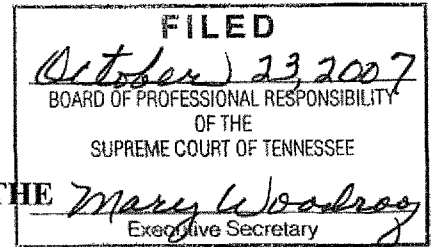


**IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY OF THE
SUPREME COURT OF TENNESSEE**



IN RE: DAVID J. JOHNSON,
Respondent, (BPR #4595)
An Attorney Licensed to
Practice Law in Tennessee
(Shelby County)

DOCKET NO. 2000-1145-9-C

JUDGMENT OF THE HEARING PANEL

This cause came to be heard on the 11th day of May, 2006, before the Hearing Panel of Edward L. Stanton, III, Panel Chair, Robert L.J. Spence, Jr., and Carolyn S. Watkins, all duly appointed and authorized by the Board of Professional Responsibility of the Supreme Court of Tennessee and based upon the testimony and exhibits presented at the hearing, the Hearing Panel finds as follows:

FINDINGS OF FACT

1. David J. Johnson ("Respondent") was represented by attorneys Tim Edwards and Ed Wallace.
2. The Board of Professional Responsibility was represented by Deputy Chief Disciplinary Counsel Laura L. Chastain.
3. Disciplinary Counsel called as witnesses: Respondent, David Gilliland ("Gilliland") and attorney Bruce Kramer ("Kramer").
4. Respondent formed Hammersmith Trust, LLC ("Hammersmith") on or about October 1996 at the request of Gilliland. (Respondent testimony at 46, 111, 112)

5. Respondent was hired to act as a trustee and dual signatory on two Master Accounts of Hammersmith, (Exhibit 10; Respondent testimony at 66; Testimony of Gilliland at 184)

6. Hammersmith was marketed to investors using Respondent's resume and insurance policy and the fact that Respondent was third-party trustee and dual signatory. (Testimony of Gilliland, at 190, 191; at 223, 227)

7. Respondent participated in setting up bank accounts and brokerage accounts for Hammersmith. (Respondent testimony at 72)

8. Respondent did not use his law firm trust account to hold investor funds. (Respondent testimony at 121)

9. Respondent co-signed checks and served as a co-signatory on the accounts based upon wiring instructions from Gilliland or Jack Higgins. (Respondent testimony at 129)

10. Respondent authorized Gilliland to create letterhead for him as Trustee and draft letters to investors which Respondent signed. (Respondent testimony at 166)

11. Respondent testified that he did not have any control over the investment funds. (Respondent testimony at 127)

12. Hammersmith offered investors returns of 360% and much higher for participating in the program. (Respondent testimony at 104, 116; Testimony of Gilliland at 254, 255)

13. Interest payments were paid to investors using the principal funds of other investors. (Testimony of Gilliland at 254)

14. Gilliland testified that in October 1998 he shared a legal opinion with Respondent which stated the Hammersmith program was an unregistered security. (Testimony of Gilliland at 276, 277)

15. In early 1999 Respondent started getting calls from Hammersmith investors regarding return of their funds, as many as eighty (80) to one hundred (100) a day. (Respondent testimony at 121, 122)

16. When Respondent would receive an investor call inquiring about funds, Respondent would contact Gilliland for a status report. (Respondent testimony at 126,127; Gilliland testimony at 234)

17. Respondent continued to act as Trustee and dual signatory for Hammersmith until approximately June, 1999. (Respondent testimony at 171)

18. Respondent's compensation increased from the initial contract amount of \$1,000 per account to \$7,500 in 1999. (Exhibit 3; Respondent testimony at 70, 71)

19. Over the course of three years, Respondent made over \$100,000 in compensation as Trustee. (Exhibit 3; Respondent testimony at 134)

20. Respondent was indicted along with eight active participants in Hammersmith by the federal government in the Northern District of Florida for his participation in Hammersmith. (Respondent testimony at 124)

21. In 2001, Respondent underwent a ten week criminal trial in the Northern District of Florida at Pensacola, Florida regarding Hammersmith. (Respondent testimony at 124)

22. Respondent was acquitted of all charges. (Respondent testimony at 124)

23. A federal judge in Dallas, Texas established a receivership for the dissolution of Hammersmith. (Kramer testimony at 175)

24. Respondent was sued civilly by the receiver for his participation in Hammersmith.
(Respondent testimony at 132)

25. Respondent's insurance carrier made a payment on Respondent's behalf to settle the civil litigation. (Respondent testimony at 132)

26. Respondent testified that he was unaware the Hammersmith system was both a Ponzi scheme and a fraud until the criminal trial in 1999. (Respondent testimony at 139,140)

CONCLUSIONS OF LAW

1. The Board has adopted the *Standards for Imposing Lawyer Sanctions* (the "Guide") promulgated by the American Bar Association. *See Bd. of Prof'l Resp. v. Maddux* 148 S. W.3d 37, 40 (Tenn. 2004).

2. The Panel "must evaluate each instance of attorney discipline in light of its particular facts and circumstances." *Maddux* at 40.

3. The Scope of the Tennessee Rules of Professional Conduct provide that "[t]he Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer has to act upon uncertain or incomplete evidence of the situation." *Tenn. R. Prof'l. Conduct, Scope* ¶ 5.

4. DR 1-102 states that:

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

5. After being informed in 1997 that Gilliland was being sued in U.S. District Court in Arkansas for securities fraud, Respondent should have exercised greater judgment and precautionary diligence with inquiring into the operations of the Hammersmith program that Gilliland retained Respondent to serve in the capacity of trustee.

6. Respondent, as an attorney, should have exercised greater judgment and precautionary diligence in investigating the alleged illegalities of the Hammersmith program when he was advised of a legal opinion obtained by Gilliland in October 1998 stating the Hammersmith program was selling unregistered securities.

7. Respondent, as an attorney, should have exercised greater judgment and precautionary diligence in investigating the alleged illegalities of the Hammersmith program when he began receiving up to 100 calls per day from Hammersmith investors in early 1999. Instead, Respondent continued to sign agreements as "Trustee" for Hammersmith and receive increased monthly compensation from Hammersmith in the amount of \$7,500.

8. The Hearing Panel declines to give credence to Respondent's claim that it was only after being indicted that he learned that Gilliland and his associates had promoted Hammersmith as an investment vehicle returning incredibly high yields.

9. The Hearing Panel finds that Respondent's failure to investigate or question the actions of Gilliland along with Respondent's decision to turn a blind eye to the operations of the Hammersmith program, when he knew or should have known the Hammersmith program was a fraud and scheme, adversely reflect upon his fitness to practice law in violation of DR 1-102(A)(6) of the Code of Professional Responsibility.

10. The Hearing Panel finds that the remaining violations charged against Respondent were not established by a clear preponderance of the evidence presented to the Hearing Panel.

11. The Hearing Panel finds that based on the evidence presented, the Respondent's conduct adversely reflected upon his fitness to practice law in violation of DR 1-102(A)(6) of the Code of Professional Responsibility.

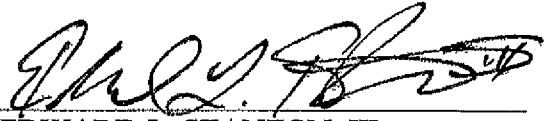
12. The Hearing Panel gives weight to Respondent's lack of a disciplinary record pursuant to Section 9.32 of the *ABA Standards for Imposing Lawyers' Sanctions*.

13. Respondent's preoccupation with his wife's terminal illness and death during the relevant period is also an appropriate mitigating factor. *Id.*

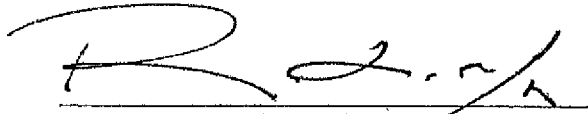
IT IS THEREFORE, ORDERED by this Hearing Panel:

- (1) That Respondent, David J. Johnson, shall be suspended from the practice of law for a period of thirty (30) days;
- (2) That Respondent, David J. Johnson, shall complete one hundred (100) hours of community service within two (2) years of the date of this Order; and
- (3) Respondent, David J. Johnson, shall pay all costs incurred by the Board of Professional Responsibility in this cause on or within ninety (90) days of the date of this Order.

ENTERED this 2nd day of October, 2007



EDWARD L. STANTON, III
Panel Chair



ROBERT L.J. SPENCE, JR.
Panel Member



CAROLYN S. WATKINS
Panel Member