

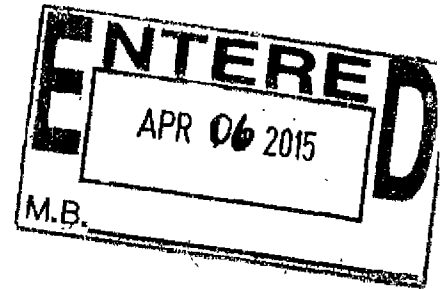
IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
AT MEMPHIS

PAUL JAMES SPRINGER,  
Petitioner,

vs.

BOARD OF PROFESSIONAL  
RESPONSIBILITY of the Supreme Court  
of Tennessee,  
Respondent.

Docket No.  
CH-14-0685



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**ORDER**

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This matter came to be heard on the 31<sup>st</sup> day of March, 2015, on the Petition of Certiorari of the Petitioner, Paul Springer. After hearing the presentation and argument of counsel for Petitioner and the Board as well as the record as a whole, this court makes the following findings of fact and conclusions of law:

**A. FINDINGS OF FACT**

1. The Board filed a Petition for Discipline against Petitioner on November 2, 2012. (Record p. 1). Petitioner filed an answer on January 2, 2013. (Record p. 5). Petitioner was licensed to practice law in Tennessee in 2001 and has been practicing since then.
2. This petition for discipline was based upon separate complaints, of which, one was dismissed. The remaining two include a complaint brought by the Board of Professional Responsibility.
3. The Board of Professional Responsibility presented certified copies of Petitioner's bank statements between September 2007 and October 2011 and trust account deposits between October 2007 and October 2011 before the Panel. (Exhibits 14 and 15). Petitioner alleges he was not noticed he would have to defend against allegations from five to six years prior to the Board's petition. These materials were submitted to address the defense of bank error. The Board of Professional Responsibility's Petition for Discipline specifically included "Mr. Springer's withdrawals and payment of personal expenses from his trust account reflects misappropriation

and/or failure to hold property and funds of clients and third parties separate from Mr. Springer's own funds." (Record p. 4)

4. These statements show, beginning July 2008, the business expenses of Petitioner's law firm were paid by Petitioner's trust account. These business expenses included withdrawals of \$121.03, \$121.03, and \$542.87 made to pay the salary of an employee of the firm in July 2008. Additionally, Petitioner authorized online bank transfers from his operating account to his trust account after these withdrawals were made. (Exhibit 14). Payroll expenses continued to be withdrawn from the Trust Account until November 2008. (Exhibit 14).

5. In December 2008 and January 2009, the Trust Account was accessed by AT&T to pay Mr. Springer's cell phone bill. (Exhibit 14). Petitioner testified to the panel he contacted First Tennessee to correct this. He testified the Trust Account had been set up with only one number difference and therefore the Trust Account had been inadvertently accessed by his payroll provider. (Transcript p. 69-70). A document from First Tennessee Bank was admitted into evidence before the Hearing Panel which provided an explanation for the transactions, including bank error in using the Trust Account for overdraft protection, causing inappropriate payments from Petitioner's Trust Account. (Exhibit 17).

6. No improper transactions occurred between February 2009 and September 2009. Then, in October 2009, the Trust Account showed expense payments to Memphis Light Gas and Water, AT&T, and KUBRA from the Trust Account. (Exhibit 14). These payments continued through October 2011, and, during the same period, several transfers were made from the Operating Account to the Trust Account. (Exhibit 14).

7. Petitioner's Trust Account contained client and third party property as well as Petitioner's personal funds authorizing personal and business expenses. Although Petitioner testified before the Panel the Trust Account was closed and reopened in late 2010 or early 2011 to correct this problem, review of these account statements show continued commingling of personal and business expenses as late as October 4, 2011. (Transcript p. 86, Exhibit 14).

8. Petitioner admits he had issues with his bank accounts and accepts strict liability for that conduct. However, Petitioner asserts there is also evidence in the record of bank liability. (Petitioner Brief, p. 10).

9. A complaint against Petitioner was made by Ms. Vequitia Todd Barnes. She retained Petitioner in a personal injury and products liability action against General Motors in

December 2004. (Transcript p. 7). A contingency fee retainer executed December 29, 2004, stated Petitioner would receive thirty-three and one-third (33.3%) of the gross amount received from the result of the action. Also, the retainer stated Ms. Barnes would be responsible for all costs and expenses. (Exhibit 1). Petitioner filed a civil action in the United States District Court for the Western District of Tennessee on behalf of Ms. Barnes. (Exhibit 2).

10. Petitioner took control of Ms. Barnes vehicle in order to preserve its condition after the execution of the retainer. (Transcript p. 9). Petitioner also began to gather copies of her medical bills. (Transcript p. 13). Of these medical bills, Petitioner received a bill from the Regional Medical Center at Memphis, reflecting Ms. Barnes incurred medical charges of \$39,068.34, with a balance of \$954.25 remaining after insurance payments and adjustments. (Transcript p. 13-15, Exhibit 3).

11. During the course of representation, Petitioner was given a copy of a hospital lien filed by Regional Medical Center in the amount of \$39,068.34. (Exhibit 3). Further, Petitioner was aware of a General Sessions judgment of over \$9,000.00 against Ms. Barnes, which was entered on March 2, 2006, representing the outstanding loan on Ms. Barnes' vehicle. (Exhibit 6, Transcript p. 18). Petitioner contacted the attorney for Credit Acceptance Corp to attempt to negotiate a compromise and obtain clear title to this vehicle. (Transcript p. 18-20).

12. Petitioner negotiated a settlement of Ms. Barnes' action of \$340,000, and received a settlement check from General Motors on December 14, 2006. (Transcript p. 17, Exhibit 5). Petitioner deposited this check into his Trust Account and provided Ms. Barnes with \$5,000.00 of the settlement proceeds. (Transcript, p. 20-21). Petitioner provided Ms. Barnes with a settlement disbursement letter dated January 16, 2007. (Exhibit 7). This letter accounts for the disbursement as follows: Ms. Barnes would receive \$235,000.00; Petitioner would retain \$100,000.00 which would include the remainder of his attorney fee, all outstanding medical liens, and the judgment for the damaged vehicle; and Petitioner would retain \$5,000.00 for expenses. This letter did not include details regarding the amount from the settlement which would specifically go toward medical liens, automobile cost or judgment, attorney's fee, or litigation expenses. These details, according to Ms. Barnes' testimony before the Panel, were also not discussed with her at her meeting with Petitioner. (Transcript, p. 25-26).

13. Further, the settlement disbursement letter does not reflect the actual disbursement of the settlement proceeds. Instead, Ms. Barnes received the aforementioned

\$5,000.00; Ms. Barnes received an additional, rather than total of, \$235,000.00 at the time of the January 16, 2007, letter; and Petitioner retained \$100,000.00. Petitioner did not retain \$5,000.00 in expenses as stated in the disbursement letter. (Transcript p. 24-25). Petitioner testified he paid all outstanding medical liens after providing Ms. Barnes with her disbursement of \$235,000.00. (Transcript p. 59). He also testified he continued to negotiate with Credit Acceptance Corp regarding the judgment and title on her vehicle. (Transcript p. 17-19).

14. Ms. Barnes testified she called Petitioner on numerous occasions after the settlement regarding the status of her car and medical bills. (Transcript p. 95-97). From January 2007 to October 2010, Petitioner failed to provide Ms. Barnes with this information she requested. Ms. Barnes testified she sent a letter to Petitioner October 5, 2010, to notify him she had been contacted by creditors regarding debts Petitioner promised would be paid. (Transcript p. 99-100). Ms. Barnes wanted a detail accounting including the legal fee received by Petitioner. (Exhibit 8).

15. Petitioner failed to provide a detailed accounting to Ms. Barnes (Transcript p. 127-128). Petitioner failed to satisfy the judgment against Ms. Barnes regarding her vehicle or obtain clear title to her vehicle. (Transcript p. 59, 100-102). Ms. Barnes filed a complaint with the board for these reasons. (Transcript p. 100).

16. Petitioner also failed to produce a detailed accounting of the disbursement of Ms. Barnes' settlement. (Transcript p. 129-131). Petitioner produced a check paid from his firm's bank account to Regional Medical Center in the amount of \$948.00; written on the check was "final settlement of MED bill." (Exhibit 13). Petitioner testified the check was intended to pay the outstanding medical bill but was not delivered to Regional Medical Center. (Transcript p. 55-56). Petitioner provided no check from his Trust Account to show payments of Ms. Barnes' medical providers (Transcript p. 130).

17. Petitioner acknowledged he was responsible for paying off the judgment on Ms. Barnes' car and providing Ms. Barnes with clear title. (Transcript p. 23). Petitioner testified he negotiated a settlement with the attorney for Credit Acceptance Corp in the amount of approximately \$7,000.00 but had difficulty receiving title to the car. (Transcript p. 29-30, 61-64). Due to the longevity of this issue, Ms. Barnes demanded Petitioner provide her with \$17,000.00 of the settlement funds Petitioner retained, and she would assume responsibility for the vehicle. (Transcript p. 100-101). Petitioner refused this request.

18. Petitioner testified he was later notified by the creditor that title to Ms. Barnes' car was available. He also testified he retained \$10,000.00 in his Trust Account pending a final resolution regarding Ms. Barnes' automobile. Further, Petitioner testified this amount remained in his Trust Account through the disciplinary hearing. (Transcript p. 28-29). However, Petitioner's accounts show this is incorrect; rather, several months reflect a near zero balance within Petitioner's Trust Account. (Exhibit 14 and 15).

19. Petitioner then testified he used the \$10,000.00 to purchase a cashier's check in anticipation of settling the vehicle issue. Petitioner stated he recently deposited the cashier's check in his Trust Account. (Transcript. p. 92-94). Petitioner failed to show or present into evidence any documentation confirming this occurred.

20. Petitioner asserts he continuously attempted to resolve matters with Ms. Barnes, but it was Ms. Barnes' conduct which prevented any such resolution from occurring. (Transcript, p. 29-30).

21. Petitioner's prior history of discipline includes a Public Censure on May 19, 2006, for being dilatory in filing appellate briefs in three (3) separate criminal appeals. Petitioner was found in willful contempt by the Court of Criminal Appeals and was ordered to pay a fine for each case. Further, Petitioner failed to comply with the Court's order, but ultimately paid the fine and court costs for each case. (Exhibit 20).

22. The Final Hearing was set for June 28, 2013, and the Board of Professional Responsibility filed its pre-trial brief, witness list, and exhibit list on June 18, 2013. (Record p. 10-12). On June 20, 2013, the panel conducted a pre-trial conference, and the final hearing was continued to August 14, 2013, on Petitioner's request to continue.

23. On January 2, 2014, the hearing panel filed its findings of fact and conclusions of law finding Petitioner violated Rules 1.3, 1.4, 1.5(c), 1.15(a), 1.15(b), 1.15(d), 1.15(e), 8.1(b), 8.4(a) and 8.4(d) of the Tennessee Rules of Professional Conduct. The hearing panel determined Petitioner should be suspended for a period of not less than sixty (60) days and shall not be reinstated to the active practice of law until he completed the following: (i) payment of \$10,000 in restitution to Ms. Barnes; (ii) engagement of a practice monitor for a period of two (2) years; (iii) completion of a practice management program that includes at least six (6) hours of CLE; (iv) two (2) years' probation upon completion of the foregoing actions; (v) proof of professional liability insurance with minimum limits of \$100,000/\$200,000.

24. The Board of Professional Responsibility filed a Motion to Alter or Amend the Judgment of the Hearing Panel on February 3, 2014. (Record p. 21) Petitioner filed a response. (Record p. 22). The Hearing Panel filed an Amended Order on February 26, 2014, clarifying its previous order and imposing a suspension of two (2) years and sixty (60) days with an active suspension of at least sixty (60) days and indefinitely thereafter until Petitioner met the previously imposed conditions. (Record p. 24). If Petitioner satisfied the conditions, he would serve the remainder of his suspension on probation.

25. Petitioner filed his Petition on April 28, 2014. The Honorable Don Ash was designated by the Supreme Court to hear this matter by order dated August 25, 2014. The Board of Professional Responsibility filed a Motion to Dismiss and/or Summary Judgment on September 26, 2014. This court denied the motion by order dated November 10, 2014.

26. Petitioner alleges the Hearing Panel allowed inadmissible evidence of conduct not properly alleged, the Hearing Panel erred in making its findings of facts, the Hearing Panel erred in failing to find any mitigating factors, and the Hearing Panel exceeded its jurisdiction in ordering the payment of \$10,000 be made to Ms. Barnes.

## B. CONCLUSIONS OF LAW

1. Having made the aforementioned findings of fact, this court makes the following conclusions of law. First, Tennessee Supreme Court Rule 9, section 33.1(b), states the standard of review for this matter, in pertinent part:

The review shall be on the transcript of the evidence before the Hearing Panel and its findings and judgment. If allegations of irregularities in the procedure before the Hearing Panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the Hearing Panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the party filing the Petition for Review have been prejudiced because the Hearing Panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in

excess of the Hearing Panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the Hearing Panel as to the weight of the evidence on questions of fact.

2. Further, “[A]lthough the trial court may affirm, remand, reverse, or modify a Hearing Panel decision, the trial court may not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.” *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 322 (Tenn. 2009).

3. In particular, this Court will not reverse the decision of a Hearing Panel so long as the evidence “furnishes a reasonably sound factual basis for the decision being reviewed.” *Hughes*, 259 S.W.3d at 641 (quoting *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993)).

4. In *Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993), the Court of Appeals provided “the court should review the record carefully to determine whether the administrative agency's decision is supported by ‘such relevant evidence as a rational mind might accept to support a rational conclusion.’” (citing *Clay County Manor v. State Dep't of Health & Environment*, 849 S.W.2d 755, 759 (Tenn.1993);

5. Substantial and material evidence is defined as such relevant evidence as a rational mind might accept to support a rational conclusion or which furnishes a reasonably sound factual basis for the decision being reviewed. *Bd. of Prof'l Responsibility v. Allison*, 284 S.W.3d 316, 322-23 (Tenn. 2009). This standard requires something less than a preponderance of the evidence but more than a scintilla or glimmer. *Jones v. Bureau of TennCare*, 94 S.W.3d 495, 501 (Tenn. Ct. App. 2002) (quoting *Gluck v. Civil Serv. Comm'n*, 15 S.W.3d 486, 490 (Tenn. Ct. App. 1999)).

### C. RULING

1. Petitioner alleges the Hearing Panel should not have admitted the Trust Statements of Petitioner due to the Board of Professional Responsibility's failure to properly put Petitioner on notice. The Board of Responsibility's Petition for Discipline specifically states, "Mr. Springer's withdrawals and payment of personal expenses from his trust account reflects misappropriation and/or failure to hold property and funds of clients and third parties separate from Mr. Springer's own funds." (Record p. 4). As argued by the Board, the introduction of the Trust Account statements raised no additional allegation of misconduct. Rather, these statements were evidence reviewed by the Hearing Panel equally to any other evidence, particularly in regards to Petitioner's defense of bank error. This court finds the Panel acted appropriately in admitting the bank statements.

2. Petitioner also argues the Hearing Panel erred in failing to find any mitigating factors. This court finds the Hearing Panel clearly reviewed all evidence and considered both mitigating and aggravating factors. Although Petitioner alleges the Hearing Panel failed to consider bank error as a mitigating factor, this is not a factor included in the ABA Standards for Lawyer Sanctions, Section 9.32. This court finds the Panel appropriately reviewed and applied mitigating and aggravating factors in determining the punishment of Petitioner.

3. Petitioner argues the Hearing Panel exceeded its jurisdiction in ordering the payment of \$10,000 be made to Ms. Barnes. Tennessee Supreme Court Rule 9, § 4.7 gives the Hearing Panel authority to require the Petitioner to make restitution to appropriate parties as a result of Petitioner's actions. Ms. Barnes was affected by Petitioner's failure to satisfy the judgment against Ms. Barnes as he admitted he agreed to do. This court finds the Panel appropriately determined the \$10,000.00 should be returned to Ms. Barnes.

4. In review of the Hearing Panel's decision, this court does not find the panel's findings, inferences, conclusions, or decisions are in violation of constitutional or statutory provisions, in excess of the panel's jurisdiction, made upon unlawful procedure, arbitrary or capricious, characterized by an abuse of discretion or clearly unwarranted exercise of discretion, or unsupported by evidence which is both substantial and material in light of the entire record. The Court finds the Hearing Panel's findings of fact and conclusions of law are fully supported by the evidence presented in this matter and reversal or modification of the Hearing Panel's decision is simply not warranted.



5. Petitioner failed to demonstrate the Hearing Panel's conclusions were not supported by substantial and material evidence or their decision was arbitrary and capricious. Petitioner's suspension is fully supported by the facts and this Court must not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

6. This Court AFFIRMS the decision of the Hearing Panel and assesses costs to Petitioner.

IT IS SO ORDERED, this the 6 day of April, 2015.

**A TRUE COPY-ATTEST**

Donna W. Russell, Clerk & Master

By *Donna W. Russell*

D.C. & M.

**CERTIFICATE OF SERVICE**

*[Signature]*  
HONORABLE DON R. ASH

I hereby certify the foregoing has been served upon the following by U.S. Mail on this the 14th day of April, 2015:

A. Russell Willis  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027

Paul Springer  
301 Washington Avenue  
Suite 302  
Memphis, TN 38103-1988

*Donna W. Russell*  
Clerk