licensed to practice Law in 1991. He was practicing Law in Jasper, Tennessee, when he was approached with an offer to join McKoon, Billings, Gold and Presley, P.C.<sup>1</sup> Mr. Featherston became a shareholder in the Law Firm on December 2, 1999, and remained a shareholder until his termination on June 7, 2006.

In February 1999, the shareholders of the Law Firm formed Tri-State Title Co. LLC.<sup>2</sup> Each shareholder of the Law Firm was a member of Tri-State. On June 5, 2001, Mr. Featherston became the Chief Manager of Tri-State. At the suggestion of Mr. Featherston, Tri-State and First Volunteer Bank formed a joint venture named First Volunteer Title Company, LLC.<sup>3</sup> Tri-State and First Volunteer Bank each owned 50% financial and voting interest. Mr. Featherston became the Chief

<sup>1</sup> Hereinafter referred to as "Law Firm."  
<sup>2</sup> Hereinafter referred to as "Tri-State."  
<sup>3</sup> Hereinafter referred to as "First Volunteer Title."

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Manager of First Volunteer Title and was the Tri-State representative on its Board of Directors. In 2003, Tri-State assigned its ownership in First Volunteer Title to the Law Firm. In 2005, Tri-State was dissolved. Later First Volunteer Bank surrendered its membership in First Volunteer Title. Therefore, the Law Firm became the sole owner of First Volunteer Title. Later, that name was changed to River City Title.

In October 2003, the Board of Directors of First Volunteer Title approved a resolution whereby Mr. Featherston would be paid a monthly salary of \$2,000 as Chief Manager. The Board consisted of two members from the Bank and Mr. Featherston.

During the period that Mr. Featherston was a shareholder in the Law Firm, the shareholders received compensation in the form of monthly draws. At the end of the year, the shareholders would receive additional compensation. This additional compensation would be divided by the members based upon their contribution to the Law Firm and by a formula devised for this purpose. At these year-end meetings, the shareholders, including Mr. Featherston would participate and make their "pitch" as to the additional compensation that might be awarded. Mr. Featherston never advised his fellow shareholders that he was drawing a monthly salary from First Volunteer Title.

First Volunteer Title operated in Jasper, Tennessee, separate from the main office of the Law Firm in Chattanooga. The lack of profitability of First Volunteer Title lead the Law Firm to close the Jasper office and moved it to its office in Chattanooga. On the night of June 6, 2000, Mr. Barry Gold, a shareholder in the Law Firm decided to look at First Volunteer Title's books and records. It was upon the inspection that Mr. Gold learned for the first time that Mr. Featherston was drawing a monthly salary as manager. Further examinations of the records revealed that Mr. Featherston had made a number of disbursements to himself for personal expenses. On February 8, 2005, Mr. Featherston withdrew \$600 from Tri-State's escrow account and deposited it into his personal account. On the other occasions, Mr. Featherson took \$500 and \$105 from the Tri-State account for

personal expenses. Those amounts were taken after Tri-State had stopped operating. Mr. Featherson did not report these disbursements to the Law Firm nor on his Federal Income Tax Return. Mr. Featherston also made charges on a Visa credit card totaling \$4738. These charges were to a card issued to First Volunteer Title. This card bill was paid for from First Volunteer Title's administrative account. Mr. Featherston also cashed an employment tax refund check of River City Title. Mr. Featherston did not have permission from the Law Firm for those actions.

After the Law Firm discovered these matters, meetings were held with members of the Law Firm and Mr. Featherson. In June 2006 the parties entered into a termination agreement. Mr. Featherston self reported these incidents to the Board of Professional Responsibility. The Hearing Committee found that Mr. Featherston had violated RPC 1.15 and RPC 8.4(b) and (c). After weighing aggravating and mitigating factors, the Hearing Committee entered judgment suspending Mr. Featherston for thirty (30) days. The Board of Professional Responsibility thereafter filed a Writ of Certiorari asserting that the Hearing Committee erred in concluding that the evidence supported only a thirty-day suspension.

Rule 9 Section 1.3, Tennessee Supreme Court Rule provides that a court may not overturn or modify the decision of the Hearing Committee unless the Hearing Committee's findings, conclusions or decisions are: (1) in violation of Constitutional or statutory provision, (2) in excess of the Committee's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, or (5) unsupported by evidence which is both substantial and material in light of the entire record.

Although Mr. Featherston characterized these disbursements to himself either as a bonus or salary advance, the Hearing Committee found that he wrongfully converted these funds for his own use and failed to advise his fellow Law Firm shareholders that he had taken these funds. In paying his personal credit card from First Volunteer Title funds, the Hearing Committee found that he

violated a fiduciary duty that he owed his fellow Law Firm shareholders. The Committee found that Mr. Featherston converted for his own use the tax refund. The Hearing Committee found that Mr. Featherston intentionally and dishonestly withheld monthly payment information from his fellow shareholders regarding his monthly salary. The Committee found that Mr. Featherston did so with the intent to profit personally. The Committee rejected Mr. Featherston's argument that the Operating Agreement of First Volunteer Title allowed him discretionary use of the title company's funds. The Hearing Committee found that Mr. Featherston's actions were criminal; violated a fiduciary duty to the Law Firm shareholders; involved deceit and dishonesty and that the misconduct "seriously, adversely reflects on the Respondent's fitness to practice Law." A thorough review of the transcript and Record in this case clearly supports the findings of the Hearing Committee.

In concurring with the findings of the Hearing Committee, the next question is the appropriate sanction in light of the ABA Standards for imposing lawyer sanctions. In determining the appropriate sanction, this Court recognizes that "we must evaluate each instance of attorney discipline in light of its particular facts and circumstances." *Bd. of Prof'l Responsibility v Maddox*, 148 S.W.3d 40 (Tenn. 2004). ABA Standard 5.11 provides as follows:

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

ABA Standard 5.11 addresses the issues when disbarment is appropriate. These instances include serious criminal conduct or intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

The Hearing Committee concluded that ABA Standard 5.12 applied in this case despite the findings of criminal conduct as well as deceit and dishonesty. While this Court feels that ABA 5.11

may be the appropriate standard, the Court finds that the Hearing Committee's conclusion that ABA Standard 5.12 is supported and that a period of suspension is appropriate.

In determining the appropriate period of suspension, ABA Standard 2.3 provides that suspension should be a period of time equal to or greater than six months. Also, the aggravating and mitigation factors must be weighed in determining the appropriate period of suspension. The Hearing Committee found three aggravating factors to wit:

- (a) The Respondent has substantial experience in the practice of Law, being licensed in Tennessee since 1991;
- (b) Respondent's actions constitute multiple offenses;
- (c) Respondent's failures constituted or contributed to a pattern of misconduct, incompetence or negligence.

This Court finds that there is substantial material evidence to support these aggravating factors. The monthly salary draws covered a period of twenty-seven (27) months. The unauthorized disbursements were a pattern of conduct. The Hearing Committee also found various mitigating factors that included his good character, no prior disciplinary action; restitution; self reporting and cooperation with the Law Firm after he was confronted regarding his salary from First Volunteer Title. It should be noted that Mr. Featherston was confronted on June 7, 2006, the day after Mr. Gold discovered the unauthorized salary. Mr. Featherston was told that he could either resign or be terminated. Thereafter, the Law Firm shareholders and Mr. Featherston entered into negotiations for a withdrawal agreement. The agreement negotiated the amount of restitution that Mr. Featherston should pay to the Law Firm. This Court finds that these actions of self reporting and restitution do not constitute actions undertaken by Mr. Featherston as an acknowledgment of misconduct, but as an attempt by Mr. Featherston as "damage control." During his testimony, Mr. Featherston did state that he felt remorse, but continued to assert that his actions were not misleading, but were authorized

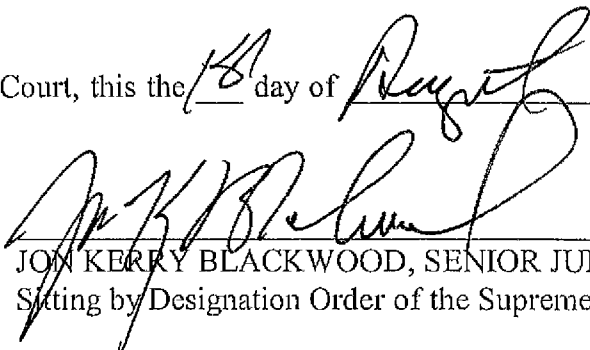
by the operating agreement with First Volunteer Title. However, he failed to report the disbursements for hours and personal expenses on his Federal Income Tax Returns; indicating a lack of candor and the intent to deceive. Finally, Mr. Featherston only disclosed these matters after confrontation. The Court finds that the Hearing Committee's finding of those two mitigating factors is not supported by evidence that is both substantial and material.

While sanctions in other cases are appropriate for the Court to consider in establishing uniformity, this Court does not find *Maddox, Id.*, appropriate to this case. In *Maddox*, the misconduct was not considered criminal. Neither the Hearing Committee nor the trial Court found that Respondent's conduct in *Maddox* seriously adversely reflected on his fitness. As previously mentioned, the Hearing Committee found Mr. Featherston's conduct to be criminal and involve deceit and dishonesty. These actions reflect serious misconduct.

The Court, in weighing the mitigating and aggravating factors, concludes that a ninety (90) day suspension from the practice of Law is appropriate.

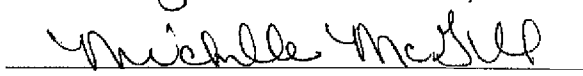
Wherefore, the Court concludes that Respondent should be suspended from the Practice of Law for a period of ninety (90) days.

All of which is ORDERED by the Court, this the 16 day of August 2008.

  
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JON KERRY BLACKWOOD, SENIOR JUDGE  
Sitting by Designation Order of the Supreme Court

CERTIFICATE OF SERVICE

I, Michelle McSill, Clerk, hereby certify that I have mailed a true and exact copy of same to all Counsel of Record this the 6 day of August, 2008.

  
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CLERK