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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

SEP 23 2010

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

VSB CLERK'S OFFICE

v.

Case No. CL10-1931

CHARLES LOWENBERG PINCUS, III
VSB DOCKET NO. 09-021-076759

MEMORANDUM ORDER

This cause came to be heard on July 27-28, 2010, before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of the Honorable Aundria D. Foster, Judge of the Seventh Judicial Circuit, Chief Judge presiding, the Honorable William H. Shaw, III, Retired Judge of the Ninth Judicial Circuit, and the Honorable Theodore J. Markow, Retired Judge of the Thirteenth Judicial Circuit. The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders, and the Respondent appeared in person and through his counsel, Jason C. Roper, Esquire.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Charles Lowenberg Pincus, III, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or why he should not otherwise be sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Second District Committee of the Virginia State Bar.

The panel accepted the Parties' Joint Stipulation of Facts and admitted the parties' timely filed exhibits.

The panel granted the Virginia State Bar's motion to withdraw the violation of

Rule 8.1(a) of the Virginia Rules of Professional Conduct charged in the Certification issued in this matter for the reasons stated on the record.

Following opening statements on behalf of the parties, the Virginia State Bar then presented its evidence, at the conclusion of which Respondent moved to strike the evidence as to Rules 1.3(a), 1.4(a), 1.5(a) and (b), 1.15(c)(1) and (3) and 8.4(b) and (c) of the Virginia Rules of Professional Conduct. Following deliberation, the panel granted Respondent's motion to strike as to Rule 8.4(b) and (c) and dismissed those charges accordingly. The panel overruled Respondent's motion to strike as to the balance of the rule violations.

The panel then proceeded to hear Respondent's evidence and arguments from the parties as to whether the evidence proved violations of any of the remaining provisions of the Virginia Rules of Professional Conduct under the clear and convincing standard. Based on the stipulation of the parties and the acceptance of the stipulation by the panel, it was agreed that Respondent's renewed motion to strike the evidence and the Virginia State Bar's response thereto could be argued at the same time that the parties made closing arguments. Given this stipulation, the parties made their closing arguments to the panel regarding whether the evidence demonstrated by clear and convincing evidence that Respondent had violated Rules 1.3(a), 1.4(a), 1.5(a) and (b), and 1.15(c)(1) and (3) of the Virginia Rules of Professional Conduct.

Following deliberation, the panel unanimously found by clear and convincing evidence the following material facts:

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In 2002, Gwendolyn Morgan (“Ms. Morgan”) received a lengthy prison sentence as a result of her conviction of multiple credit card fraud offenses. She was incarcerated at the Virginia Correctional Center for Women located in Goochland, Virginia, from 2002 through March 2009.
3. In July 2007, Ms. Morgan’s husband died. Ms. Morgan subsequently appointed John and Barbara Williams (collectively “Williams”) as her attorneys-in-fact to handle her financial affairs during the remainder of her incarceration, including, but not limited to, the maintenance of her residential home located at 1016 Anderson Way, Virginia Beach, Virginia 23464 (“Home”).
4. In October 2007, Ms. Morgan contacted Respondent and advised him that the Williams had misappropriated large sums of her monies.
5. Respondent agreed to represent Ms. Morgan in pursuing claims against the Williams for the alleged misappropriation of Ms. Morgan’s monies.
6. Respondent offered to act as Ms. Morgan’s new attorney-in-fact and to assist her by paying the Home’s mortgage and checking on the Home and assisting with the upkeep and maintenance of the Home for the duration of her incarceration.
7. Respondent prepared a representation agreement dated October 18, 2007 that Ms. Morgan signed and returned to Respondent on November 5, 2007. Under the “Scope of Representation” section, Respondent inserted the following:

As you explained to me, you want representation to proceed with a civil lawsuit against John and Barbara Williams for fraudulent use and conversion of funds left to you as a result of your husband’s death. I will endeavor to assist you in this claim . . . I will undertake to represent you in this regard on an hourly basis at the rate of \$200.00 per hour.
8. Respondent prepared a General Durable Power of Attorney (“POA”) appointing

himself as Ms. Morgan's attorney-in-fact, which Ms. Morgan signed and returned to Respondent on November 5, 2007. Respondent signed the POA on November 12, 2007 in acknowledgment and acceptance of his appointment as Ms. Morgan's attorney-in-fact and agreement to act in that capacity. The POA included the following provision:

2 Compensation and Expenses. My agent shall be entitled to be repaid for all reasonable expenses incurred on my behalf under this instrument. However, my agent shall not receive other compensation for services rendered to me under this power of attorney.

Respondent never provided to Ms. Morgan in writing any other proposal or agreement as to the fees Respondent would charge for services as her attorney-in fact nor provided her with an explanation of the fees he would charge for those services.

Notwithstanding, Respondent billed Ms. Morgan in excess of \$3,000.00 at his standard rate of \$200.00 per hour for services he rendered as Ms. Morgan's attorney-in-fact.

9. Respondent did not contact the Williams or notify them of the revocation of their power of attorney until sending them a letter dated January 17, 2008, in which he advised of Ms. Morgan's termination of their power of attorney and requested an accounting of sums received and expended on behalf of Ms. Morgan. Respondent did not receive a response to his letter. By letter dated February 6, 2008, Ms. Morgan sent Respondent copies of bank statements and checks indicating that the Williams had obtained \$70,000.00 of Ms. Morgan's monies through the issuance of multiple checks made payable to "John Williams" in August and September 2007. Respondent never filed an action against the Williams or took any other action to investigate or pursue their alleged misappropriation of Ms. Morgan's monies prior to terminating his representation of Ms. Morgan in October 2008 in response to Ms. Morgan's filing of this bar complaint.

The panel unanimously found that the evidence failed to show under the clear and convincing evidentiary standard that the Respondent violated Rules 1.4(a), 1.5(a) and 1.15(c)(1) and (3) of the Rules of Professional Conduct, and dismissed those charges accordingly.

The panel unanimously found that the evidence established under the clear and convincing evidentiary standard violations of the following provisions of the Virginia Rules of Professional Conduct on the part of Respondent:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.5 Fees

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

THEREAFTER, the Virginia State Bar and the Respondent presented evidence and argument regarding the sanction to be imposed upon the Respondent, and the panel then retired to deliberate. **AFTER DUE CONSIDERATION** of the evidence, including Respondent's disciplinary record, the nature of the ethical misconduct committed by the Respondent, and arguments of counsel, the panel reached the unanimous decision that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended for sixty (60) days, effective July 28, 2010. Therefore, it is hereby **ORDERED** that the license of the Respondent, Charles Lowenberg Pincus, III, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of sixty (60) days, effective July 28, 2010.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, that Respondent shall

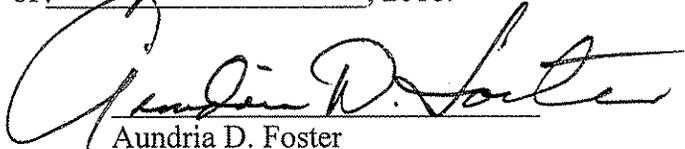
forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the license suspension, and make such arrangements as are required herein within 45 days of this effective date of the license suspension. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the license suspension that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and the arrangements required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the City of Virginia Beach and mailed to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

These proceedings were recorded by Ronald Graham and Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-1100.

ENTERED this 3 day of September, 2010.



Aundria D. Foster
Chief Judge



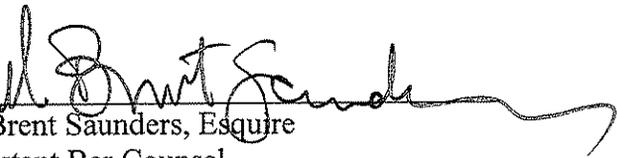
William H. Shaw, III
Judge



Theodore J. Markow
Judge

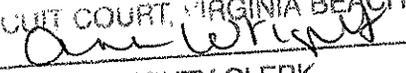
SEEN AND OBJECTED TO AS TO THE DISMISSAL OF RULES 1.4(a), 1.5(a) and 1.15(c)(1) and (3) AND AS TO THE PANEL'S NOT FINDING A VIOLATION OF RULE 1.3(a) BASED ON RESPONDENT'S ACTS AND OMISSIONS AS ATTORNEY-IN-FACT:

VIRGINIA STATE BAR

By: 
M. Brent Saunders, Esquire
Assistant Bar Counsel

SEEN AND OBJECTED TO ON THE BASIS THAT THE EVIDENCE BEFORE THE THREE-JUDGE PANEL DID NOT MEET THE CLEAR AND CONVINCING STANDARD REQUIRED TO SHOW THAT THE RESPONDENT CHARLES LOWENBERG PINCUS, III VIOLATED VA. R. PROF'L. COND. 1.3(a) WITH REGARD TO HIS REPRESENTATION OF GWENDOLYN MORGAN'S INTERESTS ADVERSE TO JOHN AND BARBARA WILLIAMS AND THAT THE EVIDENCE DID NOT MEET THE CLEAR AND CONVINCING STANDARD TO SHOW THAT THE RESPONDENT CHARLES LOWENBERG PINCUS, III VIOLATED VA. R. PROF'L. COND. 1.5(b) BY NOT EXPLAINING THE FEES OR THEIR BASIS THAT HE WOULD CHARGE TO GWENDOLYN MORGAN AS HER ATTORNEY-IN-FACT WITHIN A REASONABLE PERIOD AFTER COMMENCEMENT OF THIS UNDERTAKING:


Jason C. Roper, Esquire
Counsel to Respondent

CERTIFIED TO BE A TRUE COPY
OF RECORD IN MY CUSTODY
TINA E. SINNEN, CLERK
CIRCUIT COURT, VIRGINIA BEACH, VA
BY 
DEPUTY CLERK