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BOARD OF PROFESSIONAL  
RESPONSIBILITY

PCW EXEC. SEC.

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

IN RE: PHILIP K. LYON,  
Respondent, BPR No. 13661  
An Attorney Licensed to  
Practice Law in Tennessee  
(Davidson County)

DOCKET NO. 2012-2118-5-KB

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JUDGMENT OF THE HEARING COMMITTEE

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This cause came on to be heard by the Hearing Committee of the Board of Professional Responsibility of the Supreme Court of Tennessee on December 12, 2012, and was adjourned to December 19, 2012, at which time the hearing was concluded upon filing by both parties, post-trial briefs. The cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. The Hearing Committee, Laura L. Chastain, chair, Charles K. Grant and Rhonda A. Kinslow, makes the following Findings of Fact and submits its judgment in this cause as follows:

I. Statement of the Case

1. A Petition for Discipline was filed on May 9, 2012, charging the Respondent with violations of the Tennessee Rules of Professional Conduct in File No. 34668-5-PS.
2. Respondent was duly served with the Petition and on June 25, 2012, Respondent answered the Petition.
3. After appropriate notice to the parties this matter was set for Hearing on December 12, 2012 and the proof was completed that day. The Hearing was adjourned until December 19, 2012 when each party filed its post trial brief.
4. The Hearing Committee found it significant that the Board of Professional Responsibility did not seek summary suspension or place any safeguards on Respondent's trust account, evidencing that the Board did not feel that the public was at risk from Respondent's continued practice of law and access to a client trust account.

File No. 34668-PS-Self Report

5. At the Hearing, Respondent testified that all factual allegations of the Petition for Discipline were true. He stipulated to those factual allegations.
6. On July 1, 2010, Respondent's long-time friend and client, David Harp, deposited \$74,101.68 into Respondent's trust account.
7. Mr. Harp's deposited funds were unrelated to any present or future legal work that Respondent was to perform for Mr. Harp, but the funds were merely deposited for safekeeping.
8. Between September 13, 2010 and November 12, 2010, Respondent directed his legal assistant to make nine (9) separate withdrawals of Mr. Harper's trust funds totaling \$51,300.00 and to transfer the funds to Respondent's operating account to cover operating expenses.
9. Respondent was able to reimburse \$21,300.00 of Mr. Harp's trust funds by directing his legal assistant to transfer said amount from his operating account in September and October 2010.
10. Between October 5, 2010, and November 12, 2010, Respondent directed his legal assistant to make four (4) separate withdrawals of Mr. Harp's trust funds totaling \$42,000.00 and transfer the funds to Respondent's personal bank account.
11. Respondent was able to reimburse \$2,000 of Mr. Harp's trust funds by directing his legal assistant to transfer said amount from his personal bank account on November 5, 2010.
12. On November 12, 2010, there was a shortfall of \$70,000.00 from Mr. Harp's trust account.
13. In February 2011 Mr. Harp notified Respondent that he would require the funds previously deposited with Respondent in order to close the purchase of real estate.
14. Respondent reported to Mr. Harp that the funds were not available.
15. Due to the unavailability of his funds, Mr. Harp was unable to close on the purchase of real estate and suffered financial losses.
16. In August 2011, Respondent issued a check in the amount of \$76,000.00 to Mr. Harp from Ms. Ashley's trust funds.
17. In August 2011, Respondent issued a check to Ms. Ashley from her trust funds in the amount of \$269,457.14, which reflected the amount owed to Ms. Ashley.
18. In August 2011, Respondent contacted F. Keith Adkinson, Esquire, his co-counsel in Ms. Ashley's case.
19. Mr. Adkinson was entitled to 50% of a one-third (1/3) contingency fee for the work he performed in Ms. Ashley's case with Respondent.
20. Respondent requested a delay in the payment to Mr. Adkinson of his share of legal fees.
21. Mr. Adkinson refused a delay in the payment of his fee and requested Respondent to promptly issue a check to him.
22. In August 2011, Respondent issued a check to Mr. Adkinson from Ms. Ashley's trust funds in the approximate amount of \$70,000.
23. Respondent soon discovered that he had insufficient funds in his trust account to cover the checks issued to Ms. Ashley and Mr. Adkinson.

24. On the morning of September 1, 2011, Respondent went to Ms. Ashley's home and retrieved the check he had written to her without explaining to Ms. Ashley his reasons for doing so.
25. On the afternoon of September 1, 2011, Mr. Adkinson contacted Mr. Lyon and demanded that he immediately deliver to him a cashier's check representing the full amount of funds belonging to Ms. Ashley.
26. On September 1, 2011 Respondent delivered a cashier's check in the amount of \$230,000.00 to Mr. Adkinson representing the balance of trust funds in his trust account.
27. On September 2, 2011, Respondent delivered a cashier's check in the amount of \$18,000.00 to Mr. Adkinson from funds in Respondent's operating account.
28. On September 6, 2011 Respondent delivered a cashier's check in the amount of \$21,457.14 to Mr. Adkinson which represented the balance of the funds owed to Ms. Ashley.
29. Respondent failed to promptly deliver trust funds belonging to a client and/or third person upon receipt of such funds or upon proper request by such client or third person.

## II. CONCLUSIONS OF LAW

30. Respondent dealt improperly with client property and caused injury to his client, which reflects adversely upon his honesty, trustworthiness, or fitness as a lawyer.
31. Respondent violated Rules of Professional Conduct 1.15(b)(d) and Rule 8.4 (a)(b)and (c).

## III. FINDING OF AGGRAVATING AND MITIGATING CIRCUMSTANCES

1. Respondent had a dishonest or selfish motive, which is an aggravating circumstance.
2. Respondent has shown a pattern of misconduct which is an aggravating circumstance.
3. Respondent had multiple offenses which is an aggravating circumstance.
4. Respondent has substantial experience in the practice of law which is an aggravating circumstance.
5. Respondent has an absence of a prior disciplinary record which is a mitigating circumstance.
6. Respondent made a full and free disclosure to the Board and a cooperative attitude, which is a mitigating circumstance.
7. Respondent has made a timely good faith effort to make restitution or to rectify consequences of misconduct which is a mitigating circumstance.
8. Respondent evidenced remorse which is a mitigating factor.

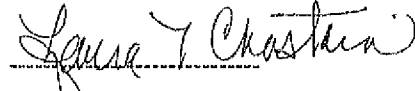
IV. JUDGMENT

IT IS THEREFORE, ORDERED by the Hearing Committee as follows:

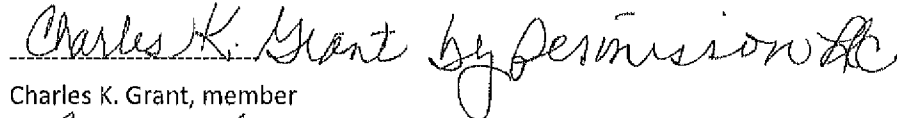
1. That Respondent be suspended from the practice of law for a period of one (1) year.
2. That Respondent be required to enter into a secured (secured by collateral with sufficient equity to cover \$42,500.00) promissory note payable to Mr. Harp for the amount still owed to Mr. Harp of \$42,500.00 which represents the amount due and owing to Mr. Harp for his damages from not being able to consummate his real estate transaction.
3. That Respondent be required to give evidence at his reinstatement proceeding that he has made full restitution for the damages that his misappropriation of Mr. Harp's trust funds caused.

This the 11<sup>th</sup> day of January, 2013.

THE HEARING COMMITTEE:



Laura L. Chastain, chair



Charles K. Grant, member



Rhonda A. Kinslow, member