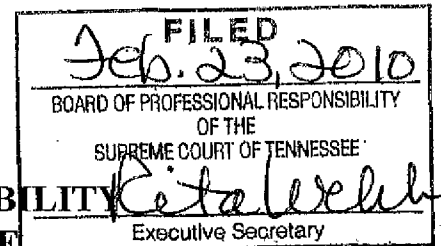


**IN DISCIPLINARY DISTRICT II
OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE**



**In Re: MICHAEL S. SHIPWASH, BPR#19173,
Respondent**

No. 2008-1741-2(k)-RS

HEARING PANEL DECISION

This matter came before the Hearing Panel, pursuant to Rule 9, §8.2 of the Rules of the Tennessee Supreme Court, on petition by the Tennessee Board of Professional Responsibility filed. A hearing was held on November 16 and 17, 2009, in Knoxville at which time the Hearing Panel heard testimony from witnesses and considered closing arguments. The Board of Professional Responsibility was represented by Randall J. Spivey; Michael S. Shipwash represented himself. At the conclusion of the hearing, the Panel requested the parties to submit proposed Finding of Fact and Conclusions of Law. After full consideration of the evidence, the Hearing Panel makes the following findings of fact and conclusions of law, and submits its judgment.

STATEMENT OF THE CASE

1. A Petition for Discipline was filed on March 19, 2008, charging the Respondent with violating Professional Conduct Rules 1.1, 1.2, 1.3, 1.5, 1.8, 1.14, 2.1, and 8.4.
2. Respondent answered the Petition on April 9, 2008, denying all allegations of misconduct.
3. Various motions were filed and resolved by the Hearing Panel prior to the hearing, which was conducted in Knoxville on November 16 and 17, 2009.

FINDINGS OF FACT

1. Respondent Michael S. Shipwash has been licensed to practice law in Tennessee since 1998. His most recent office address as registered with the Board of Professional Responsibility is 8079 Kingston Pike, Suite O, Knoxville, TN 37919-3909. His BPR Number is 19173.

2. On June 10, 2006, the Respondent sent a letter to the Board in order to self-report what he termed a "potential excessive attorney fee and/or gift" he received from a client, Mary Ann Ledwell. (Exhibit 1)

3. Respondent had been directed by Campbell County Circuit Judge McAfee to self-report the possible violation during a proceeding in that court related to an action brought by the conservator appointed by the court for Ms. Ledwell.

4. On July 12, 2005, Respondent was retained to represent Ms. Ledwell in the removal of a lien on her home and the sale of the Ledwell Motel in Gatlinburg, TN.

5. Ms. Ledwell did not execute the retainer agreement. It was signed on her behalf by David Guardino under authority of a Power of Attorney, although both Ms. Ledwell and Mr. Guardino were present and participated in a meeting with Respondent on July 12, 2005. (Exhibits 2 and 3)

6. The retainer agreement states that Respondent was to receive a one-third fee of the gross recovery related to the removal of the lien and sale of the Motel. (Exhibit 2)

7. The Respondent testified that he never intended for his fee to be one-third of the gross recovery, and was unable to explain how he would take a one-third fee of the gross recovery for the removal of a lien.

8. The Respondent further testified that the Retainer Agreement that was signed on behalf of Ms. Ledwell was the only Retainer Agreement form that he used in his practice because he only took contingency fee cases.

9. However, the Respondent's paralegal, Faun Whitteaker, contradicted Respondent's testimony. She testified that Respondent had retainer agreements for flat fee cases, contingency fee cases, and cases that would be billed on an hourly basis.

10. The Respondent testified that when the retainer agreement was signed on July 12, 2005, he informed Ms. Ledwell that he did not intend to take a one-third fee.

11. No subsequent Retainer Agreement was executed by the Respondent or Ms. Ledwell changing the terms of the Retainer Agreement of July 12, 2005.

12. Respondent received a fee of \$121,000 related to the sale of the Motel.

13. Respondent did not produce any time records or other records to show what services related to the sale of the Motel that he provided to Ms. Ledwell, or the time expended for those services. In testimony at the hearing, Respondent testified that he had tried to recreate the number of hours he spent representing Ms. Ledwell and estimated he spent 200-250 hours. He testified his hourly rate was \$250.

14. Respondent testified that he also received a \$20,000 fee for services he provided in removing a \$176,000 lien from residential property owned by Ms. Ledwell.

15. He described the work that he did related to removing the lien as including drafting a lawsuit (which apparently was never filed) and making phone calls. Again, he provided no time records or other records to show work that he provided. He testified that the \$20,000 was offered and paid by Ms. Ledwell after the lien was released. He considered that fee reasonable.

16. Respondent admitted in the hearing that \$121,000 was not a reasonable fee for services provided to Ms. Ledwell related to the sale of the motel.

17. Respondent had no experience in brokering the sale of a motel or in handling real estate matters.

18. Respondent conducted very little research into what a fair price would be for the Motel. Respondent testified that all the information he obtained regarding what a fair price would be for the motel was gained from internet research by his paralegal and from potential buyers. He obtained no independent appraisal of the Motel property.

19. On August 4, 2005, Ms. Ledwell signed a document entitled "Authority to Negotiate and Sell the Ledwell Motel." This document authorized and directed Respondent to sell the Motel, and gave Respondent "unconditional and unlimited" power "as to all actions the Law Office feels is reasonable and appropriate" in selling the motel. (Exhibit 5)

20. Ms. Ledwell's signature was notarized by Faun Whitteaker, the Respondent's paralegal, who testified that she obtained Ms. Ledwell's signature on the document drafted by Respondent.

21. Respondent reached an agreement with Sidney Maples, president of Sidney James Motor Lodge, Inc., to sell the Ledwell Motel for \$900,000.

22. On October 4, 2005, a document entitled "Authority to Sell the Ledwell Motel to Sidney Maples" was signed by Ms. Ledwell, and David Guardino as POA, agreeing to the sale of the Ledwell Motel for \$900,000. (Exhibit 6) This document stated the approximate payoff balance owed on the motel and that the remainder would be placed in Respondent's trust account

for disbursement. Further, the document stated that Respondent would be given a “gift” out of the proceeds in the amount of \$121,000.

23. The October 4, 2005, document was notarized by Faun Whitteaker. She testified that after Respondent had drafted the document, she called Ms. Ledwell and then added the third paragraph outlining the “gift” to the document before going to Ms. Ledwell’s home to get her signature. She testified that the third paragraph was added to the document without Respondent’s knowledge.

24. Respondent testified that after he discovered the “gift” language contained in the October 4, 2005, document, he informed Ms. Ledwell that he could not accept the money as a gift, but he could accept the payment if it was called a “fee.”

25. Neither the original Retainer Agreement nor the October 4, 2005, document was ever amended to state how much Respondent would be paid for his services or whether the \$121,000 was a gift or a fee.

26. Ms. Whitteaker testified that she was “written up” by Respondent for her action in adding the “gift” paragraph to the October 4, 2005, document. A document entitled “Employee Disciplinary Action Form,” purportedly signed October 4, 2005, was entered as Exhibit 27. Ms. Whitteaker testified that she drafted the disciplinary action document after Respondent told her it was unethical to include the “gift” language. She testified that Respondent was not in the office when she got back from having Ms. Ledwell sign Exhibit 6. Although the disciplinary action form is dated October 4, 2005, she testified that she did not meet with Respondent until a “couple of days later.”

27. The sale of the motel was completed October 20, 2005. (Exhibit 7) From the \$900,000 sale price, a check for \$355,763.81 was deposited in Respondent's trust account representing the money due Ms. Ledwell after closing.

28. Out of the amount in Ms. Ledwell's trust, Respondent paid himself \$121,000, plus \$621.82 that he had previously loaned Ms. Ledwell to cover some living expenses. An additional amount of \$5,000 was paid to I-75 Carpet, Inc. He paid the remainder of \$229,141.99 to Ms. Ledwell, a check that was negotiated by Mr. Guardino. (Exhibit 8)

29. Respondent testified that he represented Ms. Ledwell in Campbell County General Sessions Court in an action brought by I-75 Carpet, Inc. (Exhibit 28) He testified that he did not have a representation agreement and did not charge Ms. Ledwell for his representation in that matter.

30. Attorney Jody R. Troutman testified at the Hearing that she has an extensive real estate practice in Campbell County, has participated in hundreds of closings of both commercial and residential real estate, is familiar with fees received by real estate brokers in commercial real estate transactions, and that the fee received by Respondent for selling the motel was exorbitant and unreasonable.

31. Ms. Troutman testified that commercial real estate brokers receive a fee between three and six percent.

32. On December 6, 2005, the Campbell County Chancery Court entered an Order of Writ of Habeas Corpus ordering that Ms. Ledwell "be transferred into the custody of the Conservator, Shannon D. Marlow or his agents or Attorney, Jody R. Troutman." (Exhibit 22)

33. Ms. Troutman testified at the Hearing that she lives in the same neighborhood as Ms. Ledwell and that she became concerned about Ms. Ledwell's well being because of her casual observation of Ms. Ledwell's home.

34. Ms. Troutman testified that the Ledwell home was generally referred to by neighbors as the "cult house," that many people were living there, and that she was concerned that drugs were being manufactured on the property.

35. Ms. Troutman testified that she subsequently learned that Ms. Ledwell was living in the home and being cared for by Mr. Guardino, a self-professed psychic.

36. Ms. Troutman contacted Ms. Ledwell's son, Shannon D. Marlow.

37. Ms. Troutman and Mr. Marlow were concerned that Mr. Guardino was taking advantage of Ms. Ledwell and led them to file a conservator action on December 1, 2005.

38. Shannon D. Marlow was appointed Conservator by the Chancery Court on December 1, 2005, and the Power of Attorney held by Mr. Guardino was revoked.

39. Ms. Troutman was unable to serve process on Ms. Ledwell, and she sought and was granted the Writ of Habeas Corpus on December 6, 2005.

40. On December 6, 2005, attorney Joe Hoover contacted Respondent asking for his assistance in transferring Ms. Ledwell to her newly appointed Conservator.

41. Respondent testified that he wrote a letter to Mr. Guardino and Ms. Ledwell on December 6, 2005, advising Mr. Guardino to return Ms. Ledwell to Campbell County. (Exhibit 23)

42. The Respondent's letter, which indicates that it was both faxed and mailed, states, in part, that he had been contacted by Mr. Hoover who informed him "that Attorney Troutman has

evidence that you (David Guardino) have essentially defrauded Mary Ann and stolen her money.” Respondent further stated:

As you are aware, I am not a criminal attorney. As you also know, I am representing you (David) and Mary Ann in the civil matters that we have discussed. I strongly recommend that you obtain the services of a criminal attorney regarding your keeping Mary Ann from the Conservatorship order.

As you know, we are to appear in Court on Decameter (sic) 8, 2005 at 9:00 a.m. I advise you to return Mary Ann to Campbell County prior to that date to avoid any potential for contempt, kidnaping and/or interference with an Order of the court.

I have also learned that you have posted e-mails of me on your website. Please immediately cease and desist from doing so. This entire situation is putting me a great dilemma and it may lead to a conflict of interest should these issues not be resolved immediately.

(Exhibit 23)

43. The same day the Respondent sent this letter, Ms. Ledwell was delivered to his office.

44. Respondent testified that Ms. Ledwell was lucid and acting normally on that date.

45. Respondent testified that he told Ms. Ledwell about the allegations against Mr. Guardino and went through her relationship with Mr. Guardino. Respondent testified he told Ms. Ledwell that if anything improper had occurred, he wanted to refund the money he had been paid. Respondent testified that Ms. Ledwell instructed him to keep the money, which he did.

46. Ms. Troutman testified that she and Shannon Marlow went to Respondent’s office on December 6, 2005, and that Ms. Ledwell was filthy, had not bathed in some time, and was wearing mis-matched pajamas. She further testified that Ms. Ledwell was not lucid, and that she was telling “bizarre” stories about a Campbell County deputy that she had seen dressed in a “Halloween police costume” in a tree outside her bedroom window.

47. Ms. Troutman testified that she had Ms. Ledwell transported by ambulance to Baptist Hospital where she was treated by Dr. Joseph Kennedy, a psychiatrist with a subspecialty in geriatric psychiatry. He testified that Ms. Ledwell was not medically stable when she entered the hospital. (Deposition of Dr. Kennedy, Exhibit 24, was introduced by stipulation of the parties.)

48. On December 16, 2005, Dr. Kennedy signed a Certificate of Need indicating that Ms. Ledwell was physically and mentally incapacitated, suffering from dementia and in danger of death due to the absences of supervision and care. In Dr. Kennedy's opinion, Ms. Ledwell was incompetent as far back as June 8, 2005.

49. Dr. Kennedy testified that Ms. Ledwell suffered from mixed dementia with delusions and organic personality disorder resulting from a prior frontal lobe injury and years of alcohol abuse. She exercised poor judgment, had poor insight, was particularly vulnerable to undue influence, and would not have the ability to make significant decisions about her assets.

50. Dr. Kennedy testified that Ms. Ledwell's deficits were pretty obvious, and that "anyone who spent significant amounts of time with her would see that she was very vulnerable and malleable and at risk." (Exhibit 24, p. 53:5-7)

51. The Respondent testified that he communicated at least weekly with Ms. Ledwell and emailed her on a regular basis, met with her in his office, and even went to a birthday party at her home. His paralegal, Faun Whitteaker, also communicated with Ms. Ledwell, met with her on several occasions, and attended the birthday party at her home.

52. Ms. Whitteaker went to Select Specialty Hospital, a unit of St. Mary's Medical Center, to have Ms. Ledwell sign the document entitled "Authority to Negotiate and Sell the Ledwell Motel," dated August 4, 2005.

53. Both Respondent and Ms. Whitteaker testified that they discerned no mental infirmities and did not question her competence. Specifically, when Ms. Ledwell was brought to Respondent's office on December 6, 2005, neither Respondent nor Ms. Whitteaker noticed anything out of the ordinary about her appearance or demeanor.

54. Ms. Troutman testified that the first time she met Ms. Ledwell was at Respondent's office on December 6, 2005. She described Ms. Ledwell as "dirty," seated in a wheelchair, wearing soiled pajamas with food stains, and her hair was dirty and greasy. Ms. Troutman testified that Ms. Ledwell was "childlike" and confused. Ms. Ledwell agreed to go by ambulance to the hospital. At the hospital, Ms. Ledwell was making bizarre statements.

55. A document/letter dated October 4, 2005, to Respondent, signed by Ms. Ledwell and David Marius Guardino, was introduced as Exhibit 20. Respondent denied receipt of the document. However, Respondent's paralegal, Ms. Whitteaker, notarized the letter. This document was signed and notarized on the same date as the Authority to Sell document. (Exhibit 6)

56. The October 4, 2005, letter states, in part:

I am very ill, as you know; I am crippled and incontinent--fortunately, my mind is as good as ever, however, but I do not want to be put through depositions, court trials or any other stressful matters that CAUSE ME STRESS! For the last few months, I have been in the hospital close to death, so I have told David to help keep me alive by handling everything for me. As a result, I DO NOT KNOW ANYTHING ABOUT MY AFFAIRS, AND DO NOT WANT TO BE QUESTIONED--harassed--ABOUT THINGS THAT I DO NOT KNOW ANYTHING ABOUT ANYWAY!

I am a bed-ridden incontinent invalid. Therefore, I have hired David and Wendy to take care of me, and they have hired you to help them take care of me, so please respect my privacy; I just want to be left alone while I "live happily ever after" with my new and current loving family! If you were in my shoes, you would feel

the same way.

(Exhibit 20).

57. The letter also references a Will executed by Ms. Ledwell that leaves her entire estate to the children of David and Wendy Guardino.

58. On August 4, 2005, Ms. Ledwell executed a "Last Will and Testament" that was drafted by Respondent and named Respondent as "Executor" of her estate, and "Trustee" for a trust created for beneficiaries of her estate if the beneficiaries are under the age of 25. (Exhibit 10)

59. The Will was executed on the same date as the document entitled Authority to Negotiate and Sell the Ledwell Motel, Exhibit 5; and the letter from Ms. Ledwell to Respondent, Exhibit 20. All the documents were notarized by Faun Whitteaker.

60. While representing Ms. Ledwell, the Respondent also represented Mr. Guardino who was facing a federal indictment for tax evasion.

61. The Respondent testified that he never discussed a possible conflict of interest due to this dual representation with either Ms. Ledwell or Mr. Guardino.

62. Respondent, who testified that he never practiced criminal law, entered an appearance in U.S. District Court on behalf of Mr. Guardino in September 2005, a month prior to the sale of the Ledwell Motel. Respondent testified that he later was allowed to withdraw from that representation.

63. After the conservatorship action was begun by Ms. Troutman and Mr. Marlow, attorney Robert Asbury was appointed as Guardian Ad Litem for Ms. Ledwell in March 2006.

64. As part of his GAL duties, Mr. Asbury conducted an investigation of current and past actions involving Ms. Ledwell and her finances.

65. The parties stipulated that Ms. Ledwell's assets as of January 2004 were approximately \$2 million. Mr. Asbury introduced several Deeds of Trust showing loans to Ms. Ledwell on properties she owned. Two of those were executed by Mr. Guardino as POA for Ms. Ledwell. One loan, dated August 5, 2005, was for \$272,000; another loan dated November 16, 2005, was for \$393,750. (Exhibit 25)

66. Mr. Asbury testified that all encumbered properties had been foreclosed on and he was unable to locate the proceeds of any loans or sale of the property, other than for the sale of the Motel. He testified that when he withdrew from the conservatorship case, Ms. Ledwell had no assets and was living in a nursing home on Medicaid.

67. Attorney David Wigler and Carol Holbert, both employed at the law offices of Herbert Moncier, testified that Mr. Guardino had approached Mr. Moncier in September 2004 about representing him on a tax evasion charge. Both Mr. Wigler and Ms. Holbert testified that they were introduced to Ms. Ledwell, who was going to pay Mr. Guardino's expenses from proceeds from the sale of a Land Rover. They had concerns about Ms. Ledwell's competence and whether she understood what she was asked to do. Mr. Moncier declined representation.

68. The Respondent knew or should have known that Mr. Guardino was abusing his fiduciary relationship with Ms. Ledwell, and that Ms. Ledwell was not competent to make decisions on her own that were in her best interest.

69. Evidence was presented at the hearing related to the value of the Motel property. The evidence showed that the Motel was operated by Sidney James Mountain Lodge under a lease agreement. The appraised value by Sevier County for property tax purposes was \$1.4 million.

70. The Board presented testimony by real estate appraiser, Eddie D. Crook, who had been hired by an attorney for Ms. Ledwell's family members. He conducted his appraisal in August 2007 with a valuation date of October 20, 2005. Mr. Crook placed the fee simple market value of the Motel at \$1.8 million. (Exhibit 26)

71. The Respondent presented testimony from Tom Graves, real estate appraiser, by way of deposition taken for proof. Mr. Graves opinion was that the fee simple value of the Motel was \$1.479 million, but the value of the property with the existing leasehold was \$650,000. (Exhibit 30)

72. A third appraisal was conducted by Elwood R. Roehn, Jr. for Tennessee State Bank, which was the lender for the purchaser of the Motel, Sidney Maples. His appraisal was entered as Exhibit 31 and set the "approximate Market Value of fee simple estate" as of October 13, 2005, as \$1.5 million.

73. Mr. Guardino died prior to the hearing while serving time in prison after conviction of the tax evasion charge.

CONCLUSIONS OF LAW

The Hearing Panel makes the following Conclusions of Law:

1. Respondent violated Rule of Professional Conduct 1.1 and 1.3 by failing to competently and diligently represent the interest of his client, Mary Ann Ledwell, in the sale of

her motel and protect her from ongoing abuse by David Guardino, who had a fiduciary relationship with Ms. Ledwell.

2. Respondent failed to competently investigate the value of the motel, or advertise and market the motel for sale.

3. Respondent had no knowledge or experience in handling commercial real estate transactions; there was no evidence presented to show that he consulted anyone with such expertise; he obtained no independent appraisals of the value of the Motel property; he did not review any appraisals of the Motel property; he did not advertise or market the motel for sale.

4. The Hearing Panel finds that the Board did not carry its burden of proof that the sale of the Motel for \$900,000 was significantly less than its appraised value. The appraised value evidence presented by the Board was for the fee simple value, but did not include the leasehold interest on the Motel and the impact that interest might have on the fair market value of the Motel at the time of sale. Although the price received for the motel may not have been significantly less than fair market value, the evidence failed to show that Respondent's competence or diligence had anything to do with it because he failed to conduct a competent or diligent investigation of the value.

5. Respondent failed to diligently insure that Ms. Ledwell's financial interests were not being abused by David Guardino, who had a fiduciary duty based on his Power of Attorney. Respondent knew, or should have known through a diligent investigation, that Ms. Ledwell's assets were being squandered by Mr. Guardino. As discussed below, Respondent's relationship with Mr. Guardino impacted his duty to Ms. Ledwell.

6. Respondent violated Rule of Professional Conduct 1.5 by accepting an unreasonable amount of fees from Ms. Ledwell for both the sale of the Motel and for obtaining a release of a lien. These fees were not only unreasonable, but were exorbitant considering the amount of actual work performed even as described by Respondent.

7. Respondent was paid \$141,000 his services. However, he produced no records nor was he able to clearly state what services he provided to justify such a fee. The amount he said he received for selling the motel was \$121,000 and is very close to one-third of the approximate amount of \$355,000 that Ms. Ledwell received after payoff of the existing mortgage on the Motel, yet he testified that he told Ms. Ledwell that he was not going to charge her one-third. The evidence showed the usual fee received for the sale of commercial real estate was substantially less than what Respondent received. Respondent received an additional \$20,000 from Ms. Ledwell for obtaining release of a lien on her home. However, again he was not able to state what services he provided that justified such a fee.

8. Respondent failed to diligently explain fees to Ms. Ledwell. He had her sign documents setting his fee at one-third of any recovery, but told her that he was not going to charge her that amount. He never explained how his fee would be calculated. The documents he had Ms. Ledwell sign were misleading and confusing.

9. The Hearing Panel does not find either Respondent's or his paralegal's testimony credible that the paralegal added the paragraph without Respondent's authority concerning the gift to Respondent. The testimony by Respondent and Ms. Whitteaker that she was disciplined by way of a writeup was contrived, probably after the Board filed the Disciplinary Petition. Both witnesses testified that the writeup did not occur for some days after the document was signed by

Ms. Ledwell, yet the writeup was dated October 4, 2005. Respondent had every opportunity to clarify in writing to Ms. Ledwell that he could not accept a gift out of the proceeds of the sale, but failed to do so.

10. The Hearing Panel concludes that Respondent knew, or should have known, that Ms. Ledwell was a Client Under a Disability and should have considered obtaining the appointment of a Guardian as required by Rule of Professional Conduct 1.14 to assure his actions were in Ms. Ledwell's best interest. This was especially true due to the intertwined attorney/client relationship the Respondent undertook in representing Mr. Guardino knowing that he was charged with a serious federal crime, while at the same time negotiating the sale of valuable assets for Ms. Ledwell.

11. Respondent's statement that he had no reason to suspect Ms. Ledwell's mental condition should have required special care in his dealings with her are contradicted by the testimony of witnesses describing her condition both before and at the end of Respondent's representation of her. The Hearing Panel believes and gives credence to the testimony of the Board's witnesses concerning Ms. Ledwell's condition and appearance, and did not fully believe Respondent and his paralegal, Ms. Whitteaker. Her appearance and other factors should have given Respondent clues that something was amiss regarding her competency.

12. The Hearing Panel finds that the Respondent violated Rule 1.8 (c) by preparing the Authority to Sell the Ledwell Motel to Sidney Maples document, Exhibit 6, dated October 4, 2005, which granted him a "gift" of \$121,000 from the proceeds of the sale.

13. Respondent violated Rule 1.8(e) by providing monies to Ms. Ledwell, and presumably Mr. Guardino because he was living in her home, to pay for living expenses.

DISCIPLINE

Based on the above grounds, the Hearing Panel has determined that the Respondent shall be disciplined. Respondent shall be suspended from the practice of law for a period of one (1) year, but shall be placed on probation for the entire time so long as the Respondent complies with the terms of the probation as set forth below.

1. The Respondent must obtain an experienced mentor attorney well versed in law office procedure. The mentor shall be subject to approval by the Board. Respondent must meet with the mentor at least monthly within the one (1) year probationary period and work on law office procedures such as retainer agreements, conflict checks, etc. The mentor must report to the Board regarding such meetings.

2. Respondent shall make restitution to Mary Ann Ledwell's conservatorship in the amount of One Hundred Forty-One Thousand Dollars (\$141,000.00). All fees Respondent has received from representing Ms. Ledwell are determined to be "ill-gotten gain" which should be returned to her. The Respondent may work out a payment plan that is reasonable and acceptable to the Board of Professional Responsibility for such restitution but must at all times be in compliance with any payment schedule that is agreed upon.

3. The Respondent must attend and complete ten (10) hours of continuing legal education in the area of ethics within the one (1) year probationary period.

The Hearing Panel finds that these sanctions are reasonable given the severity of the Respondent's violations of the applicable Rules of Professional Conduct. Certain mitigating and aggravating factors influenced the Hearing Panel's decision on Respondent's discipline as set

forth below. In mitigation, the Respondent has no prior disciplinary offenses and has to some extent expressed some remorse regarding his actions. He has further been compliant with disciplinary proceedings. Respondent argues that a mitigating factor is that he self-reported a possible violation. However, the evidence showed that Respondent self-reported at the suggestion of a Circuit Court judge, so it was not exactly voluntary.

Aggravating factors include that the Respondent has been found guilty of taking an excessive fee which can be said to be the result of a selfish motive. There are multiple offenses involved in the present action. The Respondent was deceptive regarding the "gift" language inserted in one of his contracts with Mary Ann Ledwell concerning Respondent's fee and his "punishment" of paralegal Faun Whitteaker for allegedly inserting such "gift" language unilaterally. The Hearing Panel did not believe Respondent's testimony on this matter.

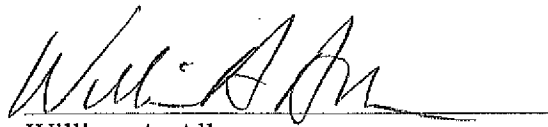
The Hearing Panel also considered the vulnerability of the victim, Mary Ann Ledwell. The fact that she was particularly vulnerable due to her mental and physical disabilities was an aggravating factor. Mr. Shipwash did not come to Ms. Ledwell's assistance in her time of need but instead ignored her disabilities and actively participated in a transaction where Ms. Ledwell lost her most significant asset, the Ledwell Motel. Additionally, the Respondent did not wholeheartedly acknowledge the wrongful nature of his conduct but instead filed documents with the Board taking the position that all of his conduct at issue was excusable. Only at the hearing did he finally acknowledge that the One Hundred Twenty-One Thousand Dollar (\$121,000.00) fee for the sale of the motel was excessive. He did not acknowledge as wrong any of the other conduct as proved by the Board in this case despite the fact that his conduct regarding Ms.

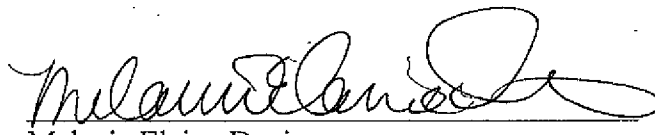
Ledwell was wrong in numerous respects. Finally, as an aggravating factor, the Respondent has substantial experience in the practice of law having been practicing since 1998. He worked at the reputable law firm of Leitner, Williams, Dooley & Napolitan, where he should have received legal training in retainer agreements, record keeping and billing. He cannot use youth and inexperience as an excuse for his failure of judgment.


All of these mitigating and aggravating factors were taken into consideration by the Hearing Panel in determining the discipline stated herein. It is averred that such discipline is in compliance with and in harmony with the 1991 Edition of the *Standards for Imposing Lawyers Sanctions* from the American Bar Association. These standards were taken into consideration by the Hearing Panel in making its decision as to discipline for the Respondent.

Entered this 23rd day of February, 2010.

HEARING PANEL


William A. Allen
Panel Chair


Melanie Elaine Davis
Panel Member


Charles Dungan
Panel Member