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IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

VIRGINIA STATE BAR EX REL.
THIRD DISTRICT COMMITTEE – SECTION II

Complainant,

v.

Case No. CL 03-1238

JAMES GRANDISON HARRISON, III

and

JAMES ALFRED MCCAULEY

Respondents.

ORDER DISMISSING
CHARGES OF MISCONDUCT

The District Committee issued its Determinations and its Dismissals with Terms in these matters on July 30, 2003. On August 8, 2003, the Respondents each timely filed their written demand for further proceedings before a three-judge panel in the Circuit Court pursuant to Va. Code § 54.1-3935. The three-judge panel was duly appointed, and a Rule to Show Cause was issued which set these matters for a hearing on November 3, 2003.

On or about October 23, 2003, the Virginia State Bar filed a Motion to Dismiss Charges of Misconduct in these proceedings, pursuant to Part Six, Section IV, Paragraph 13.I.3.d.(1) of the Rules of the Supreme Court of Virginia, "on the grounds

that the determinations appealed from are contrary to controlling law set forth in the Rules of Professional Conduct adopted by the Supreme Court of Virginia." The Bar agrees that the dismissal of the Charges of Misconduct which it seeks would be a dismissal with prejudice with respect to the Respondents' broadcasts through February 24, 2003 of the television advertisements *Shredder, Strategy Session, Stonewall, Choker* and *Trainer*, which are the subject of these proceedings. However, the Bar does not agree that the dismissal with prejudice would in any way preclude the Bar from prosecuting Respondents for causing to be broadcast *Shredder, Strategy Session, Stonewall, Choker and* Trainer at any time after February 24, 2003. The Bar contends that the District Committee Determinations are contrary to controlling law in that they determined, in the Terms imposed, that a disclaimer or qualifying language in an advertisement may be considered in deciding whether the advertisement is false or misleading.

On October 28, 2003, the Respondents filed their Response to the Bar's Motion to Dismiss Charges of Misconduct. The Respondents agree that the District Committee Determinations may be dismissed with prejudice as contrary to controlling law, but for different reasons than advanced by the Bar. The Respondents assert that the District Committee Determinations are contrary to the law and/or not supported by substantial evidence for the reasons and on the grounds stated in the Respondents' Motion to Dismiss or Limit Disciplinary Proceedings, and in the Respondents' Submissions in Support of Ethicality and Constitutional Protection of Marks & Harrison's Television Advertising, both previously filed with the District

Committee.

It now appears that all parties to this proceeding agree that these proceedings and the Charges of Misconduct involved herein should be dismissed with prejudice pursuant to Part Six, Section IV, Paragraph 13.I.3.d.(1) of the *Rules of the Supreme Court of Virginia.* However, the parties are not in agreement regarding the basis for such dismissal. The Court declines to rule on the grounds for dismissal, recognizing that the relief requested by the parties is not in dispute.

NOW THEREFORE IT IS HEREBY ORDERED THAT these proceedings and all Charges of Misconduct arising from the Respondents' broadcasts through February 24, 2003 of the television advertisements *Shredder, Strategy Session, Stonewall, Choker* and *Trainer* be, and they hereby are, dismissed with prejudice pursuant to Part Six, Section IV, Paragraph 13.I.3.d.(1) of the *Rules of the Supreme Court of Virginia.*

Enter: 11/ 3 /03

Chief Judge H.C. Gill, Jr.

A COPY TESTE:
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