

**IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

2015 NOV 10 PM 1:24
PROFESSIONAL RESPONSIBILITY
RW EXHIBIT 34

**IN RE: Sean K. Hornbeck,
BPR #23197, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Davidson County)**

DOCKET NO. 2013-2265-5-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for hearing on December 3, 2015 before a Hearing Panel consisting of Christopher C. Whitson, Chair, Matthew T. Harris, and Daniel C. Todd. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. Hornbeck was present for the hearing and represented by Allen Woods.

FINDINGS OF FACT

1. Harish Raghavan is a resident of New York, New York and the chairman of Gracie Pointe, LLC where he works in the finance business. (Raghavan deposition, p. 5, ll. 8 - 19)
2. Mr. Raghavan was introduced to Sean Hornbeck by Stan Dedmon in relation to an investment opportunity. (Raghavan deposition, p. 5, l. 20 – p. 6, l. 15)
3. Mr. Hornbeck came to New York to meet with Mr. Raghavan whereupon Mr. Hornbeck advised Mr. Raghavan that the funds advanced by Mr. Raghavan would be held in escrow, would not be moved and would not be at risk. (Raghavan deposition, p. 6, l. 22 – p. 7, l. 14)
4. Prior to their meeting, Mr. Raghavan had a few telephone conversations with Mr. Hornbeck during which Mr. Hornbeck represented to Mr. Raghavan that the funds placed in an escrow account would serve as essential equity behind a huge leverage transaction that would

create a profit on a trading platform. (Raghavan deposition, p. 7, l. 15 – p. 8, l. 11)

5. The escrow account would be maintained by Mr. Hornbeck in his capacity as an attorney. (Raghavan deposition, p. 8, ll. 18 – 22)

6. Mr. Raghavan and his partner caused funds to be transferred to Mr. Hornbeck's trust account in one transaction of \$3,000,000 and another of either \$2,000,000 or \$2,500,000. (Raghavan deposition, p. 9, ll. 8 – 22)

7. Mr. Hornbeck gave Mr. Raghavan the understanding that the money transferred to Mr. Hornbeck's trust account would remain there and never be used in investments. (Raghavan deposition, p. 9, l. 24 – p. 10, l. 4)

8. The money transferred to Mr. Hornbeck's trust account was to be "blocked funds" meaning that the money could not be moved from the account without Mr. Raghavan's approval. (Raghavan deposition, p. 10, l. 23 – p. 11, l. 4)

9. The only time Mr. Raghavan gave his permission to move funds from Mr. Hornbeck's trust account was when Mr. Hornbeck expressed concern for the creditworthiness of Wachovia Bank and Mr. Raghavan wrote an email to Mr. Hornbeck allowing him to move the money to an escrow account in another comparable bank. In doing so, Mr. Raghavan did not give permission for the money to be moved outside of an escrow account. (Raghavan deposition, p. 12, l. 18 – p. 13, l. 10)

10. Mr. Raghavan's permission to move the money from an escrow account at one bank to an escrow account at another bank was given in an email from Mr. Raghavan to Mr. Hornbeck and Jeff Weaver on July 23, 2008. (Raghavan deposition, p. 13, ll. 8 – 24, Ex. 2)

11. At no time did Mr. Raghavan ever authorize Mr. Hornbeck to transfer any of the money to any third parties. (Raghavan deposition, p. 14, ll. 1 – 3)

12. Mr. Raghavan was not aware that a portion of the money had been transferred to

Attorney Dippolito until after he hired Neal and Harwell. (Raghavan deposition, p. 14, l. 4 – p. 15, l. 4)

13. Mr. Raghavan wrote an email to Mr. Hornbeck on August 12, 2008 in which he stated, “Got the million. Thanks.” (Raghavan deposition, p. 15, ll. 6 – 16, Ex. 3)

14. Mr. Hornbeck promised Mr. Raghavan that within 30 days of each transaction there would be payouts made in June and July. (Raghavan deposition, p. 15, ll. 17 – 22)

15. Because none of these payouts had occurred, Mr. Raghavan asked Mr. Hornbeck to return at least \$1,000,000 and Mr. Hornbeck arranged for that to happen on August 12, 2008. His August 12, 2008 email to Mr. Hornbeck was to confirm receipt of the \$1,000,000. (Raghavan deposition, p. 15, l. 23 – p. 16, l. 6)

16. Aside from the \$1,000,000 returned on August 12, 2008, the only other money returned was a small amount “captured by the court of monies held by Mr. Hornbeck and Mr. Weaver.” (Raghavan deposition, p. 16, ll. 11 – 23)

17. Because the transaction was not working as Mr. Hornbeck had promised, meaning the payouts were not occurring, Mr. Raghavan made numerous unsuccessful efforts to communicate with Mr. Hornbeck and finally went to meet with him in upstate New York when Mr. Hornbeck came there to visit a sick relative. (Raghavan deposition, p. 17, l. 14 – p. 18, l. 13)

18. Mr. Raghavan never received an accounting from Mr. Hornbeck explaining what had been done with the money. (Raghavan deposition, p. 18, ll. 15 – 18)

19. Mr. Raghavan received an email from Mr. Hornbeck on September 4, 2008 in which Mr. Hornbeck told Mr. Raghavan that at least \$2,500,000 would be released “on the 10th.” Mr. Hornbeck also told Mr. Raghavan that there would be profit at that time and it appeared the amount of the profit would be at least \$40,000,000 and that he would issue bank subpoenas the following day to confirm the exact amount. (Raghavan deposition, p. 18, l. 19 – p. 19, l. 8, Ex. 4)

20. Mr. Hornbeck is 45 years of age and graduated from law school in 1996. He was first licensed to practice law in 1997 in New York and the District of Columbia. (Transcript vol. 1, p. 38, ll. 5-19)

21. Jeff Weaver worked for Mr. Hornbeck at Hornbeck Law. (Transcript vol. 1, p. 41, ll. 17 - 22)

22. Mr. Hornbeck testified that he received between \$2,000,000 and \$2,500,000 from a joint venture that included Mr. Raghavan that was transferred with the clients' permission to William Dippolito who was to keep the money in his trust account. (Transcript vol. 1, p. 44, ll. 8 - 22)

23. Mr. Hornbeck testified that his agreement was with Enpetro, not Mr. Raghavan. (Transcript vol. 1, p. 45, ll. 11 - 21)

24. Most of Mr. Hornbeck's records have been lost. (Transcript vol. 1, p. 45, ll. 3 - 10)

25. Mr. Hornbeck has a poor memory of this period of time. (Transcript vol. 1, p. 50, l. 25 - p. 51, l. 2)

26. At the time Mr. Hornbeck gave his deposition he was not able to remember the name of Enpetro. (Transcript vol. 1, p. 45, ll. 17 - 19)

27. At the hearing, Mr. Hornbeck testified that he doesn't remember the details of how the transaction was supposed to work. (Transcript vol. 1, p. 45, l. 20 - p. 46, l. 1)

28. Mr. Hornbeck disputed Mr. Raghavan's testimony that the money was to remain in Mr. Hornbeck's trust account and never be moved without his permission. Mr. Hornbeck admits that he didn't remember "half of this" until seeing the emails made exhibits at the hearing. (Transcript vol. 1, p. 46, l. 6 - p. 48, l. 23)

29. Mr. Hornbeck doesn't recall how a profit was to be made from the transaction.

(Transcript vol. 1, p. 48, l. 24 – p. 49, l. 2)

30. Mr. Hornbeck doesn't recall how he was to be compensated. (Transcript vol. 1, p. 49, ll. 3 - 5)

31. Mr. Hornbeck testified that \$2,500,000 was transferred from the Hornbeck Law trust account to Mr. Dippolito pursuant to the authorization of Enpetro. (Transcript vol. 1, p. 49, l. 20 – p. 50, l. 9)

32. When Mr. Hornbeck gave his deposition he couldn't remember if he had authorization to transfer the money to Mr. Dippolito. (Transcript vol. 1, p. 50, ll. 10 - 14)

33. Mr. Hornbeck testified that he didn't remember having authorization to transfer the money until he saw the word "defendants" in Exhibit 4 during the hearing. (Transcript vol. 1, p. 50, ll. 15 - 22)

34. The statement for the Law Office of Sean Hornbeck IOLTA account at Wachovia Bank for May 31, 2008 through June 30, 2008 reveals the account had a beginning balance of \$100. (Transcript vol. 1, p. 54, ll. 2 – 12, Ex. 5)

35. Deposits totaling \$2,601,122 were made to the account that month. (Transcript vol. 1, p. 54, ll. 13 - 15, Ex. 5)

36. Of those deposits, Mr. Hornbeck cannot say that any of them are not related to the joint venture involving Mr. Raghavan. (Transcript vol. 1, p. 55, ll. 6 – 13, Ex. 5)

37. On June 20, 2008, a counter-withdrawal was made in the amount of \$50,000 but Mr. Hornbeck testified that he does not know what it was for. (Transcript vol. 1, p. 55, ll. 14 -22, Ex. 5)

38. A transfer was made to Mr. Dippolito that month in the amount of \$2,500,000. (Transcript vol. 1, p. 55, ll. 23 – 25, Ex. 5)

39. During July, 2008, deposits were made to the IOLTA account totaling \$3,074,919.

(Transcript vol. 1, p. 56, ll. 3 – 8, Ex. 5)

40. On July 14, 2008, \$200,000 was transferred from the IOLTA account to Solsticium.

(Transcript vol. 1, p. 60, ll. 11 – 16, Ex. 5)

41. Mr. Hornbeck doesn't remember why the money was transferred to Solsticium.

(Transcript vol. 1, p. 60, l. 25 – p. 61, l. 6)

42. On July 16, 2008, \$5,867 was transferred from the IOLTA account to Ms. Budynowicz. (Transcript vol. 1, p. 61, ll. 7 – 16, Ex. 5)

43. On July 16, 2008, \$250,000 was transferred from the IOLTA account to Mr. Budynowicz but Mr. Hornbeck doesn't remember why. (Transcript vol. 1, p. 61, ll. 17 – 19, Ex. 5)

44. Mr. Hornbeck doesn't remember Mr. Raghavan telling him to make these transfers and Mr. Hornbeck did not seek Mr. Raghavan's written authorization to make them. (Transcript vol. 1, p. 61, ll. 20 -21)

45. Mr. Hornbeck testified that a written joint venture agreement gave him authorization to make these transfers but he does not have the document. (Transcript vol. 1, p. 62, ll. 13 – 20)

46. On July 16, 2008, \$1,500,000 was transferred from the IOLTA account to Solsticium. (Transcript vol. 1, p. 64, ll. 21 – 23, Ex. 5)

47. In July, 2008, four counter-withdrawals were made from the IOLTA account in the amounts of \$25,000, \$25,000, \$20,000 and \$20,000 but Mr. Hornbeck does not know why. (Transcript vol. 1, p. 64, l. 24 – p. 65, l. 6, Ex. 5)

48. Mr. Hornbeck has no idea if this is part of the joint venture's money. (Transcript vol. 1, p. 65, ll. 7 – 8, Ex. 5)

49. When a counter-withdrawal from the IOLTA account in the amount of \$25,000 was

made on July 3, 2008, a deposit in that amount was also made to a Hornbeck Law operating account. (Transcript vol. 1, p. 65, l. 13 – p. 66, l. 2, Ex. 5)

50. When a counter-withdrawal from the IOLTA account in the amount of \$25,000 was made on July 10, 2008, a deposit in the amount of \$24,000 was made to a Hornbeck Law operating account. (Transcript vol. 1, p. 66, ll. 3 – 8, Ex. 5)

51. When a counter-withdrawal from the IOLTA account in the amount of \$20,000 was made on July 17, 2008, a deposit in the amount of \$19,000 was made to a Hornbeck Law operating account. (Transcript vol. 1, p. 66, ll. 9 – 14, Ex. 5)

52. When a counter-withdrawal from the IOLTA account in the amount of \$20,000 was made on July 22, 2008, a deposit in that amount was made to a Hornbeck Law operating account. (Transcript vol. 1, p. 66, ll. 15 – 22, Ex. 5)

53. On July 23, 2008, \$850,000 was transferred from the IOLTA account to a Hornbeck Law account at Regions Bank which Mr. Hornbeck cannot explain. (Transcript vol. 1, p. 67, ll. 3 – 9, Ex. 5)

54. In August, 2008, the IOLTA account had an opening balance of \$119,974 and a closing balance of zero. (Transcript vol. 1, p. 67, ll. 10 – 17, Ex. 5)

55. On August 11, 2008, a counter-withdrawal was made from the IOLTA account in the amount of \$11,000 and a deposit in the same amount was made to the operating account. (Transcript vol. 1, p. 67, l. 24 – p. 68, l. 8, Ex. 5)

56. On August 14, 2008, a counter-withdrawal was made from the IOLTA account in the amount of \$10,000 and a deposit in the same amount was made to the operating account. (Transcript vol. 1, p. 68, ll. 9 – 14, Ex. 5)

57. On September 18, 2008, a counter-withdrawal was made from the IOLTA account in the amount of \$30,000 and a deposit in the same amount was made to the operating account.

(Transcript vol. 1, p. 68, ll. 15 – 20, Ex. 5)

58. Mr. Hornbeck has no explanation for why these amounts were moved from his IOLTA account to his operating account. (Transcript vol. 1, p. 68, l. 21 – p. 69, l. 1, Ex. 5)

59. On July 30, 2008, Mr. Hornbeck's operating account was used to purchase a \$9,000 plane ticket to Switzerland. (Transcript vol. 1, p. 70, ll. 2 – 11, Ex. 5)

60. Mr. Hornbeck filed a petition for bankruptcy in 2005 that was dismissed in 2012. (Transcript vol. 1, p. 71, ll. 8 – 14)

61. Mr. Hornbeck owned two homes with large mortgages. (Transcript vol. 1, p. 71, l. 15 – p. 73, l. 5)

62. Mr. Hornbeck owed money to the IRS. (Transcript vol. 1, p. 73, ll. 6 – 13)

63. Mr. Hornbeck owed a student loan in the amount of \$93,000. (Transcript vol. 1, p. 73, ll. 14 – 16)

64. The bankruptcy was dismissed because Mr. Hornbeck got most of his debts paid off. (Transcript vol. 1, p. 74, ll. 17 – 21)

65. On July 23, 2008, when Mr. Raghavan wrote the email (Ex. 2) authorizing Mr. Hornbeck to transfer money from one trust account to another, there was a balance in the trust account of only \$54,474. (Transcript vol. 1, p. 86, ll. 6 – 18, Ex. 5)

66. Mr. Hornbeck filed a suit in Chancery Court, Reata v. ESM Limited, et al. Mr. Raghavan intervened in that lawsuit and named Mr. Hornbeck as a defendant. (Transcript vol. 1, p. 88, l. 18 – p. 89, l. 6)

67. On October 15, 2008, Mr. Hornbeck was ordered by the Chancery Court to provide a detailed accounting of \$5,500,000 that Mr. Raghavan caused to be deposited in his trust account. (Transcript vol. 1, p. 89, ll. 17 – 24, Ex. 6)

68. On October 26, 2008, Mr. Hornbeck was ordered by the Chancery Court to file un-

redacted copies of his bank statements at Wachovia Bank and Credit Suisse. (Transcript vol. 1, p. 90, ll. 4 – 16, Ex. 7)

69. By November, 2008, Mr. Hornbeck no longer had the \$5,500,000 that had been deposited in his trust account in any account of his. (Transcript vol. 1, p. 91, ll. 2 – 8)

70. Pursuant to the court orders, an accounting was filed showing a balance over \$2,500,000 in an account of Mr. Hornbeck's. (Transcript vol. 1, p. 93, ll. 2 – 6, Ex. 8)

71. However, the money was not actually in Mr. Hornbeck's account at the time because it had been transferred to Mr. Dippolito. (Transcript vol. 1, p. 93, ll. 7 – 10)

72. When copies of Mr. Hornbeck's Wachovia IOLTA statements were filed in response to the court orders, the \$2,500,000 transfer to Mr. Dippolito had been redacted. (Transcript vol. 1, p. 96, ll. 4 – 17, Ex. 8)

73. A purported email from a Credit Suisse bank officer was filed in response to the court orders confirming a balance in Mr. Hornbeck's account of over \$5,500,000. (Transcript vol. 1, p. 96, ll. 18 – 22, Ex. 8)

74. However, Mr. Hornbeck did not have that amount in his account. (Transcript vol. 1, p. 96, ll. 23 – 25)

75. Jeff Weaver functioned as the administrative director of his law firm. (Transcript vol. 1, p. 97, ll. 22 – 25)

76. On November 26, 2008, Mr. Hornbeck was ordered by the Chancery Court to transfer all funds in his Credit Suisse account to the Clerk and Master. (Transcript vol. 1, p. 100, ll. 1 – 10, Ex. 9)

77. On November 30, 2008, a letter was written on Mr. Hornbeck's letterhead, over his electronic signature, instructing Credit Suisse to transfer \$125,000 from Mr. Hornbeck's account to Jeff Weaver's account at Regions Bank. (Transcript vol. 1, p. 100, l. 24 – p. 101, l. 8, Ex. 10)

78. Mr. Hornbeck testified before Chancellor McCoy in Chancery Court that despite the medications he was taking he was able to understand and truthfully answer questions. (Transcript vol. 1, p. 105, ll. 2 -- 8, Ex. 11)

79. Mr. Hornbeck testified falsely before Chancellor McCoy in Chancery Court that he had a balance in his Credit Suisse account of \$5,500,000. (Transcript vol. 1, p. 105, l. 16 – p. 106, l. 2, Ex. 11)

80. Mr. Hornbeck testified falsely before Chancellor McCoy in Chancery Court that \$2,500,000 had been transferred from Wachovia Bank to Credit Suisse when it had not been. (Transcript vol. 1, p. 106, l. 21 – p. 107, l. 4, Ex. 11)

81. Mr. Hornbeck was temporarily suspended from the practice of law by the Tennessee Supreme Court on December 15, 2008. (Transcript vol. 1, p. 108 ll. 14 – 17, Ex. 12)

82. Mr. Hornbeck was placed on disability inactive status by the Tennessee Supreme Court on January 14, 2009. (Transcript vol. 1, p. 108 ll. 6 – 9, Ex. 13)

83. Mr. Hornbeck was removed from disability inactive status on October 21, 2011. (Transcript vol. 1, p. 109 ll. 20 – 24, Ex. 14)

84. Mr. Hornbeck remains temporarily suspended. (Transcript vol. 1, p. 110, ll. 3 – 5)

85. While temporarily suspended, Mr. Hornbeck maintained a presence where the practice of law was conducted by his work in the law office of Mary Clement. (Transcript vol. 1, p. 111, ll. 4 – 9)

86. Mr. Hornbeck worked for attorney Mary Clement for several months in 2010. (Transcript vol. 1, p. 115, ll. 4 – 25)

87. Mr. Hornbeck functioned as an office assistant, performing secretarial functions, typing, assisting with marketing, greeting clients, answering the telephone, and going to meet with prospective clients. (Transcript vol. 1, p. 116, ll. 1 – 22)

88. Mr. Hornbeck performed basic legal research for Ms. Clement. (Transcript vol. 1, p. 118, ll. 10 – 14)

89. Mr. Hornbeck met with a client of Ms. Clement, Glover Palmer Smith, outside the office and asked him to write two checks to Ms. Clement, each in the amount of \$5,000. (Transcript vol. 1, p. 119, ll. 16 – 19)

90. One of those checks was deposited into Mr. Hornbeck's bank account. (Transcript vol. 1, p. 119, ll. 20 – 21)

91. Mr. Hornbeck went to court with Ms. Clement on one occasion and sat at counsel table in order to hand exhibits to Ms. Clement. (Transcript vol. 1, p. 181, ll. 10 – 18)

92. Ms. Clement billed her clients for Mr. Hornbeck's time. (Transcript vol. 1, p. 184, ll. 13 – 15)

93. Elizabeth Garland retained Mr. Hornbeck on May 21, 2008 to represent her in a contract dispute. (Transcript vol. 2, p. 185, ll. 10 – 20)

94. Ms. Garland paid Mr. Hornbeck a \$1,500 retainer. (Transcript vol. 2, p. 186, ll. 9 – 12, Ex. 15)

95. After May of 2008, Ms. Garland telephoned Mr. Hornbeck's office on multiple occasions but no one ever returned her calls. She received no emails from Mr. Hornbeck. (Transcript vol. 2, p. 186, ll. 13 – 24)

96. The only evidence Ms. Garland has that Mr. Hornbeck performed any work on her behalf is a copy of one letter he wrote to the adverse party that was provided to her by the Tennessee Department of Commerce and Insurance. (Transcript vol. 2, p. 186, l. 25 – p. 187, l. 14)

97. Ms. Garland never received a bill from Mr. Hornbeck nor did he refund any of the retainer she paid. (Transcript vol. 2, p. 187, ll. 15 – 19)

98. Mr. Hornbeck did not accomplish anything on Ms. Garland's behalf. (Transcript

vol. 2, p. 187, ll. 20 – 21)

99. Mr. Hornbeck did not return Ms. Garland's file until March, 2009, after she filed a complaint against him. (Transcript vol. 2, p. 187, ll. 22 – 25)

100. Joe Dougherty retained Mr. Hornbeck to represent him in a dispute with Turnberry Homes, Inc. regarding a contract to purchase a home. (Transcript vol. 2, p. 190, ll. 13 – 23)

101. Mr. Dougherty's first contact with Mr. Hornbeck was by telephone in May, 2007. He first met with Mr. Hornbeck in his office in July, 2007. (Transcript vol. 2, p. 191, ll. 9 – 24)

102. During the telephone call, Mr. Hornbeck requested a retainer. He did not tell Mr. Dougherty upon what basis he would bill him. (Transcript vol. 2, p. 192, l. 8 – p. 193, l. 6)

103. Following the July, 2007 meeting, Mr. Hornbeck did not communicate with Mr. Dougherty. He did not respond to any of Mr. Dougherty's telephone calls and emails. (Transcript vol. 2, p. 193, l. 16 – p. 194, l. 2)

104. Mr. Hornbeck did not advise Mr. Dougherty that he had granted Turnberry Homes, Inc. an indefinite extension to answer the lawsuit filed by Mr. Hornbeck. (Transcript vol. 2, p. 194, ll. 6 – 16)

105. Mr. Dougherty would not have agreed to an indefinite extension because of their living circumstances. (Transcript vol. 2, p. 194, l. 18 – p. 195, l. 20)

106. Mr. Hornbeck did not advise Mr. Dougherty that Turnberry Homes, Inc. was marketing the home that Mr. Dougherty had contracted to buy. (Transcript vol. 2, p. 195, ll. 10 – 12)

107. Mr. Dougherty eventually tried to hire another lawyer because Mr. Hornbeck was not responding to his calls. (Transcript vol. 2, p. 195, ll. 19 – 23)

108. Mr. Dougherty eventually requested a refund of \$5,000 from Mr. Hornbeck. As a result, Mr. Hornbeck prepared a proposed settlement agreement. (Transcript vol. 2, p. 196, ll. 3 –

20, Ex. 16)

109. The settlement agreement was never executed and Mr. Dougherty never received a refund.

110. Mr. Hornbeck did not advise Mr. Dougherty of the desirability of seeking independent legal advice before entering into a settlement agreement with Mr. Hornbeck. (Transcript vol. 2, p. 197, ll. 1 – 6)

111. Other than speaking with the attorney for Turnberry Homes, Inc., Todd Panther, on a couple of occasions, Mr. Hornbeck accomplished nothing for Mr. Dougherty. (Transcript vol. 2, p. 197, ll. 8 – 19)

112. Mr. Dougherty was only able to reach a resolution with Turnberry Homes, Inc. as a result of the efforts of Tennessee Consumer Affairs. (Transcript vol. 2, p. 197, ll. 20 – 24)

113. Mr. Dougherty paid Mr. Hornbeck a \$5,000 retainer. (Transcript vol. 2, p. 207, ll. 2 – 6)

114. The delay in prosecuting Mr. Dougherty's matter potentially caused him to lose the opportunity to purchase the home. (Transcript vol. 2, p. 212, ll. 14 – 18)

115. Mr. Hornbeck agreed verbally to refund \$5,000 to Mr. Dougherty. (Transcript vol. 2, p. 217, ll. 8 – 16)

116. During their initial meeting, Mr. Hornbeck did not tell Linda Dougherty, the wife of Mr. Dougherty, what he was going to charge them. (Transcript vol. 2, p. 234, ll. 16 – 18)

117. Ms. Dougherty made numerous efforts to reach Mr. Hornbeck by telephone without a response. (Transcript vol. 2, p. 236, ll. 19 – 23)

118. Mary Clement is an attorney serving a suspension as a result of allowing Mr. Hornbeck to work in her practice while he was temporarily suspended. (Transcript vol. 2, p. 249, l. 21 – p. 250, l. 5)

119. Mr. Hornbeck had no reason for meeting with Mr. Smith on September 17, 2010.
(Transcript vol. 2, p. 250, ll. 10 – 18)

120. After he paid his initial retainer, Ms. Clement's procedure was to send Mr. Smith bills for her fees. (Transcript vol. 2, p. 250, ll. 19 – 24)

121. There was no outstanding bill to Mr. Smith at the time Mr. Hornbeck met with him.
(Transcript vol. 2, p. 250, l. 25 – p. 251, l. 3)

122. Ms. Clement did not ask Mr. Hornbeck to collect any money from Mr. Smith.
(Transcript vol. 2, p. 250, ll. 4 – 7)

123. At the time of Mr. Hornbeck's meeting with Mr. Smith, Mr. Hornbeck was not allowed to deposit Ms. Clement's checks. (Transcript vol. 2, p. 251, l. 16 – p. 252, l. 4)

124. Ms. Clement never asked Jeff Weaver to deposit her checks and he was not authorized to sign her name to checks. (Transcript vol. 2, p. 252, l. 24 – p. 253, l. 4)

125. The endorsement on the \$5,000 check written by Mr. Smith and deposited to Mr. Hornbeck's account is not in Ms. Clement's handwriting. (Transcript vol. 2, p. 273, ll. 7 – 11)

126. Mr. Smith is an inmate at the Rutherford County Jail. (Smith deposition, p. 5, ll. 18 – 20)

127. Mr. Smith was convicted of making a false 911 call (Smith deposition, p. 6, ll. 11 – 12) and tampering with evidence. (Smith deposition, p. 7, l. 1)

128. Mr. Smith met with Mr. Hornbeck at a Mexican restaurant in Shelbyville where Mr. Hornbeck discussed the status of his case with him. (Smith deposition, p. 11, l. 12 – p. 12, l. 21)

129. During that meeting, Mr. Hornbeck told Mr. Smith that Ms. Clement needed two \$5,000 checks. (Smith deposition, p. 12, l. 22 – p. 13, l. 2)

130. Mr. Smith told Mr. Hornbeck that Ms. Clement's routine is to mail an itemized statement to him after which he mails a check and he asked Mr. Hornbeck for the statement. Mr.

Hornbeck told Mr. Smith he would receive the statement later. (Smith deposition, p. 13, ll. 9 – 19)

131. Mr. Smith told Mr. Hornbeck that he would just write one check for \$10,000 but Mr. Hornbeck replied that Ms. Clement would rather have two checks for \$5,000. (Smith deposition, p. 13, l. 25 – p. 14, l. 2)

132. Mr. Smith gave Mr. Hornbeck two checks made payable to Ms. Clement in the amount of \$5,000 each. (Smith deposition, p. 14, ll. 9 – 11, Ex. 17)

133. Attorney Todd Panther represented Turnberry Homes, Inc. in its dispute with the Doughertys. (Panther deposition, p. 4, ll. 10 – 16)

134. Mr. Panther wrote a letter to Mr. Hornbeck on June 27, 2007 in which Mr. Panther proposed a settlement offer. Mr. Hornbeck did not respond. (Panther deposition, p. 4, l. 17 – p. 5, l. 11, Ex. 18)

135. Mr. Panther wrote a letter to Mr. Hornbeck on August 21, 2007 in which he stated that he had telephoned Mr. Hornbeck on several occasions, that Mr. Hornbeck had not responded to the June 27, 2007 letter, that Turnberry Homes, Inc. is actively marketing the home, and confirming that Mr. Hornbeck had agreed to an indefinite extension for Turnberry Homes, Inc. to reply to the lawsuit. (Panther deposition, p. 5, l. 13 – p. 5, l. 20, Ex. 19)

136. Mr. Panther telephoned Mr. Hornbeck on multiple occasions after the June 27, 2007 letter. Mr. Panther was never able to speak with Mr. Hornbeck and on some of those occasions no one answered the phone. (Panther deposition, p. 6, ll. 3 – 14)

137. Mr. Hornbeck did not respond to the August 21, 2007 letter, either. (Panther deposition, p. 6, ll. 19 – 21)

138. Jeff Weaver provided Mr. Hornbeck with false financial information for use in Mr. Hornbeck's testimony in Chancery Court. (Transcript vol. 2, p. 308, ll. 12 – 22)

139. Mr. Weaver felt indebted to Mr. Hornbeck because of assistance Mr. Hornbeck

provided Mr. Weaver in the past. (Transcript vol. 2, p. 309, ll. 1 – 19)

140. Mr. Weaver prepared false documents for Mr. Hornbeck that he knew Mr. Hornbeck would present to Chancery Court. (Transcript vol. 2, p. 309, ll. 20 – 24)

141. Mr. Weaver admittedly altered Credit Suisse bank statements. (Transcript vol. 2, p. 314, ll. 3 – 7)

142. Mr. Weaver admittedly altered an email to Mr. Hornbeck from a Credit Suisse officer regarding the balance in Mr. Hornbeck's account. (Transcript vol. 2, p. 314, ll. 8 – 10)

143. \$144,975 was deposited by wire transfer from a Hornbeck account into Jeff Weaver's Regions Bank account on December 26, 2008. (Transcript vol. 2, p. 317, ll. 4 – 13, Ex. 20)

144. Mr. Hornbeck admittedly failed to communicate adequately with Elizabeth Garland. (Transcript vol. 2, p. 328, ll. 4 – 8)

145. Mr. Hornbeck admitted that Ms. Garland is entitled to a refund of her retainer and testified that he would send it to her the night of the hearing.¹ (Transcript vol. 2, p. 328, ll. 14 – 16)

146. Because he claimed to remember material facts for the first time on the day of the hearing, because he still is unable to remember so many other material facts and because he offered little if any explanation for transfers from his trust account, Mr. Hornbeck was not a credible witness.

147. Because he admitted submitting false evidence for introduction in Chancery Court in order to help Mr. Hornbeck, Mr. Weaver was not a credible witness.

¹ Disciplinary Counsel has received no proof that Mr. Hornbeck actually did so.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Sup. Ct. R. 9, § 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 or herself 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 of the State of Tennessee shall constitute misconduct and be grounds for discipline.

2. Mr. Hornbeck failed to respond adequately to Mr. Raghavan's efforts to communicate with him about the fate of the money Mr. Raghavan caused to be transferred to Mr. Hornbeck's trust account. Mr. Hornbeck failed to respond to Mr. Raghavan's request that he provide an accounting of the money. Therefore, Mr. Hornbeck violated RPC 1.4 (Communication).

3. Mr. Hornbeck represented to Mr. Raghavan that he would maintain the money that Mr. Raghavan caused to be transferred to him in his trust account. He agreed not to transfer that money out of his trust account without Mr. Raghavan's permission. He agreed to maintain the funds risk-free and return them to Mr. Raghavan at the conclusion of the transactions. Therefore, by failing to return all but \$1,000,000 to Mr. Raghavan, Mr. Hornbeck violated RPC 1.15(a) (Safekeeping Property and Funds).

4. On June 20, 2008, without offering any explanation for doing so, Mr. Hornbeck made a counter-withdrawal from his trust account in the amount of \$50,000. On July 23, 2008, without offering any explanation for doing so, Mr. Hornbeck transferred \$850,000 from his trust account to his operating account. Between July 3, 2008 and September 18, 2008, without offering any explanation for doing so, Mr. Hornbeck made 11 counter-withdrawals from his trust account totaling \$141,000 and deposited \$139,000 of that in his operating account. In addition, Mr. Hornbeck transferred \$4,455,867 to William Dippolito, Solsticium and Mr. and Mrs. Budynowicz without authorization. On December 26, 2008, after being ordered by Chancellor McCoy to pay

all the remaining money into court, Mr. Hornbeck transferred \$144,975 into Jeff Weaver's Regions Bank account. By participating in the misappropriation of this money, Mr. Hornbeck violated RPC 8.4(b) and (c) (Misconduct).

5. Mr. Hornbeck testified in Chancery Court that he had a balance of \$5,500,000 in his Credit Suisse account when he did not. Mr. Hornbeck submitted a false accounting, altered bank statements and an altered email to make it appear he still had the money that Mr. Raghavan caused to be transferred to his trust account. By supplying this false evidence to Chancellor McCoy, he violated RPC 8.4(b), (c) and (d) (Misconduct).

6. By failing to pursue Ms. Garland's matter, Mr. Hornbeck violated RPC 1.3 (Diligence).

7. By failing to communicate with Ms. Garland, Mr. Hornbeck violated RPC 1.4 (Communication).

8. By failing to refund Ms. Garland's \$1,500 retainer and failing to promptly return her file, Mr. Hornbeck violated RPC 1.16(d) (Declining or Terminating Representation).

9. By failing to pursue the Doughertys' matter, and failing to communicate with Mr. Panther, Mr. Hornbeck violated RPC 1.3 (Diligence) and 3.2 (Expediting Litigation).

10. By failing to communicate with the Doughertys, Mr. Hornbeck violated RPC 1.4 (Communication).

11. By failing to refund the Doughertys' \$5,000 fee, Mr. Hornbeck violated RPC 1.16(d) (Declining or Terminating Representation).

12. By negotiating with the Doughertys for the release of their claims against him in exchange for a refund of their fee, Mr. Hornbeck attempted to violate RPC 1.8(h) (Conflict of Interest).

13. By scheming to defraud Mr. Smith of \$5,000, Mr. Hornbeck violated RPC 8.4(b) and (c).

14. By his employment at Ms. Clement's law practice in violation of the orders of the Supreme Court, Mr. Hornbeck violated RPC 5.5 (Unauthorized Practice of Law) and 8.4(d) and (g) (Misconduct).

15. Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a), Misconduct.

16. The acts of dishonesty by Mr. Hornbeck described herein seriously adversely reflect on his fitness to practice.

17. The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

18. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

19. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

4.11 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

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

4.32 FAILURE TO AVOID CONFLICTS OF INTEREST

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.42 LACK OF DILIGENCE

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes serious or potential injury to a client; or
- (c) a lawyer engages in a pattern of neglect and injury or potential injury to a client.

5.11 FAILURE TO MAINTAIN PERSONAL INTEGRITY

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.

6.21 ABUSE OF THE LEGAL PROCESS

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 client or a party, or causes serious or potentially serious interference with a legal proceeding.

7.1 VIOLATION OF OTHER DUTIES OWED AS A PROFESSIONAL

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional 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.

20. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- a) dishonest or selfish motive;
- b) a pattern of misconduct;

- c) multiple offenses;
- d) refusal to acknowledge wrongful nature of conduct;
- e) substantial experience in the practice of law;
- f) indifference to making restitution; and
- g) illegal conduct.

21. Based upon the evidence and admissions in this matter, the Hearing Panel finds that disbarment is the appropriate discipline.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. Hornbeck should be disbarred pursuant to Tenn. Sup. Ct. R. 9, § 4.1. Mr. Hornbeck is ordered to pay restitution to Glover Palmer Smith in the amount of Five Thousand Dollars (\$5,000.00), to Elizabeth Garland in the amount of One Thousand Five Hundred Dollars (\$1,500.00) and to Joe and Linda Dougherty in the amount of Five Thousand Dollars (\$5,000.00). Payment of this restitution shall be a condition of reinstatement. In the event restitution is made by the Tennessee Lawyers' Fund for Protection of Clients (TLFCP), Mr. Hornbeck will be responsible for reimbursement of TLFCP in the same amount.

IT IS SO ORDERED.

Chris Whitson
Christopher C. Whitson, Panel Chair

Matthew T. Harris
Matthew T. Harris, Panel Member

Daniel C. Todd
Daniel C. Todd, Panel Member

by permission
ccw

by permission
ccw

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.