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

IN RE: KING BETHEL HARRIS, III
Respondent, BPR No. 23282
An Attorney Licensed
to Practice Law in Tennessee
(Shelby County)

DOCKET NO. 2009-1841-9-KH
2010-1875-9-KH

FINDINGS OF FACT, CONCLUSIONS OF LAW
And JUDGMENT OF THE HEARING PANEL

This matter came before a duly appointed Hearing Panel on September 15, 2010 upon a Petition for Discipline, Docket Number 2009-1841-9-KH, filed on August 28, 2009 by the Board of Professional Responsibility (hereinafter "Board") against King Bethel Harris, III, Respondent (hereinafter "Respondent"); upon an Order of Default entered on December 8, 2009; upon a second Petition for Discipline, Docket Number 2010-1875-9-KH, filed by the Board on January 6, 2010; upon Respondent's Answer filed on March 3, 2010; upon Order consolidating the cases entered on April 13, 2010; upon statements of counsel; evidence presented; and upon the entire record in this cause. Pursuant to Tennessee Supreme Court Rule 9, Section 8, the Hearing Panel makes the following findings of fact and conclusions of law.

STATEMENT OF THE CASE

This is a disciplinary proceeding against the Respondent, King Bethel Harris, an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee.

The Board filed a Petition for Discipline, Docket Number 2009-1841-9-KH, on August 28, 2009. Respondent did not file an Answer to the Petition for Discipline within the required 20 days after service of the Petition. Respondent did not ask the Chair (of the Board) for an extension of time in which to file his Answer. On October 26, 2009 the Board filed a Motion for Default Judgment and that Allegations Contained in Petition for Discipline Be Deemed Admitted. An Order of Default granting the Board's Motion was entered on December 8, 2009. Pursuant to the Order of Default, all allegations contained in the Petition for Discipline are deemed admitted. The Hearing Panel set a Default Hearing for January 8, 2009 for the purpose of determining the discipline to be imposed in this matter.

On January 8, 2010, Respondent appeared and made an oral motion for opportunity to retain new counsel and prepare for hearing. The Panel granted this motion and continued the matter until February 17, 2010. Further, the Panel granted the motion of Ronald Lucchesi, Esquire, to withdraw from representation of Respondent.

On February 17, 2010, Respondent appeared with new counsel, Samuel Muldavin, Esquire. Mr. Muldavin requested additional time in which to file a motion to set aside the prior default judgment. The Panel agreed and a hearing was set for March 29, 2010.

By Order entered on April 1, 2010, the Panel denied Respondent's motion to set aside the default judgment in relation to Docket No. 2009-1841-9-KH.

On April 7, 2010, the Board filed a Motion to Consolidate Docket No. 2009-1841-9-KH with Docket No. 2010-1875-9-KH. On January 6, 2010, the Board filed another Petition for Discipline against Respondent. Respondent, through counsel, filed an Answer on March 3, 2010. By Order entered on April 13, 2010, the Panel agreed to consolidate both petitions.

The Panel entered a revised Scheduling Order on June 1, 2010 setting discovery deadlines and setting the hearing for September 15-16, 2010.

On May 20, 2010, the Board filed a Motion to Compel discovery responses. On June 7, 2010, counsel for Respondent, Samuel Muldavin, filed a Motion to Withdraw. Mr. Muldavin's motion was granted by Order entered on June 24, 2010. Respondent was also ordered to provide responses to outstanding discovery by June 28, 2010.

On June 30, 2010, the Board filed a Motion to Strike Respondent's Answer to Petition for Discipline and Enter a Judgment by Default due to Respondent's failure to provide discovery responses by the deadline. The Board voluntarily withdrew its Motion after Respondent provided the requested discovery.

On August 28, 2010, the Panel and Disciplinary Counsel participated in a previously scheduled pre-hearing conference call. Respondent did not participate. The Board sent notices of the hearing date and time to Respondent. Respondent did not appear for the disciplinary hearing despite having proper notice.

FINDINGS OF FACT

The allegations in the Petition for Discipline, Docket Number 2009-1841-9-KH have been deemed admitted due to the Respondent's failure to respond. Those facts are incorporated herein and the Panel's conclusions are based fully on each allegation deemed admitted.

1. **(Docket No. 2009-1841-9-KH) Complaint of Lindsay Gerrard -File No. 31437-9-DB**

On or around January 20, 2008, Mr. Gerrard was introduced to Respondent by Mr. Shawn Leege. Mr. Leege held himself out to be a financial consultant and commercial lender who was working with Respondent on an investment program. In a telephone conference on or

around January 20, 2008, Respondent explained that he was looking for an investor who would invest $125,000.00 in his company, Worldwide Financial Services Group, LLC. Respondent explained to Mr. Gerrard that the purpose of the investment was to secure a $10,000,000.00 bank guarantee. From the proceeds, Respondent promised a return of $1,000,000.00 on Mr. Gerrard's investment within sixty (60) days. Respondent stated that he was going to invest the same amount. Respondent stated that costs for legal work, representation and commission to Mr. Leege would be deducted from the proceeds earned by Mr. Gerrard. During this phone conference, Respondent stated that he was a licensed attorney who had experience in this type of transaction. However, Respondent was suspended from the practice of law in Tennessee at the time of this conversation. Respondent promoted his legal expertise as the key to a successful transaction. Respondent and Mr. Leege told Mr. Gerrard that the money would be placed in Respondent's attorney trust account so that it would be secure. Respondent explained that the transaction would be conducted with a person in Paris, France. Respondent stated that he had worked with this person before. Mr. Gerrard was persuaded to invest the money with Respondent due to Respondent's statements that he was a licensed attorney who had experience with these transactions.

Mr. Gerrard sent $125,000.00 by wire transfer to Respondent on January 22, 2008. Respondent provided wiring instructions on letterhead by Smith Harris, PLLC, "Attorneys and Counselors" with offices in Memphis and St. Louis, Missouri. Respondent's name is printed on the letterhead. Further, the wiring instructions clearly provide that Respondent's designation is "Attorney at Law." In fact, Respondent did not have an active license to practice law in either state.

Approximately three (3) months following the January 20, 2008 phone call, Mr. Gerrard began calling Respondent to inquire about the return on his investment. Mr. Gerrard had difficulty getting in touch with Respondent, however, when he was able to contact him, Respondent stated that the transaction was taking longer than usual. Respondent also stated that he was waiting on signed documents and that the person in France was not setting up the account as originally anticipated. After waiting several more months, Mr. Gerrard contacted Respondent and requested that the original $125,000.00 be returned immediately. Respondent promised to return the money within a couple of weeks but failed to do so. On August 18, 2008, Mr. Gerrard contacted Respondent to demand that his money be refunded. Respondent promised to repay Mr. Gerrard within three (3) days.

Respondent e-mailed Mr. Gerrard on September 4, 2008 again agreeing to repay Mr. Gerrard. Respondent's e-mail address improperly reflected his status as an attorney. His address is "attykbh@yahoo.com." Further, the e-mail reflects that he is employed at Smith Harris, LLC, which is his law firm. To date, Respondent has not repaid Mr. Gerrard.

Mr. Gerrard filed a complaint of ethical misconduct with the Board on August 26, 2008. On September 8, 2008, the Board sent a copy of the complaint to Respondent requesting a response within ten (10) days. Having received no response, the Board sent a Notice of Petition for Temporary Suspension on October 21, 2008 to Respondent alerting him that the Board intended to file a Petition for Temporary Suspension in the event he did not respond to the complaint within ten (10) days. Having still received no response, the Board sent the complaint to Respondent's home address on December 3, 2008. Once again, the Board sent a Notice of

Petition for Temporary Suspension to Respondent on December 17, 2008 due to Respondent's failure to respond. On January 23, 2009, Respondent's counsel sent a response to the complaint.

2. **(Docket No. 2010-1875-9-KH) Complaint of Mary Kellogg -File No. 32252-9-PS**

On June 11, 2009, a complaint was filed by Mary Kellogg alleging ethical misconduct by Respondent. On June 17, 2009, the Board sent a copy of the complaint to Respondent requesting a response within ten (10) days. Respondent did not provide a response despite several notices from the Board. The Board sent a Notice of Petition for Temporary Suspension on July 23, 2009 to Respondent alerting him that the Board intended to file a Petition for Temporary Suspension in the event he did not respond to the complaint within ten (10) days. Finally, on July 31, 2009, Respondent's counsel sent a response to the complaint.

Respondent is currently suspended from the practice of law. On January 3, 2008, Respondent was suspended for one (1) year by Order of the Supreme Court for the unauthorized practice of law. He has not petitioned for reinstatement.

On January 22, 2008, Ms. Kellogg agreed to invest money using the Respondent's company, Worldwide Financial Services Group, LLC, to be used to secure two bank guarantees. Ms. Kellogg, relying upon the Respondent's assertion that he was a licensed attorney, understood that her funds would be held in the Respondent's escrow account. At all pertinent times, the Respondent held himself out in emails and on letterhead as an attorney, despite the fact that his license to practice law was suspended for a year. Ms. Kellogg relied upon Respondent's representations that his law firm, Smith Harris, PLLC, would act as the escrow agent.

In accord with the Respondent's written instructions, Ms. Kellogg wired $85,000 to the Respondent on January 25, 2008. Respondent sent an e-mail on January 23, 2008 with wiring instructions in which he uses the address of Smith Harris, PLLC, a law firm in Missouri. He further identifies himself as "Esq". His e-mail address is "attykbh@yahoo.com". Throughout the period of the transaction, Respondent continued to use letterhead, addresses, etc. reflecting his status as an attorney. Respondent is not licensed to practice law in Missouri. Further, he has maintained an attorney trust account through Capitol One Bank, with the address designated as 1030 Highland Plaza Drive East, St. Louis, Missouri, 63110.

When the investment failed to materialize, Ms. Kellogg asked the Respondent for an accounting of the transaction. Respondent has never refunded any of Ms. Kellogg's money. He has not provided her with proof demonstrating the transfer of her funds to the parties or organization handling the procurement of the bank guarantees.

Respondent continued to use his attorney trust account after his suspension. In fact, much of the transactional history to this account indicates that he was receiving large amounts of money into the trust account and then moving the funds to his Worldwide account. On August 1, 2008, he transferred $500,000.00 to a Wells Fargo account from his trust account. Thereafter, the Smith Harris, PLLC escrow account remained dormant.

Prior to August 1, 2008, during the time he was suspended from the practice of law, Respondent conducted transactions from his Smith Harris, PLLC escrow account including the following:

Beginning balance as of 6/1/08 - $9,955.00
Deposit from LNJ Enterprises on 6/17/08 - $1,572,270.00
Withdrawal to Compass Bank on 6/18/08 - $1,530,770.00
Withdrawal to Worldwide Financial Svcs on 6/23/08 - $10,000.00

Deposit from Paul Ewell on 6/24/08 - $100,000.00
Withdrawal to Eric Ostigaard on 6/25/08 - $10,000.00

There are several withdrawals to Worldwide Financial, Respondent's other company. In July 2008, Respondent's trust account had similar transactions:

Beginning balance as of 7/1/08 - $90,970.00
Withdrawal to Worldwide Financial Svcs on 7/9/08 - $20,000.00
Deposit from LNJ Enterprises on 7/22/08 - $250,000.00
Withdrawal to U Dream It South LLC on 7/24/08 - $250,000.00
Deposit from Midwest Royalties LLC on 7/25/08 - $430,000.00
Withdrawal to Worldwide Financial Svcs on 7/30/08 - $50,000.00

Respondent's bank account records for Worldwide Financial Services Group from Bank of America dated January 2008 to present demonstrate that Respondent was making deposits and withdrawals between the Worldwide account and the Smith Harris account. The list below is a sample of such transactions:

Transfer from Smith Harris account on 5/2/08 - $75,000.00
Transfer from Smith Harris account on 6/17/08 - $5,000.00
Transfer from Smith Harris account on 6/23/08 - $10,000.00
Transfer from Smith Harris account on 5/30/08 - $5,000.00
Transfer to Smith Harris account on 7/3/08 - $50,000.00
Transfer from Smith Harris account on 7/9/08 - $20,000.00 (see matching transfer from Smith Harris account, above)

In relation to Ms. Kellogg's investment, the bank records demonstrate that she made a wire transfer into Respondent's Worldwide account on January 25, 2008. Around the same date, other investors related to the transaction also made deposits. A review of the Worldwide bank statements indicates that Respondent did not then transfer the total amount of the investors' funds to any third party. Respondent asserts that the investment for bank guarantees would be

facilitated by a person named Lord Phillipe Sinclair. Respondent's January 2008 statement indicates a debit to "Sinclair" in the amount of $75,000.00 on January 9, 2008, prior to the deposit by Ms. Kellogg and other investors. The account statements also reflect a debit in the amount of $150,000.00 to Paul Ewell, who was Lord Sinclair's attorney, according to Respondent. This transfer occurred in May 2008. Notably, Respondent's account balance in the Worldwide account as of May 1, 2008, prior to the transfer to Paul Ewell, was $93,927.35. This amount is appreciably less than the total Mr. Gerrard and Ms. Kellogg deposited in January, 2008, along with other investors.

CONCLUSIONS OF LAW

Pursuant to Tenn. S. Ct. R. 9, Section 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.

As noted above, Respondent has failed to answer the Petition for Discipline, Docket Number 2009-1841-9-KH. The Hearing Panel has already entered an Order of Default and, therefore, pursuant to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted.

The Panel finds that the Board has demonstrated by a preponderance of the evidence that Respondent has violated the following Rules of Professional Conduct ("RPC"s): 1.15, Safekeeping Property; 5.5, Unauthorized Practice of Law; 5.7, Responsibilities Regarding Law-

Related Services; 7.1 Communications Concerning a Lawyer's Services; 7.5(a)(b) Firm Names and Letterheads; and 8.4(a)(b)(c), Misconduct.

Once a disciplinary violation has been established, the appropriate discipline must be based upon application of the *ABA Standards for Imposing Lawyer Sanctions*, ("ABA Standards") pursuant to Section 8.4, Rule 9 of the Rules of the Supreme Court.

1. **Unauthorized Practice of Law**

Respondent is currently suspended from the practice of law. On January 3, 2008, Respondent was suspended for one (1) year by Order of the Supreme Court for the unauthorized practice of law. Based upon his prior disciplinary history, he certainly understands the impact of engaging in the unauthorized practice of law. Rules of Professional Conduct 5.5, 5.7 and 7.5(a)(b) govern the unauthorized practice of law, responsibilities regarding law-related services and firm names and letterheads. While on suspension, Respondent is not allowed to hold himself out to be a lawyer and must remove all indicia of lawyer, counselor at law, etc from his title. Further, Respondent shall not maintain a presence or occupy an office where the practice of law is conducted. Respondent's actions, as set forth in the statement of facts, constitutes a violation of these rules.

Respondent contends that he was not practicing law in relation to the investment transactions. He contends that he was acting on behalf of Worldwide Financial Services Group, not Smith Harris. This argument is belied by the transfers in and out of the Smith Harris escrow account, the letterhead, and the signature line in his e-mails. Respondent continually held

himself out as an attorney during these transactions. It is clear that he did not intend for these transactions to be independent of his law practice, thereby violating RPC 5.7.

In fact, the establishment of Smith Harris, PLLC is in and of itself suspect. Respondent's letterhead indicates that a branch of Smith Harris, PLLC is located in Missouri. He is not licensed in Missouri. It is a violation of RPC 5.5 to practice in another state where doing so is a violation of that state's ethical rules. His trust account address is established in Missouri. However, Smith Harris, PLLC was formed as a Limited Liability Company in Tennessee. Further, Respondent testified in his deposition that Wayman Smith of Smith Harris, PLLC has never actually been affiliated with the firm.

Tennessee Supreme Court Rule 9, Section 18.7 provides that attorneys who have been suspended may not "maintain a presence or occupy an office where the practice of law is conducted. The respondent shall take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, legal assistant, law clerk or similar title."

From the beginning, Respondent held himself out to be an attorney. Respondent was clearly continuing to use his attorney trust account. Both Mr. Gerrard and Ms. Kellogg were induced to invest with Respondent based upon his representations that their money would be safely held in his attorney trust account. The bank records demonstrate that Respondent received the money from complainants; yet, there is no obvious transfer of the funds to a third party for investment. Further, the Worldwide account is not a trust account. Respondent made regular withdrawals that slowly drained the account of complainants' funds. By his actions, Respondent effectively converted the funds of Ms. Kellogg and Mr. Gerrard for his own use, thereby violating RPCs 1.15 and 8.4(b) and (c).

ABA Standard 7.1 applies to the unauthorized practice of law and provides that disbarment would be an appropriate sanction in this case.

> 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

ABA Standard 5.11 is also appropriate because Respondent engaged in serious criminal conduct (misrepresentation, fraud, misappropriation or theft and intentional conduct involving dishonesty and deceit.)

> 5.11 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 theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; 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.

Finally, ABA Standard 8.1(b) applies in that Respondent "has been suspended for the same or similar misconduct, and intentionally and knowingly engages in further acts of misconduct that cause injury or potential injury to the public, legal system, or profession."

2. Failure to Respond

By failing to provide a response to the disciplinary complaints until after numerous requests from the Board, Respondent knowingly failed to respond to a lawful demand for information from the Board, as required in RPC 8.1. The Panel finds that ABA Standard 7.3

applies; however, given the aggravating factors enumerated below and other violations identified in this Order, it is appropriate to increase the level of discipline.

3. Aggravating Factors

Pursuant to ABA Standard 9.22, a number of aggravating factors are present in this case and are listed below. The following are the aggravating factors that are present in this case.

a) prior disciplinary offense;

b) dishonest or selfish motives;

c) a pattern of misconduct;

d) . . .

e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

f) . . .

g) refusal to acknowledge wrongful nature of conduct.

h) . . .

i) . . .

j) indifference to making restitution

Respondent's prior disciplinary offense is also related to the unauthorized practice of law. He was suspended for one (1) year for practicing law prior to being licensed in any state.

CONCLUSION

Based upon the foregoing, it is the judgment of this Hearing Panel that King Bethel Harris, III is hereby disbarred from the practice of law. The Hearing Panel also finds that

disbarment is an independently appropriate sanction for each of the consolidated docket numbers, No. 2009-1841-9-KH and No. 2010-1875-9-KH. The Hearing Panel further finds that King Bethel Harris, III should make restitution to the complainants as follows: Lindsay Gerrard in the amount of $125,000.00 and Mary Kellogg in the amount of $85,000.00. Restitution shall be a condition precedent to reinstatement.

IT IS SO ORDERED.

C. Coble Caperton, Panel Chair
For the Panel