

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
AT MEMPHIS

FILED
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OCT 08 2015

WILLIAM C. GOSNELL,
Petitioner,

vs.

Docket No
CT-001720-14 Div III

CIRCUIT COURT CLERK
BY  D.C.

BOARD OF PROFESSIONAL
RESPONSIBILITY of the Supreme Court
of Tennessee,
Respondent.

ORDER

This matter came to be heard on the 30th day of September, 2015, before the Honorable Don R. Ash, Senior Judge, on the Petition for Certiorari filed by William C Gosnell (sometimes hereinafter "Petitioner" or "Plaintiff") on April 15, 2014, requesting relief from the Judgment of the Hearing Panel, arguing the punishment imposed is too harsh and too severe. After hearing the presentation and argument of counsel for the Board as well as the record as a whole, this court makes the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

1 The Board of Professional Responsibility of the Supreme Court of Tennessee (the "Board") filed a Petition for Discipline against the Petitioner on February 13, 2013 (TR 1). An Answer was filed March 1, 2013

2 Petitioner was licensed to practice law in 1976 and has been actively practicing law since that time in the areas of personal injury, criminal defense and debtor bankruptcy (T. p. 5)

3. The Board's Petition for Discipline alleged Petitioner violated Rules 1 4, 3.3(a), 3.4(c), 8.4(a), 8 4(c), and 8 4(d) of the Tennessee Rules of Professional Conduct, citing the complaints of Mr Nicholas J. Owens, Jr., Esq., and Mr. Christopher Gray. The Board also filed a supplemental petition for discipline which alleged additional violations of the Tennessee Rules of Professional Conduct, Rule 1 1 and Rule 8 4(d)

4. On May 2, 2011, Petitioner was retained by Deedsha Dixon in a personal injury suit arising out of an automobile accident. Ms Dixon had been injured by the owner of a

vehicle which was insured by the American National Property and Casualty Company (hereinafter "ANPAC"), represented by Mr. Owens (T p 23-24).

5. In Ms Dixon's case, Mr. Owens and Petitioner ostensibly reached a settlement of \$25,000.00 for Ms. Dixon's full release of all claims against ANPAC's insureds. (T. p. 41-43) Mr Gosnell admitted Mr. Owens' testimony of this account was factually correct. (T. p. 57). A settlement check was issued by Mr. Owens and received by Petitioner on December 9, 2011. A letter was delivered with the check stating that the funds were not to be dispersed until Ms. Dixon executed her release of all claims against Mr Owens' clients and that the check should be returned if such condition was not met. (Ex. 8)

6 Ms. Dixon did not sign the release, and she informed Petitioner of this on December 13, 2011. (T. p. 86-87) Petitioner admitted he advised Ms. Dixon she could accept the \$25,000 offer from Mr. Owens and still pursue claims against ANPAC's insureds. (T. p. 58-59). Further, Petitioner admitted he did not perform any legal research or consult with any other personal injury attorneys regarding the advice given, nor had he ever accepted a settlement offer and pursued further claims in any other case. (T p 59-60, 89).

7 Petitioner altered the release prepared by Mr. Owens to release only the insurance company Ms. Dixon executed the altered release and Petitioner disbursed the \$16,666.67 settlement check to himself and Ms. Dixon (T p 36-37, 61-63, 90-91, 97) Mr. Owens directly paid \$8,333.33 to a third-party medical provider (Ex. 13).

8. On December 29, 2011—without explanation for the two week delay—Petitioner mailed the executed, altered release to Mr. Owens with a letter stating Ms. Dixon would only release ANPAC, itself, from liability and would be filing a lawsuit against ANPAC's insureds—the owner and the driver of the vehicle who struck her. (Ex 9). Mr. Owens demanded an unaltered executed release, and testified no settlement would have occurred had Mr Owens and ANPAC known the intentions of Ms Dixon. (T. p. 37-39) Petitioner was unable to obtain Ms. Dixon's signature on the original release

9 On behalf of ANPAC, Mr. Owens filed suit on February 27, 2012, alleging fraud in the inducement, outrageous conduct and breach of a settlement agreement by accepting the settlement and executing a substantially altered release. (Ex 10) After neither Petitioner nor Ms Dixon filed a personal injury action against Mr. Owens' clients before the statute of limitations expired, ANPAC dismissed its suit without prejudice

10. On June 13, 2012, Ms Dixon filed suit against Petitioner, alleging legal malpractice for Petitioner's failure to inform Ms. Dixon she could not settle with ANPAC without also foreclosing her rights against the owner and the driver of the vehicle, misrepresenting to Ms. Dixon she could sign the altered release; and failing to bring suit against the owner and driver of the vehicle within the statute of limitations (Ex. 14) The matter was settled prior to the December 2013 disciplinary hearing

11 Further, on February 9, 2011, Mr Gray retained Petitioner to file a Chapter 7 bankruptcy petition. This petition required the signature of Mr. Gray prior to filing. Petitioner mailed a prepared petition to Mr. Gray on February 21, 2011. (Ex. 2, T. p. 6-10)

12. On February 21, 2011, Petitioner also filed the prepared, and unsigned, petition electronically with the United States Bankruptcy Court. (T p. 9-11). After the petition had been filed, Mr Gray contacted Petitioner and stated he did not wish to proceed. (Tr. p. 9-10). After Petitioner filed a Motion to Dismiss the Petition, the Petition was dismissed on April 20, 2011. (Ex. 26).

13. Mr Gray's Petition, however, had been reported to credit agencies and Mr. Gray asked Petitioner to remove the bankruptcy filing from Mr. Gray's credit report (Ex. 3, 4). Due to the premature filing, Mr Gray was prevented from obtaining financing to complete the purchase of a new home. (T p 11, 15-16). Despite retaining other counsel to expunge the bankruptcy petition, Mr. Gray could not fully remove the bankruptcy filing for two (2) years.

14. Petitioner never volunteered to refund the filing fee or any portion of the attorney's fee to Mr. Gray. (T p 70) However, after being admonished and ordered to do so by the Bankruptcy court by order dated January 29, 2013, Petitioner refunded the filing fee and his attorney's fees to Mr. Gray on February 11, 2013. (Ex. 27).

15 A Supplemental Petition was granted and filed on September 24, 2013, (TR 14) listing prior disciplinary action against Petitioner.

a. On January 31, 1990, Mr. Gosnell received a Private Reprimand for lack of competence in serving legal process and inadequate communication with his client

b On April 21, 1997, Mr. Gosnell received a Public Censure for neglect, failure to communicate, making a false statement and improper recommendation of professional employment through another

c. On February 19, 1998, Mr. Gosnell received a Public Censure for neglect and inadequate communication in two complaints.

d. On July 15, 1998, Mr. Gosnell received a Private Informal Admonition for neglect and inadequate communication

e. On November 3, 1998, Mr. Gosnell received a Private Informal Admonition for neglecting to list two student loans in a client's Chapter 7 Petition for Bankruptcy.

f. On October 7, 1999, Mr. Gosnell received a Public Censure for non-suiting an action without the client's knowledge, delaying and neglecting a client's legal matter and failing to adequately communicate with his client.

g. On December 11, 2001, Mr. Gosnell received a Private Informal Admonition for failing to adequately communicate with his client

h. On May 20, 2003, Mr. Gosnell received a Private Informal Admonition for failing to adequately communicate with his client.

16. Petitioner filed an Answer on December 2, 2013. (TR 16)

17. On February 20, 2014, the Hearing Panel filed its Findings of Fact and Conclusions of Law imposing a disciplinary sanction of a two (2) year suspension for violations of Rules 1.1, 1.4(a), 1.4(b); 3.3(a); 3.4(c); 8.4(a); 8.4(c), and 8.4(d) and ordering restitution of \$600.00 to Mr. Owens

18. On April 15, 2014, Mr. Gosnell filed a Petition for Certiorari requesting relief from the judgment of the Hearing Panel, arguing the punishment imposed was too harsh and too severe.

19. A hearing was held on December 8, 2014. Mr. Gosnell failed to appear; counsel for the Board was present.

20. On December 10, 2014, this court entered an Order affirming the decision of the Hearing Panel.

21. On June 17, 2015, Mr. Gosnell filed pleading titled "Motion to Rehear Motion to Vacate Judgment on the Grounds of Excusable Neglect, Mistake[,] Inadvertance [sic] or Surprise Rule 60.02" with attached Affidavits. Mr. Gosnell contended he applied for disability status with the Board of Professional Responsibility prior to December 8, 2014, and therefore, he believed the December 8 hearing had been stayed

22. On August 24, 2015, this court entered an “Order Granting Rule 60 02 Motion to Vacate Judgment.”

B CONCLUSIONS OF LAW

1. Having made the aforementioned findings of fact, this court makes the following conclusions of law. First, Tennessee Supreme Court Rule 9, section 33 1(b), states the standard of review for this matter, in pertinent part:

The review shall be on the transcript of the evidence before the Hearing Panel and its findings and judgment. If allegations of irregularities in the procedure before the Hearing Panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the Hearing Panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the party filing the Petition for Review have been prejudiced because the Hearing Panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the Hearing Panel'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 the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the Hearing Panel as to the weight of the evidence on questions of fact.

2. Further, “[A]lthough the trial court may affirm, remand, reverse, or modify a Hearing Panel decision, the trial court may not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.” *Board of Professional Responsibility v Allison*, 284 S W 3d 316, 322 (Tenn. 2009)

3. In particular, this Court will not reverse the decision of a Hearing Panel so long as the evidence “furnishes a reasonably sound factual basis for the decision being reviewed” *Hughes v Board of Professional Responsibility of Supreme Court of Tennessee*, 259 S.W.3d 631, 641 (quoting *Jackson Mobilphone Co v. Tenn Pub Serv Comm’n*, 876 S.W.2d 106, 111 (Tenn Ct. App. 1993))

4. In *Jackson Mobilphone Co*, the Court of Appeals explained that “the court should review the record carefully to determine whether the administrative agency’s decision is supported by ‘such relevant evidence as a rational mind might accept to support a rational conclusion’” 259 S.W.3d at 111 (quoting *Southern Ry v State Bd of Equalization*, 682 S.W.2d 196, 199 (Tenn 1984))

C RULING

1. In his Petition, Petitioner alleges simply that the Hearing Panel’s imposed two year suspension is too harsh and too severe considering the nature of the infractions.

2. In its Findings of Fact and Conclusions of Law, the Hearing Panel found Petitioner “did not intend to honor the conditions” of settlement and he “knowingly misled” Mr. Owens to believe a settlement had been reached. Petitioner “intentionally and knowingly” altered the release and then “knowingly withheld material information” to induce Mr. Owens to remit a \$25,000.00 payment. Despite that Petitioner “knew or should have known he had no right to take the settlement proceeds out[,]” he dispersed such funds to Ms. Dixon. Petitioner then failed to notify Mr. Owens of his actions for two weeks “evidenc[ing] an intent to conceal his misappropriation of the settlement funds.” The Hearing Panel found Petitioner’s actions “reflect[ed] a complete lack of understanding” of fundamental tort law . . . [and] contract law[,]” a “lack of communication between attorney and client[,]” and a “lack of judgment and skill expected and required of reasonably competent attorneys in Tennessee.”

3. In its Findings of Fact and Conclusions of Law, the Hearing Panel further found Petitioner “misrepresented” to the Bankruptcy Court that Mr. Gray had authorized the filing of a bankruptcy petition, Petitioner failed to communicate with Mr. Gray, and Petitioner’s assumed authorization to file the petition without Mr. Gray’s signature—in violation of Bankruptcy Court rules—was “unreasonable.”

4. In imposing a two-year suspension and restitution, the Hearing Panel considered

Petitioner's "lengthy disciplinary history" and it determined that Petitioner "ha[d] not benefitted from the prior discipline imposed upon him" and "ha[d] not heeded any lessons from facing numerous prior disciplinary proceedings[.]" The Panel found "obvious" that "the public would be endangered and the legal profession and administration of justice would be disserved if Mr Gosnell were allowed to continue the practice of law " The Panel found applicable the following aggravating factors


- a) a pattern on misconduct,
- b) failure to acknowledge the wrongful nature of his conduct;
- c) prior disciplinary history;
- d) multiple offenses;
- e) substantial experience in the practice of law, and
- f) dishonest or selfish motive

5. Simply put, the evidence presented overwhelmingly "furnishes a reasonably sound factual basis" for the Hearing Panel's decision *Hughes*, 259 S W 3d at 641 (citation omitted) This Court does not find the panel's findings, inferences, conclusions, or decisions are in violation of constitutional or statutory provisions, in excess of the panel's jurisdiction, made upon unlawful procedure, arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, or unsupported by evidence which is both substantial and material in light of the entire record. The Court finds the Hearing Panel's findings of fact and conclusions of law are fully supported by the evidence presented in this matter and reversal or modification of the Hearing Panel's decision is simply not warranted

6. Plaintiff failed to demonstrate the Hearing Panel's conclusions were not supported by substantial and material evidence or that their decision was arbitrary and capricious. Plaintiff's suspension and obligation to pay restitution in the amount required by the Hearing Panel is fully supported by the facts and this Court must not substitute its judgment for that of the Panel as to the weight of the evidence on questions of fact.

7. This Court AFFIRMS the decision of the Hearing Panel and assesses costs to Plaintiff.

IT IS SO ORDERED, this the 5 day of October, 2015.



HONORABLE DON R. ASH

CERTIFICATE OF SERVICE

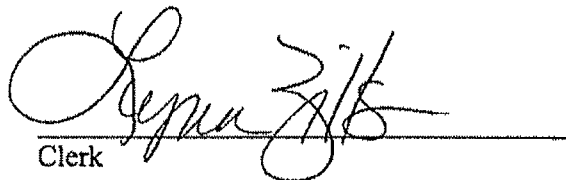
I hereby certify the foregoing has been served upon the following by U.S Mail on this the 12TH day of OCTOBER, 2015

William C. Gosnell

~~100 North Main Street~~ 44 N. SECOND ST, STE 502
Memphis, TN 38103

Russell Willis

10 Cadillac Drive Suite 220
Brentwood, TN, 37027



Clerk