

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

**FILED**  
2013 OCT 29 PM 12:52  
BOARD OF PROFESSIONAL  
RESPONSIBILITY  
*Rew* EXEC. SEC. #1

**IN RE: WILLIAM T. MAXWELL,  
BPR #006916, Respondent  
An Attorney Licensed and  
Admitted to the Practice of  
Law in Tennessee  
(Shelby County)**

**DOCKET NO. 2013-2220-9-AJ**

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**JUDGMENT OF THE HEARING PANEL**

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This matter came to be heard on October 16, 2013, for final hearing on the Board's Petition for Discipline before Shannon David Elsea, Panel Chair; Max L. Ostrow, Panel Member, and; Alexander C. Elder, Panel Member. Present at the hearing were David A. Gold, counsel for the Respondent, William T. Maxwell, Respondent, and Alan D. Johnson, Disciplinary Counsel for the Board.

**FINDINGS OF FACT**

1. A Petition for Discipline, Docket No. 2013-2220-9-AJ, was filed on May 16, 2013.
2. The Respondent filed an answer to the Petition on June 24, 2013, in which the Respondent admitted the material facts alleged in the Petition and set forth mitigating factors.
3. Prior to the Hearing, the parties filed a Joint Stipulation of Facts that are set forth below.
4. On November 12, 2009, Mr. Maxwell self-reported potential disciplinary misconduct.

5. Mr. Maxwell was formerly an agent for Chicago Title Insurance Company. His self-report letter was sent three days after an audit of his escrow account by Chicago Title Insurance Company.

6. In his self-report letter, Mr. Maxwell stated that on April 1, 2009, he withdrew \$65,000 from his escrow account at Cadence Bank in order to pay a promissory note that he had purchased from Patriot Bank.

7. He had written a title policy for Chicago Title Insurance Company to insure Patriot Bank's first mortgage lien interest in property but had omitted to procure two quitclaim deeds necessary to secure Patriot Bank's interest.

8. He purchased Patriot Bank's note so it would not file a claim with Chicago Title Insurance Company.

9. In his letter of November 12, 2009, Mr. Maxwell also reported that on October 12, 2009, he withdrew \$46,000 from his escrow account at Cadence Bank in order to make an IRA contribution.

10. Mr. Maxwell reported that these two withdrawals had been repaid to the escrow account before the audit.

11. Based upon information it discovered during a 2009 Retention Review of Mr. Maxwell's accounts, Chicago Title Insurance Company scheduled a field audit of Mr. Maxwell's accounts for November 9, 2009.

12. On November 9 and 10, 2009, Ms. Lynette Greene, Regional Agency Auditor and Assistant Vice President of Fidelity Insurance Company in Memphis, Tennessee, conducted a field audit of Mr. Maxwell's account on behalf of Chicago Title Insurance Company.

13. The audit consisted of reviewing Mr. Maxwell's escrow bank accounting practices, including, but not limited to, escrow bank account reconciliations and supporting reports and documentation.

14. In addition to confirming the withdrawals and repayments reported by Mr. Maxwell, the audit revealed another withdrawal that Mr. Maxwell made from the trust account on May 26, 2009 in the amount of \$25,000.

15. Mr. Maxwell has subsequently confirmed, by letter dated May 3, 2013, in response to Disciplinary Counsel's inquiry, that he did make the May 26, 2009 withdrawal.

16. The following represents the withdrawals and repayments by Mr. Maxwell:

- a. April 1, 2009 – withdrew \$40,000 and repaid \$25,000 on May 4, 2009, \$6,949.15 on May 4, 2009 and \$8,050.85 on May 4, 2009.
- b. May 7, 2009 – withdrew \$25,000 and repaid \$16,300 on June 1, 2009, \$5,000 on July 8, 2009, and \$3,700 on October 30, 2009.
- c. May 26, 2009 – withdrew \$25,000 and repaid \$8,700 on May 27, 2009, \$11,386.42 on October 30, 2009 and \$4,913.58 on October 30, 2009.
- d. October 12, 2009 – withdrew \$46,000 and repaid \$4,500 on October 30, 2009, \$5,000 on October 30, 2009, and \$36,500 on November 4, 2009.

17. Mr. Maxwell was placed on Disability Inactive status on April 1, 2010 and was reinstated to Active Status on July 19, 2012.

#### CONCLUSIONS OF LAW

18. Based upon the testimony of the Respondent, the witnesses called on behalf of the Respondent, arguments of counsel, and the entire record of this cause, The Hearing Panel finds that the Respondent violated Rules of Professional Conduct 1.15 (Safekeeping Property) and 8.4 (a), (c), and (d) (Misconduct).

## ABA Standards

19. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, appropriate discipline must be based upon application of the ABA Standards for Imposing Lawyer Sanctions (“ABA Standards”). The Hearing Panel finds that the following ABA Standards are applicable to the facts and circumstances presented.

### 4.1 FAILURE TO PRESERVE THE CLIENT’S PROPERTY

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

### 5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer’s fitness to practice.

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

- (a) dishonest or selfish motive;
- (b) a pattern of misconduct;
- (c) multiple offenses, and;
- (d) substantial experience in the practice of law.

21. Pursuant to ABA Standard 9.32, the Hearing Panel finds the following mitigating factors are present in this case:

- (a) absence of a prior disciplinary record;
- (b) personal or emotional problems;
- (c) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (e) character or reputation;
- (f) mental disability or chemical dependency including alcoholism or drug abuse when:
  - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
  - (2) the chemical dependency or mental disability caused the misconduct;
  - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- (g) delay in disciplinary proceedings;
- (h) imposition of other penalties or sanctions, and;
- (i) Remorse.

### **JUDGMENT**

Based on these findings of fact and conclusions of law, it is the judgment of the Panel that Mr. Maxwell shall be suspended from the practice of law for fifteen (15) months pursuant to Tenn. Sup. Ct. R. 9, § 4.2. The suspension shall be retroactive to July 19, 2012. The Hearing

Panel further recommends that if and when the Respondent seeks reinstatement, that his reinstatement should be conditioned upon compliance with any TLAP recommendations and that he be monitored with regard to his use of a trust account.

IT IS SO ORDERED,



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Shannon David Elsea, Panel Chair

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Max L. Ostrow, Panel Member

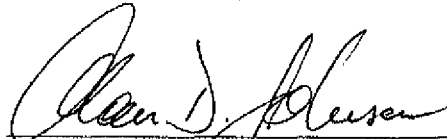
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Alexander C. Elder, Panel Member

**NOTICE TO RESPONDENT**

**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.**

Approved for Entry:



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Alan D. Johnson, BPR No. 10505  
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