

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

BOARD OF PROFESSIONAL RESPONSIBILITY)
OF THE SUPREME COURT OF TENNESSEE,)

Plaintiff,)

vs.)

CHARLES EDWARD WALKER,)

Defendant.)

No. 20-0616-II

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MEMORANDUM AND ORDER

This cause came on to be heard on the 20TH day of November 2020 before Robert E. Lee Davies, Senior Judge upon the petition for review filed by Charles Edward Walker. The Court has received a copy of the administrative record with exhibits, the Hearing Panel transcript, and the briefs filed by each party. After argument of counsel, the Court makes the following findings of fact and conclusions of law:

Mr. Walker received his license to practice law in Tennessee in 2002 and has engaged in the active practice of law since that time. On August 29, 2018, a petition for discipline was filed which Mr. Walker answered on October 25, 2018. The Board then filed a supplemental petition on February 15, 2019 which Mr. Walker answered on March 7, 2019. The hearing on the petition took place on November 12 and 13, 2019. The Panel heard testimony of witnesses, including Mr. Walker, took the case under advisement and issued its written findings of fact and conclusions of law on March 6, 2020. Based upon its findings of fact and conclusions of law, in conjunction with the ABA Standards for imposing lawyer sanctions, the Panel decided that the appropriate final

discipline in this case was to suspend Mr. Walker's license to practice law for a period of three years, with the final year served on probation under the supervision of a practice monitor.

Chancellor McCoy Hearing

The initial complaint against Mr. Walker originated from a real estate transaction. John Sherrod, represented by Paul Krog and Eugene Bulso, filed a lawsuit against REO Holdings. The prior owner of the property failed to pay property taxes, and on August 19, 2004, Mr. Sherrod purchased the property located at 6016 Lenox Avenue in Nashville, Tennessee at a sale conducted by the Davidson County Chancery Court. In May 2015, Mr. Walker began a notice of redemption process with the Chancery Court on behalf of a company in which he was a fifty percent owner by the name of REO Holdings, LLC. The notice of redemption filed by Mr. Walker on behalf of REO cited to a series of assignments of a deed of trust and a promissory note. The documents also included an appointment of a substitute trustee. The assignment was not from the original lender, Capital Builders. Instead, the assignment was from Merdan Ibrahim to REO Holdings; however, there was no derivation clause in this assignment to Mr. Ibrahim. What was missing in the chain was the assignment from Capital Builders to Ibrahim.

After an initial investigation, Mr. Krog and Mr. Bulso determined that there were legitimate issues regarding the validity of the documents filed by Mr. Walker to redeem the property. They took the deposition of Mr. Ibrahim. During the deposition, Mr. Ibrahim testified he had never heard of Capital Builders; he knew nothing about any note being given to him by Capital Builders; he never read any of the documents he signed; and the only reason he signed the documents was because he was presented the documents by someone at the Walker Law Office and told to execute them. Mr. Ibrahim also admitted he assigned the deed of trust and note to REO Holdings without any consideration. Mr. Krog and Mr. Bulso then filed a motion to strike which was heard by

Chancellor McCoy on November 13, 2015. Mr. Krog testified before the Panel that they were alleging on behalf of his client that Mr. Ibrahim never had an interest in the property when he made the assignment to REO Holdings. Apparently, Mr. Walker never filed a response with any evidence, to the motion. At the hearing, the following dialogue took place:

Walker: And your honor, I would submit to the court I have the documents from Capital Builders confirming their embossed and confirming that the note was transferred to Mr. Ibrahim. ...

Mr. Bulso: As soon as it became apparent that these documents that appear on their face to be genuine and legitimate, as soon as it became apparent that they were not, Mr. Sherrod retained us; and we filed this motion on his behalf. With regard to the substance, you know, Mr. Walker alludes to this document that he - that he has. Obviously, your honor, if they had an - REO Holdings had an opportunity to respond to this motion. It did so on Monday of this week. It filed no evidence of any kind, including this alleged assignment from Capital Builders. ...

The Court: [T]his court is convinced that there has been significant deceit or misrepresentation that has occurred with regards to an effort to redeem real estate by REO Holdings. Mr. Walker is the gentleman who has executed a number of the documents having created - not executed. He created a number of these documents, Walker Law Offices, with the assignment of the deed of trust and a deed of trust appointment of substitute trustee, instrument prepared by Walker Law Offices. ... I believe you have had more than sufficient time to come forward with legitimate documents. If in fact, you have, as you represented, the original of the conveyance to Mr. Ibrahim from Capital Builders. Mr. Ibrahim didn't know anything about it. That's hard for me to understand. ...

Mr. Walker: That is not a fraudulent document. So, for the court to say that all these documents are fraudulent when in fact I have an embossed document here that is notarized for the assignment - we have never been asked to produce it.

The Court: Mr. Walker, the representations made by Mr. Bulso are so serious that one would not think an invitation to examine an embossed document would be necessary. What is really troubling is the testimony of Mr. Ibrahim and the documents that he executed that you prepared. He has no knowledge of them. He indicated that he came in and signed these documents without reading them, with no knowledge of who Capital Builders is. And this is a gentleman who has done work for you remodeling houses. His testimony is that he is a hard-working individual. He receives a note for \$5,000 and he never knows it, and then he gives it to you for nothing, boggles the mind.

(Hearing before Chancellor McCoy, November 13, 2015)

Based upon Chancellor McCoy's determinations from the hearing on November 15, 2015, the Chancellor made a referral to the Board as a result of Mr. Walker's conduct.

Bankruptcy Court

Subsequent to the hearing before Chancellor McCoy, Mr. Walker filed for a Chapter 11 bankruptcy in 2016. John McLemore was appointed trustee in Mr. Walker's bankruptcy case. As the trustee, Mr. McLemore's responsibility was to take charge of the businesses, operate those businesses and determine if they can be reorganized. In Mr. Walker's case, the trustee was placed in charge of two businesses, his law practice and his real estate business, both of which he was the sole proprietor. Mr. Walker's real estate holdings consisted of thirty-nine properties located in Davidson County. Mr. Walker was unable to provide Mr. McLemore with a separate bank account in which security deposits for his rental properties were required to be placed pursuant to Tenn. Code Ann. § 66-28-301. Mr. McLemore did discover three security deposits in Mr. Walker's IOLTA accounts. Mr. McLemore determined that there was approximately \$34,000 missing in security deposits and as a result, he sold properties to generate \$34,000 to be placed in a security deposit account.

Mr. Walker testified that the three rental deposits were in his IOLTA account because those deposits were received after he filed for bankruptcy in February 2016 and that he needed to hold the money where it would not be subject to the claims of creditors. As to the remaining rental property security deposits, Mr. Walker testified that there was another bank account in the name of C & J Properties at Pinnacle Bank. Mr. Walker contended that these security deposits were the property of the C & J partnership, not his individual property. As a late filed exhibit to the hearing, Mr. Walker did file bank statements for the security deposits at Pinnacle Bank.

Contempt Hearing before Chancellor Lyle

After Chancellor McCoy made the referral to the Board of Professional Responsibility, she recused herself, and the case was transferred to Chancellor Lyle. Mr. Bulso then filed a motion for a temporary injunction because of his concern regarding the validity of the certificates of authenticity on the deeds which Mr. Walker had recorded. On July 24, 2015, Chancellor Lyle issued a temporary injunction. In her findings, Chancellor Lyle stated:

Before the court is clear, un rebutted evidence that in the space of the year and one half defendant REO has been acquiring tax sale redemption properties, signatures and notary seals on at least ten instruments (quitclaim deeds, affidavits of heirship and assignments of lien) were forged on 5 property transactions involving REO and its principals, Defendants Walker and Johnson. The five notaries, whose names and seals appear on property documents in this case, have filed declarations that these are forgeries.

The forgeries involved different notaries in different states, properties in various locations in Tennessee, with various grantors. The only common element in all the forgeries is that all of these various transactions involve defendants REO, Walker and Johnson.

The defendants do not dispute or contest the forgeries. Instead, they assert that they were unaware and were not involved in the forgeries and were recipients of forged documents. ...

In connection with the risk the defendants' dealings present is that Tennessee law imposes duties and responsibilities on those who use an electronic filing of property records. The law requires an electronic filer of documents with the Register of Deeds to certify and have notarized that they have custody of the document tendered for the registration and "that this is a true and correct copy of the original document executed and authenticated according to law." Tenn. Code Ann. § 66-24-101(c)(3). Further, under Tennessee law, notary seals are to be in color. Tenn. Code Ann. § 8-16-114(a). The color requirement is indicative of an original. Other states require embossing for a notary seal.

The record thus far in this case is that defendants REO, Walker and Johnson did not have the color seals required by Tennessee or embossed seals of other states, but instead possessed only black and white images of notary seals when they electronically filed what has now been established to be copies of forged documents.

(Chancery Court Order entered July 24, 2015, Docket No. 15-780-BC)

Chancellor Lyle enjoined Defendants REO Holdings, Charles E. Walker, and Jon Paul Johnson and their employees and agents from recording any document with the Register of Deeds in the state of Tennessee without having filed a notice with the court, and the court enjoined Defendants from transferring the real property identified in their discovery responses without first obtaining leave from the court. The order of temporary injunction was amended once by the court and once by agreed order to provide that the restrictions did not apply to documents recorded by “Team Title, Inc. or the Law Office of Charles Walker, except to the extent that any such document transfers or assigns any interest in real property to any defendant ...”

On March 3, 2016, Mr. Bulso filed a motion for criminal contempt against Mr. Walker in which Mr. Bulso’s clients alleged that Mr. Walker and two other defendants, Johnson and Coone were involved in a scheme to purchase real property in Davidson County using two other nominees and a trust called the “All Amp Trust” in violation of the Chancery Court’s temporary injunction. On July 26, 2016, the court conducted a hearing on the contempt. In its order finding Mr. Walker in criminal contempt of court, Chancellor Lyle stated:

[T]he court finds beyond a reasonable doubt that in December of 2015, to purposefully evade compliance with the July 24, 2015 order, Defendant Walker established the All Amp Trust ...

The evidence at the July 26, 2016 trial established that as settlor of the All Amp Trust, Defendant Walker was granted the rights: 1) to distribute income of principal to any person or organization as he directed; 2) to pay such amounts or dispose of the net income and principal of the trust as he directed the trustee from time to time; 3) to reserve the right at any time and from time to time to amend, alter, revoke or terminate the trust, in whole or in part, or any provisions, by an instrument in writing signed by Defendant Walker ...; and 4) on the revocation of the trust, the trustee was to pay or transfer to Defendant Walker ...all of the trust funds. ...

Jamaal Boykin, as trustee for the All Amp Trust, purchased the 4229 Laurenwood Drive, Antioch, Tennessee property in December 2015. As trustee for the All Amp Trust, an agent for Defendant Walker, Jamaal Boykin recorded a substitute trustees deed conveying the Laurenwood property to Jamaal Boykin as trustee for the All Amp Trust. ...

From the foregoing evidence the court finds beyond a reasonable doubt that through his role as settlor of the All Amp Trust, Defendant Walker used the trust to evade the July 24, 2015 order, and the evidence establishes that Defendant Walker, beyond a reasonable doubt, violated the July 24, 2015 order willfully and for a bad purpose.

(Order of Chancery Court entered August 2, 2016, Docket NO. 15-780-BC)

On appeal, Mr. Walker argued that he was not specifically enjoined from creating a trust.

In affirming the Chancery Court, the Court of Appeals held:

The injunction was issued in this case to ensure that every deed the Defendants filed complied with the statutory filing requirements pertaining to real property documents; the court found that Defendants' registration of forged real estate documents posed substantial risk to the public welfare. The evidence is clear that, after the injunction was issued, Mr. Walker established the All Amp Trust, a revocable trust in which he retained the right to direct the accumulation and distribution of trust assets, and in which Mr. Boykin was named trustee. ... Mr. Boykin was bound to follow Mr. Walker's directions relative to the trust property, including recording the deed conveying that property to the trust and, upon its subsequent sale in March 2016, distributing a portion of the proceeds to pay Mr. Walker's legal fees. ...

Taking in its entirety and in context, the proof is beyond a reasonable doubt that Mr. Walker, as settlor of the trust and its sole beneficiary, sought "to evade responsibility for violating an injunction by doing through subterfuge that which, while not in terms a violation, yet produces the same effect by accomplishing substantially that which [he] w[as] enjoined from doing," (citations omitted) Family Trust Services LLC v. REO Holdings, LLC, 2018 WL 2203216 * 6-7 (Tenn. Ct. App. 2018).

Pro Hac Vice Application, U.S. District Court Texas

On August 4, 2017, Mr. Walker executed a motion for admission *pro hac vice* in the United States District Court for the Western District of Texas, in a pending case styled Michael-RP Burnette v. Dell Marketing, LP. Question 5 of the motion provided: "Applicant has never been subject to grievance proceedings or involuntary removal proceedings while a member of the bar of any state or federal court, except as provided below". Mr. Walker left the question blank.

Apparently, Mr. Walker had concerns about question 5 and as a result he sent an email to Julie Golden, the courtroom deputy, wherein he stated:

I have a question regarding the *pro hac vice* admission. Question 5 asks if I have had any grievance proceedings against me and to list those. I represented thousands of indigent defendants in state court when I was working as a conflict attorney (handling conflicts with the public defender) and some of them filed complaints with the Board. None of them resulted in any complaints or proceedings being filed by the Board against me. Do I need to include all of those in section 5?

The reply to Mr. Walker's inquiry is set forth in an email from Julie Golden, courtroom deputy for Judge Pittman in which she states: "You only need to include any cases that had actual findings of wrongdoing."

Findings by the Hearing Panel

The Hearing Panel found that Mr. Walker and his employees engaged in conduct intended to deceive Chancellor McCoy regarding the redemption documents filed by REO Holdings. Accordingly, the Panel found Mr. Walker had violated Code of Professional Responsibility, Rule 3.3, Candor toward the tribunal, Rule 4.1, Truthfulness in statements to others, Rule 5.1, Responsibility to partners, managers and supervisory lawyers, and Rule 8.4, Misconduct. In support of these findings, the Panel specifically determined that:

- Mr. Walker was an owner and also represented REO Holdings.
- Mr. Johnson was a non-lawyer member of REO Holdings.
- REO Holdings participated in a redemption of property.
- There was a significant time gap in the assignment of judgment between Capital Builders and Merdan Ibrahim, prior to the assignment from Ibrahim to REO Holdings.
- Ibrahim was an employee of REO Holdings.
- Mr. Walker certified that the assignment of deed of trust was a true and accurate copy of the assignment and authenticated according to the law.
- Mr. Walker did not provide the original, embossed assignment from Capital Builders to Ibrahim.

- The risk of potential serious injury to a party occurred when Mr. Walker attempted to pursue a redemption proceeding without the original assignment from Capital Builders.
- The later assignment was created in October 2015 during the pendency of the case before Chancellor McCoy.

With regard to the injunction issued by Chancellor Lyle, the Panel found:

- Chancellor Lyle issued a temporary injunction ordering that Mr. Walker was enjoined from transferring or encumbering real property identified in that case without leave of court.
- Mr. Walker was enjoined from withdrawing funds paid to redeem any real property without leave of court.
- Mr. Walker created All Amp Trust and operated it in violation of the Chancellor's order.
- This created a benefit for Mr. Walker where he could continue obtaining money without oversight from the court.
- The Hearing Panel went on to accept the facts found by Chancellor Lyle and the Court of Appeals as true based upon the doctrine of offensive collateral estoppel citing Bowen v. Arnold, 502 S.W. 3d 102 (Tenn. 2016).
- Mr. Walker's creation of a trust in order to evade the court's order created a serious interference with the legal proceedings by circumventing the injunction.

With regard to the bankruptcy case, the Panel found that:

- As trustee, John McLemore discovered \$30,000 was missing from funds which Mr. Walker should have held in trust as security deposits for his rental properties.
- Mr. McLemore only discovered three security deposits which were placed in Mr. Walker's IOLTA account.
- Mr. Walker placed those accounts in his IOLTA account for safe keeping because of his bankruptcy filing.
- Mr. Walker testified the property manager of the remaining rental properties he owned was C & J Properties, a partnership in which he was a partner and that C & J Properties kept a security deposit account, but that Mr. Walker failed to produce records to show that a separate security deposit account existed.
- The Board acknowledged the failure of a lawyer to keep security deposits in a separate account was not a violation of the Rules of Professional Responsibility.

Regarding the *pro hac vice* application, the Panel found:

- Mr. Walker applied for *pro hac vice* status in the United States District Court for the Western District of Texas.
- He failed to disclose in his application that he had prior grievance proceedings in Tennessee where he had received a private informal admonition on November 26, 2008; that he also failed to disclose the pending disciplinary complaints which were filed against him by Chancellor McCoy on December 8, 2015, Paul Krog on April 8, 2016 and John McLemore on August 22, 2016.

- His failure to disclose provided Mr. Walker with an attempt to gain *pro hac vice* status.

Hearing Panel's Conclusion of Law

The Panel concluded that Mr. Walker did not violate the Rules of Professional Conduct by placing security deposits into his firm's IOLTA account.

With regard to the complaint by Chancellor McCoy, the Panel concluded that by failing to correct his statements that he had the original assignment from Capital Builders to Ibrahim, when he later discovered that he did not have that document, Mr. Walker violated R.P.C. 3.1 (Meritorious claims and contentions) and R.P.C. 3.3 (Candor toward the tribunal). The Panel concluded Mr. Walker violated R.P.C. 3.4 (Fairness to opposing party and counsel) when he failed to provide an original assignment of the interest from Capital Builders to Ibrahim when litigation ensued concerning the assignment or by failing to disclose that he did not have the original document when he discovered it was not in his possession. Likewise, the Panel concluded Mr. Walker violated R.P.C. 4.1 (Truthfulness in statements to others) because he failed to disclose the loss of the original assignment from Capital Builders to Ibrahim.

With regard to his application for *pro hac vice* status, the Panel concluded Mr. Walker violated R.P.C. 3.3 (Candor toward the tribunal) by failing to notify the district court of his prior disciplinary history and his currently pending disciplinary complaints. The Panel went on to conclude that the above violations by Mr. Walker also resulted in a violation of R.P.C. 8.4(a)(Misconduct).

With regard to the referral by Chancellor Lyle, the Panel concluded that Mr. Walker violated R.P.C. 8.4(c) (Conduct involving dishonesty) and 8.4(d) (Conduct that is prejudicial to the administration of justice) when he created the All Amp Trust to avoid the court's injunction.

After finding these violations, the Hearing Panel looked to the ABA Standards to determine an appropriate type of discipline. Although the Panel considered the standards pertaining to Reprimand, Suspension, and Disbarment, the Panel failed to identify which particular sanction was the presumptive sanction in this case.

The Panel also failed to consider any aggravating or mitigating circumstances. It concluded that suspension was the appropriate sanction for each of the violations and suspended Mr. Walker for three years, with the final year served on probation under the supervision of a practiced monitor.

Issues Raised by Attorney Walker

Mr. Walker raises several issues on appeal. Initially, he claims that the Board withheld exculpatory evidence and alleged facts it knew were false. Walker relies upon the Board's responses to written discovery and claims that the Board did not produce any documents. The Board's discovery responses include the following: "During the investigation of the disciplinary complaints, the Board provided Mr. Walker with all documents responsive to this request which were received by the Board and not otherwise confidential pursuant to Tenn. Sup. Ct. R. 9, § 32." The Board also responded that it would make its investigative file available to Mr. Walker for inspection. The Board's responses to discovery requests were made on April 3, 2019. Mr. Walker had over seven months to schedule an inspection of the Board's entire file; however, he failed to do so until right before the hearing occurred. Although Mr. Walker claims the Board received confirmation from the purported successor in interest to Capital Builders, Linda Carmack that she had "confirmed the authenticity of the assignment and affidavit", there is no such confirmation in the record. The only emails attached by Mr. Walker concerning Ms. Carmack were sent by the

Board, requesting confirmation of the documents' authenticity, and Mr. Walker did not provide the Panel with any email from Ms. Carmack demonstrating such confirmation. If Mr. Walker was dissatisfied with the Board's discovery responses, he should have filed a motion to compel with the Hearing Panel. A reviewing court is not the proper forum to raise an initial complaint regarding discovery. "Absent allegations of irregularities in the procedure before the Hearing Panel, the trial court's review of the decision by the Hearing Panel 'shall be on the transcript of the evidence before the Hearing Panel and its findings and judgment.'" Tenn. Sup. Ct. R. 9 § 1.3, Hoover v. Board of Professional Responsibility, 395 S.W. 3d 95, 102 (Tenn. 2012). This argument is without merit.

Mr. Walker contends that the Hearing Panel's holding that he violated R.P.C. 3.1, 3.3 and 3.4 is incorrect. This argument demonstrates a misunderstanding of the Panel's findings and conclusions. Here, the existence of the assignment was not the issue. Instead, the issue was the validity of the assignment. The question of the assignment's validity was contested in Chancery Court. The assignment provided that the note was transferred with the assignment of deed of trust from Capital Builders to Ibrahim and that the endorsement on March 16, 2011 was confirmed and authorized. Mr. Bulso presented the deposition of Mr. Ibrahim in his motion to strike. Mr. Ibrahim's deposition indicated he knew nothing about this assignment, was paid nothing for this assignment, and only executed the documents because he was told to do so by someone at the Walker Law Firm. Knowing all of this before the hearing, Mr. Walker never produced the purported original assignment. Instead, at the hearing, Mr. Walker took the position that no one had ever asked him to produce it. Chancellor McCoy granted the motion to strike because she concluded that Mr. Walker manufactured the assignment to redeem the real property, without any justification.

In May 2015, Mr. Walker created the assignment of deed of trust from Mr. Ibrahim to REO Holdings, which Mr. Ibrahim signed. Mr. Walker then executed a certificate of authenticity regarding the assignment. The same day, Mr. Ibrahim executed an appointment of substitute trustee which purported to remove the trustee's name in the original note and replace him with Mr. Walker. Although Mr. Ibrahim signed the appointment on behalf of REO Holdings as its authorized member, Mr. Ibrahim testified he had never been a member or manager of REO Holdings. After Mr. Bulso filed his lawsuit against REO Holdings, Mr. Walker then created the assignment in October 2015 from Capital Builders to Mr. Ibrahim.

The Hearing Panel found that Mr. Walker failed to correct his statements that he had the original assignment from Capital Builders in violation of R.P.C. 3.1 and 3.3, and Mr. Walker failed to disclose to either opposing counsel or the court that he did not have the original assignment from Capital Builders in violation of R.P.C. 3.4. This issue is without merit.

Next, Mr. Walker contends that the Panel's findings regarding his *pro hac vice* application was in error. Initially, Mr. Walker argues that the Panel erred in holding that he should have disclosed his current complaints with the Board at the time he filed his application in Texas. Specifically, he contends that since the formal petition for discipline had not been filed, he was not required to disclose the complaints which the Board was investigating. The Board counters that question 5 of the application requests the disclosure of any "grievance proceedings" and that at the time of the application, Mr. Walker was being investigated by the Board regarding Chancellor McCoy's complaint and Mr. Krog's complaint pertaining to Mr. Walker's criminal contempt. There was also the complaint regarding Mr. Walker's IOLTA accounts. Mr. Walker had responded to all of these complaints, and the Board was actively investigating them many months prior to his application with the Texas court. All of these accusations related to his fitness

to practice law in the State of Tennessee, which a judge of another state would want to know before admitting a lawyer *pro hac vice*.

Mr. Walker relies on his question and the response from the deputy to the district judge in Texas. The problem with that defense is Mr. Walker tailored his question narrowly, but then applied the deputy's response broadly to the complaints which he had not disclosed. The Court has serious doubt that the deputy's response would have been the same had Mr. Walker disclosed the pending investigations by the Board against him. This issue is without merit. Mr. Walker claimed he forgot about the private reprimand he received in November 2008. While this might be a plausible explanation, the Panel did not credit Mr. Walker's testimony on this issue. As the Panel is the finder of fact, this Court gives great deference to that finding.

Mr. Walker claims the Hearing Panel erred by applying the doctrine of offensive collateral estoppel to find that he was guilty of criminal contempt. In order to establish a claim of collateral estoppel, a party must demonstrate:

- 1) That the issue to be precluded is identical to an issue decided in an earlier proceeding,
- 2) That the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding,
- 3) That the judgment in the earlier proceeding has become final,
- 4) That the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding, and
- 5) That the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

Mullins v. State, 294 S.W. 3d 529, 535 (Tenn. 2009).

In Bowen v. Arnold, 502 S.W. 3d 102 (Tenn. 2016), our Supreme Court rejected the traditional mutuality requirement for both offensive and defensive collateral estoppel. Pursuant to the holding in Bowen v. Arnold, the Hearing Panel found that:

- Chancellor Lyle found Mr. Walker in criminal contempt for violation of her injunctive order.
- Mr. Walker violated the court order by establishing the All Amp Trust and by directing money to be withdrawn from the trust in order to pay legal fees related to his bankruptcy.
- Mr. Walker's violation was willful, undertaken for a bad purpose and done intentionally with the specific intent to do something the law forbids.

Mr. Walker argues that he was denied the opportunity to cross examine Chancellor Lyle; however, neither party called Chancellor Lyle as a witness. When asked why he did not subpoena Chancellor Lyle, Mr. Walker replied, "because I assumed she would be here." Mr. Walker's reliance on the Board's witness list which included Chancellor Lyle, has no merit.

Mr. Walker's complaint regarding the severity of the sanctions is dealt with in this Court's analysis using the ABA Standards and any aggravating or mitigating factors. In reviewing Mr. Walker's allegation regarding the court costs which were assessed against him, the Court finds that the Panel's assessment of those costs was within its exercise of discretion, and Mr. Walker has not produced evidence that those costs were unnecessary or unreasonable.¹

Analysis

The Court finds that the findings of fact and the conclusions of law articulated by the Panel are supported by the preponderance of the evidence. Considering how these findings relate to the ethical duty Mr. Walker violated, the above violations concern the public, the legal system, and

¹ During oral argument counsel for the Board conceded that the court reporter's fees may have included the cost of the transcript. In the event that is the case, the Board is ordered to credit Mr. Walker with that amount.

his duties as a professional. Secondly, The Court should consider the lawyer's mental state, and the extent of the actual or potential injury caused by the lawyer's misconduct. Board of Professional Responsibility v. Daniel, 549 S.W. 3d 90, 100 (Tenn. 2018).

"The ABA Standards are 'guideposts' rather than rigid rules for determining appropriate and consistent sanctions for attorney misconduct". Board of Professional Responsibility v. Justice, 577 S.W. 3d 908, 931 (Tenn. 2019)(citations omitted). Instead, the standards provide a theoretical framework. The ultimate sanction imposed will depend upon the presence of aggravating or mitigating factors. Id., (citing ABA Standards, Theoretical Framework).

Comparing Mr. Walker's violations to the ABA Standards, the Court finds that there are three separate duties involved, those owed to the public (ABA Standard 5.0), those owed to the legal system (ABA Standard 6.0), and those owed as a professional (ABA Standard 7.0). Regarding the duties owed to the public, the Panel cited 5.11 and 5.13, and the Court finds that 5.12 also should be considered.

5.11 Disbarment is generally appropriate when:

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

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.

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.

The conduct of Mr. Walker which relate to duties owed to the public involve his actions in the redemption process before Chancellor McCoy and his creation of the All Amp Trust to

circumvent the injunction of Chancellor Lyle. This conduct could fall under either 5.12, Suspension, or 5.13, Reprimand. “The main distinction between Standard 5.12 and Standard 5.13 appears to be the seriousness of the conduct, with Standard 5.12 focused on ‘criminal conduct’ that seriously adversely reflects on the lawyer’s fitness to practice and Standard 5.13 focused on ‘other [presumably non-criminal]conduct.’” Annotated Standards for Imposing Lawyer’s Sanctions, pg. 262-263.

With regard to duties owed to the legal system, the Panel cited Standards 6.11, 6.12, 6.13, 6.21, and 6.22. The Panel specifically found that Mr. Walker did not intentionally deceive Chancellor McCoy because he never stated that the original assignment from Capital Builders to Ibrahim existed while knowing that it did not exist. Standard 6.11 requires “the intent to deceive the court” for disbarment; however, suspension under 6.12 is appropriate when a lawyer has not acted with intent to deceive but knows that the false information is being submitted to the court or that material information is being improperly withheld and takes no remedial action. Here, the conduct of Mr. Walker in the matter before Chancellor McCoy is more akin to Standard 6.12.

Standard 6.21 authorizes disbarment when a lawyer knowingly violates a court order with the intent to obtain a benefit for the lawyer and causes potentially serious injury to a party or potentially serious interference with a legal proceeding. Under Standard 6.22, suspension is appropriate when a lawyer knows that he is violating a court order and causes injury or potential injury to a client or a party or potential interference with a legal proceeding. Mr. Walker knowingly violated Chancellor Lyle’s injunction order with the intent to benefit himself (the payment of his attorney’s fees) and caused potentially serious injury to the Plaintiffs in that case or potentially serious interference with the court’s injunctive relief. Comparing these Standards, Mr. Walker’s conduct aligns more closely to 6.21.

With regard to his duties owed to the legal profession, Standard 7.12 provides that suspension is generally appropriate when a lawyer knowingly engaged in conduct that is a violation of a duty owed as a professional and causes potential injury to the public or the legal system. In his application for *pro hac vice*, Mr. Walker knowingly withheld material information concerning his private reprimand, the current complaint by Chancellor McCoy and the criminal contempt finding and subsequent referral by Chancellor Lyle. Courts will suspend lawyers who have knowingly omitted, misrepresented or otherwise been dishonest in providing required information on their bar applications. Annotated Standards for Imposing Lawyer's Sanctions, pg. 362. A *pro hac vice* application in federal court is a close analogy to a bar application and therefore, 7.2 applies.

The Panel did not discuss the presence of any mitigating or aggravating factors; however, after misconduct has been established, those circumstances may be considered in deciding what sanction to impose. Turning to the aggravating factors, the Court finds:

1) Dishonest or selfish motive: Mr. Walker had a dishonest motive in establishing the All Amp Trust in order to circumvent Chancellor Lyle's injunction for his benefit.

2) Pattern of misconduct: Mr. Walker's conduct before Chancellor McCoy, his conduct leading to a finding of criminal contempt before Chancellor Lyle, and his failure to disclose his disciplinary complaints to the Texas District Court are multiple and separate instances, demonstrating his lack of candor and willingness to engage in deceit for a wrongful purpose.

3) Substantial experience in the practice of law: Mr. Walker has been licensed to practice law since 2002.

4) Refusal to acknowledge the wrongful nature of the conduct: From the inception of the proceedings in Chancery Court before Chancellor McCoy through Chancellor Lyle and the bankruptcy proceedings, continuing with the trial before the Panel, and the hearing before this Court, Mr. Walker has never recognized nor taken any responsibility for his actions. The Court does not find any mitigating factors.

In sum, the Hearing Panel's findings were supported by substantial and material evidence. Here, suspension was an acceptable sanction for Mr. Walker's conduct. A Hearing Panel does not act arbitrarily nor abuse its discretion when it makes a choice among several acceptable alternatives. Meehan v. Board of Professional Responsibility, 584 S.W. 3d 403, 418 (Tenn. 2019). The Hearing Panel neither acted arbitrarily nor abused its discretion, and its discipline is **AFFIRMED**.

It is so **ORDERED**.

ENTERED this 21 day of December, 2020.


ROBERT E. LEE DAVIES, SENIOR JUDGE

CLERK'S CERTIFICATE OF SERVICE

A copy of this Order has been served by U.S. Mail and/or Email upon all parties or their counsel named below:

Charles Walker, Esq.
69 Thompson Lane
Nashville, TN 37211

Board of Professional Responsibility
c/o Russel Willis, Esq.
10 Cadillac Drive, Ste. 220
Brentwood, TN 37027

Vicki Bailey
Deputy Clerk

December 29, 2020
Date

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

Vicki Bailey
Deputy Clerk and Master
Chancery Court

12-29-20
Date