

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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DAVIDSON COUNTY CHANCERY COURT

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J.C. & M.

Docket No. 15-509-III

SEAN K. HORNBECK)

Appellant/Petitioner)

v.)

THE BOARD OF PROFESSIONAL)
RESPONSIBILITY OF THE)
SUPREME COURT OF TENNESSEE)

Appellee/Respondent.)

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BOARD OF PROFESSIONAL
RESPONSIBILITY

MEMORANDUM OPINION AND ORDER

A hearing panel of the Board of Professional Responsibility consolidated six separate complaints involving Mr. Sean Hornbeck, an attorney licensed in New York in 1997 and in Tennessee in 2004. After a hearing, the panel made extensive findings of fact and concluded that disbarment was the appropriate punishment for Mr. Hornbeck's conduct.

Mr. Hornbeck filed a petition for certiorari to review the panel's actions. The proper standard of review is whether substantial and material evidence support the factual findings of the panel, and whether the panel's action was in violation of constitutional or statutory provisions, in excess of the panel's jurisdiction or was arbitrary and capricious. See Tenn. Sup. Ct. R. 9 § 13 (2006).

FINDINGS OF FACT

The panel made extensive findings of fact on each of the six complaints. Mr. Hornbeck does not seriously contest the findings; he relies on certain mitigating factors, such as his mental disability, the lack of any prior discipline, and the remoteness of prior offenses.

The Court, therefore, concludes that in the complaint filed by Mr. Harish Raghavan, Mr. Hornbeck accepted a payment of \$5,500,000.00 from Mr. Raghavan to be placed in a trust account as equity in a huge leverage transaction described by Mr. Hornbeck. Mr. Hornbeck represented to Mr. Raghavan that the

money would never leave the trust account and would never be used in the investment without Mr. Raghavan's permission.

On June 23, 2008, Mr. Raghavan gave Mr. Hornbeck permission to transfer the funds to an account at Credit Suisse on Mr. Hornbeck's suggestion that Wachovia Bank was in financial trouble.

Despite many promises from Mr. Hornbeck of pending payouts in June and July of 2008, nothing materialized. Mr. Raghavan requested a return of \$1,000,000.00 of his investment, which Mr. Hornbeck honored in early August. That \$1,000,000.00 refund was the only payment Mr. Raghavan ever received from his \$5-million-plus investment prior to the fall of 2008, when he joined a lawsuit in the Chancery Court of Davidson County naming Mr. Hornbeck as a defendant. He had not received any accounting from Mr. Hornbeck at that time.

The Court ordered Mr. Hornbeck to provide a detailed accounting on October 15, 2008. In a series of documents filed in response to the Chancellor's Order, Mr. Hornbeck made repeated false statements about having \$5,500,000.00 in the Credit Suisse account. Apparently, the only money in the account was \$125,000.00.

There were numerous payments from the fund to various individuals, all done without Mr. Raghavan's knowledge or consent. Mr. Hornbeck testified that some were made pursuant to the investment scheme, but there were at least thirteen withdrawals from the account in July and August of 2008, totaling \$1,081,000.00 – most of which were deposited in Mr. Hornbeck's law firm account. He offered no explanation for these transactions at the hearing. He pled a poor memory, despite telling the Chancellor that he was capable of understanding and truthfully answering questions.

In 2007 and again in 2008, Mr. Hornbeck was retained by other clients to represent them in various legal matters. He collected a \$1,500.00 retainer in one case and \$5,000.00 in the other. He did not seriously pursue either matter; he did not return his clients' calls, nor did he respond to the inquiries from adverse counsel.

In another case, Mr. Hornbeck talked to a client of the attorney he worked for while on disability/inactive status. He collected a \$10,000.00 retainer and told the client that the attorney wished to

be paid by two \$5,000.00 checks. Mr. Hornbeck deposited one of the checks in his own bank account, apparently with the forged endorsement of his employer. His employer testified that Mr. Hornbeck was not authorized to deposit her checks, nor did he have any reason to be talking to her client.

All of the facts recited above are supported by substantial and material evidence.

CONCLUSIONS

The panel concluded that Mr. Hornbeck violated the following Rules of Professional Conduct: 1.15(a) (Safekeeping Property and Funds), 1.3 (Diligence), 1.4 (Communication), 1.8(h) (Conflict of Interest), 1.16(d) (Declining or Terminating Representation), 5.5 (Unauthorized Practice of Law), and 8.4(a)(b)(c)(d) and (g) (Misconduct).

The ABA Standards for Imposing Lawyer Sanctions provide the following:

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

§4.41(a)(b)(c) Disbarment is generally appropriate when:

- a) A lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- 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.

§5.11(a)(b) 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.

§6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

§6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

The Court finds that the facts support the application of each of the cited sections of the ABA Standards. Disbarment is, therefore, an appropriate sanction.

The Standards, however, are all subject to aggravating or mitigating factors. Mr. Hornbeck argues that the panel should have considered that his mental state in 2008 was affected by being struck in the head by a metal pipe, leaving him in a “zombie” state with serious memory problems and dependence on prescription medications.

There is no dispute about the assault and the head injury. What the Court fails to find in the record, however, is evidence that his injury robbed him of his ability to reason or make distinctions between proper or improper conduct. His mental capacity in July and August of 2008 was strong enough to plan and execute an elaborate venture involving, at least, speculating with Mr. Raghavan’s money, if not outright conversion. In 2010, he concocted a scheme to obtain a \$5,000.00 payment from Mr. Smith, which he converted to his own use.

Finally, Mr. Hornbeck argues that since he has been suspended from the practice of law since 2008, he should be eligible for reinstatement, even if the Court affirms the panel’s decision of disbarment. In effect, he argues that his disbarment should be retroactive to the date he first lost the ability to practice. The Court finds, however, that he failed to raise that issue in the hearing before the panel, effectively waiving it.

It is therefore ORDERED that the decision of the hearing panel is affirmed in all respects and that the petition should be dismissed at the cost of the petitioner.

This 21st day of July, 2016.

Ben H. Cantrell
BEN H. CANTRELL
Special Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing pleading has been mailed to the following counsel on the 21st day of July, 2016.

William C. Moody, Esq.
Disciplinary Counsel
Board of Professional Responsibility
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William W. Hunt, III
Counsel for Petitioner
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RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

CS
Deputy Clerk and Master
Chancery Court

7-29-16
Date