

FILED

2011 AUG 25 PM 3: 35

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

BOARD OF PROFESSIONAL  
RESPONSIBILITY

*RW* EXEC. SEC'Y

**IN RE: JAMES D.R. ROBERTS,  
BPR #17537, Respondent,  
An Attorney Licensed to Practice  
Law in Tennessee  
(Davidson County)**

**DOCKET NO. 2009-1807-5-KH**

---

**JUDGMENT OF THE HEARING PANEL**

---

This cause came for trial before this Hearing Panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on August 8 and 9, 2011 and adjourned until August 15, 2011, at which time the hearing was concluded upon the filing, by both parties, of Proposed Findings of Fact and Conclusions of Law. The parties agreed to submit the Proposed Findings of Fact and Conclusions of Law in lieu of closing arguments. This cause was heard pursuant to Rule 9, Rules of the Tennessee Supreme Court. This Hearing Panel, Daniel L. Clayton, Eileen Burkhalter Smith and Michael D. Sontag, after considering the entire file in this matter, testimonies of the witnesses, exhibits, stipulations, and arguments presented to this Panel, and after thorough deliberations, makes the following Findings of Fact, Conclusions of Law, and renders its Judgment in this cause.

**I. BACKGROUND**

Respondent James D. R. Roberts is licensed to practice law in Tennessee, with Board of Professional Responsibility Number 17537. The Respondent was notified of a disciplinary complaint filed against him by letter dated April 10, 2007. He responded to the complaint by

letter dated June 12, 2007. A Petition for Discipline was filed against Respondent on March 9, 2009, with case No. 2009-1807-5-KH, alleging that Respondent violated certain Disciplinary Rules. Respondent filed a Response to the Petition for Discipline on May 1, 2009, and after receiving leave to do so, he filed an Amended Response to the Petition for Discipline on July 29, 2011.

## II. FINDINGS OF FACT

1. The Respondent is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee since 1995.

### *Green v. Green, et al.*

2. The Petition for Discipline arises from Respondent's representation of John Wesley Green ("Wesley Green") in a declaratory action filed on November 14, 2005, against Wesley Green's mother, Edna Green, and other shareholders in Champs-Elysees, Inc. (the "Company"). The case in Davidson Chancery Court was styled *John Wesley Green v. Edna Green, Mark Green, Arthur Fourier*, No. 05-2817-II.

3. On March 9, 2006, the Court granted the Company's Motion to Intervene in the *Green* action. The Company filed a counter-complaint against Wesley Green.<sup>1</sup>

4. The underlying litigation involves a purchase of stock by Wesley Green from his mother, Edna Green, and an allegation by the defendants that Wesley Green improperly took monies from the Company.

---

<sup>1</sup> Numerous other pleadings were filed and allegations and defenses asserted in the *Green* matter which are not relevant to the issues before this Panel.

5. Defendants, Ms. Green and the Company, filed a motion for summary judgment on May 11, 2006. On July 21, 2006, the Chancery Court entered an Order granting the motion for summary judgment and imposing a judgment of \$46,000.00 against Wesley Green.

6. Wesley Green filed an appeal of the Order granting summary judgment; however, he failed to post a bond to stay enforcement.

7. Therefore, counsel for the Company, Eugene Bulso, took action to initiate a sale of Wesley Green's stock in the company.

**The New "Champs-Elycees" Company**

8. The Davidson County Sheriff posted a notice on November 30, 2006, to sell Wesley Green's stock to satisfy the judgment, but mistakenly omitted one "s" when spelling "Champs-Elysees." (See Trial Exhibit 1.)

9. Due to the misspelling, notice was posted for sale of "22,000 Shares of stock in Champs-Elycees Inc." The notice set the date of the Sheriff's sale for December 22, 2006.

10. On or about December 6, 2006, Wesley Green suggested to Respondent that they form a new corporation in the name of the misspelled company listed in the Sheriff's notice to clearly document the error.

11. According to Respondent, he thought about introducing the idea of forming the new corporation to another client but discarded that idea because that client was very ill.

12. Respondent notified both the Sheriff's office and counsel for the Company, Mr. Bulso, about the misspelling.

13. Respondent further notified Mr. Bulso that there was a perfected third-party security interest in Wesley Green's Company stock. (See Trial Exhibit 2.)

14. The third-party security interest was a lien the Respondent had in his client's stock, as part of an amended fee agreement Respondent made with Wesley Green on January 20, 2006. (See Trial Exhibit 21.)

15. Around the first week of December, Respondent initiated a conversation with his friend and former client, George Christopher Armstrong, about the pending sale of Wesley Green's stock.

16. Respondent and Mr. Armstrong are very good friends, were best men at each other's wedding, and were prior roommates.

17. Mr. Armstrong had previously discussed with Respondent that Mr. Armstrong was considering starting a corporation for food distribution/preparation.

18. At some time around the first week of December, Mr. Armstrong agreed to charter a corporation in the misspelled name "Champs-Elyees, Inc." Mr. Armstrong agreed to set up the corporation as a favor to the Respondent and because it fit Respondent's needs.

19. The Respondent did not advise either Mr. Armstrong or Wesley Green about the potential conflict of interest inherent in the supposed dual purpose to be served by forming this new entity. Respondent did, however, inform Wesley Green that Mr. Armstrong was forming the corporation in the misspelled name "Champs-Elyees, Inc."

20. Respondent's law office prepared and submitted the application for the corporate charter, and the charter was issued on or about December 14, 2006.

21. Respondent's law office paid the filing fee for the charter and prepared the stock certificates for the new corporation.

22. Mr. Armstrong had no input regarding the creation of the stock certificates for the new company. He did not instruct anyone to issue the stock in the precise number of 22,000 shares. (See Trial Exhibit 10, p. 136:4-7.)

23. Mr. Armstrong did not have any reason to name his company "Champs-Elyees, Inc.," which was the misspelled version of the Company's name, "Champs-Elysees, Inc.," and would not have done so if it had not fit Respondent's ulterior needs.

24. Further, Mr. Armstrong did not have any reason to issue stock certificate number 13 for 22,000 shares, the precise number of shares involved in the Sheriff's sale, and would not have done so had if not fit Respondent's ulterior needs. (Trial Exhibit 10, p. 172.)

25. Also on December 14, 2006, the Respondent filed a motion and memorandum with the Chancery Court seeking a temporary injunction or, alternatively, an order quashing the Sheriff's sale.

26. Respondent asserted in the motion that the scheduled Sheriff's sale would be improper because the misspelling of "Champs-Elysees" rendered the notice defective; the Sheriff did not have possession of the stock; and that there was a third-party lien on the stock, which was not advertised on the notice.

27. Respondent further argued that the sheriff was attempting to sell stock of "a different corporation not related to Champs-Elysees, Incorporated." (See Trial Exhibit 3, p. 2, ¶ 6.)

28. Respondent testified that he wanted to use Mr. Armstrong's corporation to establish evidence that could later be used in a federal lawsuit he was planning to file against the Sheriff's office about the sale.

29. At no time did Mr. Armstrong use the new entity in the name of "Champ-Elyees, Inc." to operate a food distribution/preparation business, nor has Mr. Armstrong formed any other entity to operate such a business venture or any other business for that matter.

30. Champ-Elyees, Incorporated has been administratively dissolved.

**The Sheriff's Sale**

31. The Sheriff's sale was held on December 22, 2006.

32. Mr. Armstrong accompanied the Respondent to the sale.

33. Prior to the sale, the Respondent instructed Mr. Armstrong to ask the Sheriff whether stock in his corporation was going to be sold and to show the corporate charter and stock certificates of the new corporation to the Sheriff.

34. Prior to the sale, the Respondent and Mr. Armstrong posed questions to the Sheriff regarding the notice and the property to be sold.

35. Captain James Warren testified that the sale proceeded as planned on December 22, 2006.

36. Constance Taite, legal counsel for the Sheriff's department, testified that in her opinion, the Respondent's actions were an attempt to forestall the sale and to raise questions. Ms. Taite further testified that the Respondent had threatened to sue the Sheriff's department concerning the sale.

37. Respondent used what purported to be Mr. Armstrong's corporation solely for Wesley Green's interests.

38. On the same date of the Sheriff's sale, December 22, 2006, the Respondent filed a federal lawsuit against the Metropolitan Government of Davidson County concerning the sale.

**The Petition for Contempt**

39. Mr. Bulso filed a Motion to Show Cause on December 22, 2006, seeking to hold Respondent in contempt for his attempts to disrupt the Sheriff's sale by causing the new corporation to be formed.

40. On January 5, 2007, the Chancery Court advised Mr. Bulso that the appropriate procedure would be to seek sanctions by Petition. (Trial Exhibit 6, p. 7:13-9:18.) Mr. Bulso filed a Verified Petition for Contempt on January 12, 2007.

41. The hearing on the Petition for Contempt was set for January 24, 2007.

42. The hearing on the Petition was continued until February 20, 2007. Respondent hired counsel and timely filed a Motion to Dismiss the Petition.

43. The hearing on the Petition for Contempt commenced on February 20, 2007.

44. The Respondent testified at the hearing on the Petition for Contempt as follows:

Mr. Bulso Q: You'll see that on the screen is a Charter for a company spelled C-h-a-m-p-s-dash-E-l-y-e-e-s, Inc. Do you see that?

Respondent A: Yes, sir.

Q: I'll refer to this entity as C.E. It was your idea to form this company, C.E., wasn't it, Mr. Roberts?

A: No, sir.

(Trial Exhibit 9, p.51:14-22.)

\* \* \*

Mr. Bulso Q: Do you deny under oath, Mr. Roberts, that it was you who suggested or recommended to Mr. Armstrong that this entity be formed?

Respondent A: I do not believe that I recommended it to him.

Q: Do you agree that you suggested it to him?

A: No. I don't believe that I suggested it to him.

(*Id.* at p. 62:24-63:6.)

\* \* \*

Mr. Bulso Q: It's your testimony that Mr. Armstrong asked you to form this corporation on December 14<sup>th</sup>; is that correct?

Respondent A: I believe that's true, Mr. Bulso.

(*Id.* at 107:8-11.)

45. Mr. Armstrong testified on February 28, 2007,<sup>2</sup> that Respondent "brought up the concept" of forming the corporation in the misspelled name. (Trial Exhibit 10, p. 129:5-8.) Mr. Armstrong also testified at this disciplinary hearing that it was the Respondent who introduced the idea of forming the new entity with the misspelled name.

46. On February 20, 2007, the Respondent refused to respond to some of Mr. Bulso's questions regarding how Mr. Armstrong's corporation came into existence on the basis that he could not "answer any questions regarding privileged communications" between Respondent and Mr. Armstrong. (*See* Trial Exhibit 9, p. 54:14-21.)<sup>3</sup>

47. Respondent asserted the attorney-client privilege which he asserted arose from his representation of Mr. Armstrong in the formation of the "Champs-Elyees," the "misspelled" company.

---

<sup>2</sup> For numerous reasons, the hearing on the Petition for Contempt spanned several days.

<sup>3</sup> *See* for example, Respondent's assertions of the attorney-client privilege in testimony on February 20, 2007: Trial Exhibit 10, p. 55:9-13 (in response to the question "Was Mr. Armstrong a client of you or your firm on December the 14<sup>th</sup> of 2006?"); p. 56:7-11; p. 58:12-18 (in response to the question "It is true that you provided legal services in connection with the formation of this entity; isn't that true?"); and p. 63:7-12.



48. In each instance, once the Court instructed him to answer the question, Respondent did so.

49. On April 4, 2007, the Court entered its Order denying the Petition for Contempt because the Petition did not sufficiently support a finding of civil contempt. (See Trial Exhibit 11, p. 22.)

50. The Court made a finding that the Respondent's testimony at the February 20, 2007 hearing was evasive and untruthful. (See Trial Exhibit 11, p. 22.)

**August 8 and 9, 2011 Hearing**

51. At the August 8 and 9, 2011 hearing, the Board presented testimony from Gino Bulso, Mr. Armstrong and Mr. Roberts, while Respondent presented testimony from Wesley Green, Sherriff Warren, Constance Tate, Art Fourier and Respondent.

52. The testimony of Mr. Bulso, Sherriff Warren, Constance Tate and Art Fourier was found to be truthful and helpful; the testimony of Wesley Green, for the most part, was found to be irrelevant and unhelpful, and the testimony of Mr. Roberts, in particular with respect to the formation of Champs-Elyees, Incorporated, was found to be evasive and untruthful.

**III. CONCLUSIONS OF LAW**

**Rule 4.4(a): Respect for the Rights of Third Persons**

1. Respondent's formation of the entity "Champs-Elyees, Inc." in the name of the misspelling on the Sheriff's notice, was done for the sole purpose of delaying or disrupting the Sheriff's sale.

2. Respondent attempted to delay or disrupt the sale by asking questions of the Sheriff (or having others ask such questions on his behalf) related to the newly formed "Champs-

Elyees, Inc.," when the corporation had not existed at the time of the notice of the sale, and Respondent knew that the stock being sold was not that of the new company.

3. Mr. Armstrong was the incorporator of the new company in name only. He had no need for a corporation at that point in time; he had no reason to name it "Champs-Elyees;" and he had no reason to issue the stock in an identical form (certificate number 13 for 22,000 shares) to that involved in the Sherriff's sale. Mr. Armstrong never used the company and has not created another company for any purpose since then.

4. Respondent had existing appropriate options to oppose the sale, and Respondent availed himself of those options by filing a Motion for Temporary Injunction, notifying the Sheriff and opposing counsel about the misspelling on the Notice, and attending and videotaping the sale.

5. Respondent's creation of the new "Champs-Elyees" company resulted in the potential harm of disrupting and delaying a sale conducted pursuant to a valid existing judgment.

6. Respondent's creation of the new "Champs-Elyees" company resulted in the actual harm of waste of judicial resources and time and the waste of resources and time of third persons in the filing and determination of the Petition for Contempt and its multiple hearings.

7. Respondent's creation of the new "Champs-Elyees" company for the sole purpose of attempting to disrupt and delay the Sherriff's sale was therefore a violation of Rule 4.4(a)(1) of the Tennessee Rules of Professional Conduct.

8. Respondent refuses to acknowledge that his plan to create the new "Champs-Elyees, Inc." prior to the sale was an attempt to delay or disrupt the sale.

### Rule 3.3: Candor toward the Tribunal

9. Respondent's testimony at the February 20, 2007, hearing on the Petition for Contempt, set forth in Paragraph 44 herein, was untruthful.

10. Respondent's testimony at the February 20, 2007, hearing on the Petition for Contempt, set forth in Paragraph 44 herein, was evasive and misleading.

11. Respondent's assertions that he does not remember who initiated the idea to form a company with the misspelled name is not credible in the face of the following facts:

- (a) Respondent's client Wesley Green first suggested the idea to Respondent.
- (b) Respondent considered having another client create the company, but did not do so because the client was ill.
- (c) Mr. Armstrong had no independent knowledge of the *Green* case or pending Sheriff sale, and such information could have only been introduced to him by Respondent.

12. Respondent's testimony was material to the Court's determination of the pending Petition for Contempt because it addressed the formation of the new company, Mr. Armstrong's involvement in the formation, and whether the formation of the new company was contemptuous.

13. Respondent's testimony resulted in an adverse effect on the legal proceeding and the orderly administration of justice.

14. Respondent's refusal to answer questions by an invocation of the attorney-client privilege, as discussed in Paragraphs 46-48 herein, was misleading and evasive.

15. The alleged attorney-client privilege on which respondent relied was based on the contrived attorney-client relationship of Mr. Armstrong and Respondent for the purpose of

forming the new company with the misspelled name. Further, Respondent shared information with Wesley Green about this alleged "attorney-client" representation of Mr. Armstrong, including information about the formation of the new entity, and Respondent asked Mr. Armstrong to be prepared to testify about the matter, two facts which indicate Respondent did not rely on the confidentiality of this attorney-client relationship in other contexts.

16. The questions to which the Respondent invoked the attorney-client privilege were material to the hearing on the Petition for Contempt.

17. Though Respondent answered the questions after being instructed to do so by the Court, his invocation of the attorney-client privilege resulted in an adverse effect on the legal proceeding.

18. Respondent's testimony as discussed above, therefore, was a violation of Rules 3.3(a)(1) and 3.3(b) of the Tennessee Rules of Professional Conduct.

19. Respondent refuses to admit that his testimony was untruthful, false, misleading or evasive.

#### **Rule 8.4: Misconduct**

20. Respondent's actions as described herein violate Rules 3.3 and 4.4 of the Rules of Professional Conduct.

21. Such violation is itself a violation of Rule 8.4(a) of the Tennessee Rules of Professional Conduct.

22. Respondent's actions involve dishonesty and misrepresentation which is a violation of Rule 8.4(c) of the Tennessee Rules of Professional Conduct.

23. Respondent's actions were prejudicial to the administration of justice which is a violation of Rule 8.4(d) of the Tennessee Rules of Professional Conduct.

**Application of ABA Standards for Imposing Lawyer Sanctions**

24. §8.4 of Rule 9 of the Rules of the Supreme Court states: "In determining the appropriate type of discipline, the Hearing Panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions."

25. Section 1.1 of the ABA Standards provide:

1.1 Purpose of Lawyer Discipline Proceedings. The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.

26. The following Sections of the ABA Standards apply in this matter:

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or party, or causes interference or potential interference with a legal proceeding.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

27. Section 9.21 and 9.22 of the ABA Standards provide:

- 9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.
- 9.22 Factors which may be considered in aggravation. Aggravating factors include:
- (a) prior disciplinary offenses;
  - (b) dishonest or selfish motive;
  - (c) a pattern of misconduct;
  - (d) multiple offenses;
  - (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
  - (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
  - (g) refusal to acknowledge wrongful nature of conduct;
  - (h) vulnerability of victim;
  - (i) substantial experience in the practice of law;
  - (j) indifference to making restitution.
  - (k) illegal conduct, including that involving the use of controlled substances.

28. Existing aggravating factors in Respondent's case include:

- (b) dishonest or selfish motive;
- (d) multiple offenses;
- (g) refusal to acknowledge wrongful nature of conduct.

29. No mitigating factors as set forth in Section 9.31 and 9.32 of the ABA Standards exist in Respondent's case.

#### IV. JUDGMENT

The Preamble of the Tennessee Rules of Professional Conduct provides, in part, the following:

A lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging at these pursuits as part of a common calling to promote justice and public good. Essential characteristics of the lawyer are knowledge of the law, skill in applying the applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good.

\* \* \*

The legal profession's relative autonomy carries with it special responsibilities of self government. . . . Every lawyer is responsible for observing the Rules of Professional Conduct. . . . Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

Tenn. Sup. Ct. Rule 8, Preamble.

The Panel finds that the Respondent has engaged in deceitful conduct for the sole purpose of disrupting a Sheriff's sale which was being conducted pursuant to a valid existing judgment and has provided testimony in a legal proceeding which was evasive, untruthful and misleading. The Panel finds that the Respondent's actions were intentional.

After considering the actions of Respondent, the aggravating factors and the entire record in this case, it is the opinion of this Panel that Respondent shall be suspended from the practice of law for a period of six (6) months.

IT IS SO ORDERED.

This judgment may be appealed pursuant to Section 1.3 of Rule 9 of the Tennessee Supreme Court Rules 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.

ENTER on this the 25<sup>th</sup> day of August, 2011.

Daniel L. Clayton  
Daniel L. Clayton, Panel Chair

Eileen Burkhalter Smith (by DLC  
v/p sum)  
Eileen Burkhalter Smith, Hearing Panel

Michael D. Sontag (by DLC  
v/p sum)  
Michael D. Sontag, Hearing Panel

cc: All Counsel

9824154.2

4905946.2