

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

VIRGINIA STATE BAR EX REL
THIRD DISTRICT COMMITTEE

Complainant

v.

DEC 27 2011

TROY SAVENKO

Respondent

Case No. CL11-2719

VSJ Docket No. 09-033-076159

MEMORANDUM ORDER

This matter came to be heard by telephone conference on November 28, 2011, before a Three-Judge Circuit Court duly empanelled pursuant to Section 54.1-3935 of the Code of Virginia (1950), as amended, consisting of the Honorable Joanne F. Alper, Judge of the Seventeenth Judicial Circuit, designated Chief Judge, the Honorable Frederick H. Creekmore, Sr., Retired Judge, First Judicial Circuit, and the Honorable Westbrook J. Parker, Retired Judge, Fifth Judicial Circuit.

The Respondent appeared with his counsel, Michael L. Rigsby, Esquire. The Virginia State Bar appeared through its Bar Counsel, Edward L. Davis.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented the same to the Court.

The Chief Judge swore the Court Reporter and polled the members of the Court to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each of the three Judges verified they had no such interests.

The Court heard argument from counsel and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Court accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Court finds the following facts by clear and convincing evidence:

1. During all times relevant hereto, the Respondent, Troy Savenko, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Mr. Savenko served as associate general counsel for Cavalier Telephone, LLC (Cavalier) from July 16, 2007 to June 28, 2008.
3. Stephen Thomas Perkins held the title of general counsel when Mr. Savenko became an employee of Cavalier. Mr. Perkins maintained the title of general counsel until his employment ended on May 22, 2008.
4. George Kostel, Esquire, represented Step-9 Software Corporation (Step-9), a software services provider.
5. On August 2, 2006, Cavalier, by former Assistant General Counsel Donald F. Lynch, III, filed suit against Step-9 in the Richmond Circuit Court alleging (1) breach of contract, (2) actual and constructive fraud, (3) detinue and (4) conversion.
6. An order was entered on October 4, 2006, dismissing the detinue and conversion counts with prejudice; an order was entered on October 5, 2006, non-suiting the entire case; and an order was entered on October 11, 2006, non-suiting the breach of contract and fraud counts.
7. On October 24, 2006, Step-9, by Mr. Kostel, filed suit against Cavalier in the Fairfax County Circuit Court.

8. On May 4, 2007, the Fairfax County Circuit Court entered default judgment as to liability against Cavalier and scheduled a hearing to determine the amount of damages for September 10, 2007.
9. On July 13, 2007, Cavalier re-filed the same lawsuit against Step-9 in the Circuit Court for the City of Richmond that was previously filed and nonsuited in 2006.
10. On July 16, 2007, Troy Savenko began working as an associate general counsel for Cavalier.
11. On July 26, 2007, at the request of Perkins, Cavalier tried to serve the new suit on Step-9's registered agent, Clayton Dean, at the address of record with the State Corporation Commission (SCC).
12. On March 6, 2007, the State Corporation Commission revoked Step-9's Certificate of Authority to transact business in Virginia.
13. Attempted service on Clayton Dean, Step-9's registered agent with the Virginia State Corporation Commission was returned "Not Found, vacant, moved." The service was attempted at 1420 Spring Hill Road, Suite 525, McLean, VA 23102. This was the address of record with the State Corporation Commission.
14. On August 21, 2007, at the request of Mr. Savenko, Cavalier effected service of the new lawsuit by serving the Clerk of the SCC, the statutory agent for service of process on a foreign corporation whose Certificate of Authority has been revoked.
15. Mr. Savenko listed Step-9's SCC address of record on his SCC service of process request. Savenko researched the issue of proper service on Step-9 under the extant circumstances and initiated service through the State Corporation Commission pursuant to applicable law.
16. Savenko never attempted to serve the suit on Step-9's representatives at any of the hearings pending in the Fairfax County Circuit Court or at the depositions in that matter.
17. As a result of Cavalier's filing suit in Richmond on July 13, 2007, and Step-9's filing suit in the Fairfax Circuit Court, there were two active matters in litigation – the damages hearing against Cavalier pending in the Fairfax County Circuit Court on September 10, 2007, and Cavalier's new suit against Step-9 in the Richmond Circuit Court.
18. On August 31, 2007, in anticipation of the September 10, 2007 damages hearing in the Fairfax Circuit Court, Step-9 took the deposition of Cavalier employee Mark William Clark at Mr. Kostel's Richmond law office. Perkins defended Mark Clark at the deposition. Savenko was present when the deposition was taken. Neither Perkins nor

Savenko informed Step-9's counsel that Cavalier had obtained service upon Step-9 through the State Corporation Commission. Mark Clark testified that he believed Cavalier had re-filed the Richmond suit.

19. Mr. Savenko acknowledged to the Virginia State Bar that no one for Cavalier, he or Mr. Perkins, disclosed the fact that suit against Step-9 had been filed in the Richmond Circuit Court.
20. On September 10, 2007, the Fairfax County Circuit Court conducted the damages hearing and ordered Cavalier to pay Step-9 \$1.4 million in damages, representing the total amount of Step-9's receipts plus late fees. Savenko was not present for the hearing and states that he did not participate in the prehearing defense of Step 9 Software Corporation v. Cavalier Telephone.
21. Mr. Perkins appeared for Cavalier at the damages hearing with outside counsel. Mr. Savenko did not appear at the hearing.
22. On April 10, 2008, the Supreme Court of Virginia refused Cavalier's Petition of Appeal from the Fairfax County Circuit Court judgment against it.
23. On October 2, 2007, Cavalier filed a motion for default judgment against Step-9 in the Richmond Circuit Court.
24. On October 5, 2007, Mr. Perkins, on behalf of Cavalier, filed a memorandum supporting its motion for default judgment in the Richmond Circuit Court. Cavalier, by William Schmidt, Esquire, also filed a motion to reconsider the Fairfax judgment with the Fairfax County Circuit Court on or about October 5, 2007.
25. Cavalier did not mention the filing of the Richmond case to the Fairfax County Circuit Court, or vice-versa.
26. On October 9, 2007, Cavalier's motion for default judgment was heard in the Circuit Court for the City of Richmond, the Honorable Melvin Hughes presiding. Messrs. Perkins, Savenko and a third attorney appeared on behalf of Cavalier. Perkins presented and argued the motion to the court. Savenko was present to conduct the direct examination of Mr. Clark. No one appeared for Step-9.
27. No one disclosed to the Richmond Circuit Court Step-9's Fairfax County judgment against Cavalier or the damages award which Cavalier was appealing.
28. On October 9, 2007, the Richmond Circuit Court granted Cavalier's motion for default judgment against Step-9 and ordered Step-9 to pay Cavalier \$1,955,120.31 (one million,

nine hundred fifty-five thousand one hundred twenty dollars and thirty one cents) and \$5,000 (five thousand dollars) in punitive damages.

29. Upon learning of the default judgment entered against it, Step-9 demanded that Cavalier vacate its judgment, but Cavalier refused.
30. Step-9, on December 28, 2007, filed a motion to set-aside the Richmond default judgment, a motion to quash and a motion for sanctions in the Circuit Court for the City of Richmond. Cavalier, by Perkins and Savenko, submitted a response.
31. On January 14, 2008, the Court heard the matter. The factual issues set forth in this Disposition were addressed thoroughly before Judge Hughes in the context of Step-9's motion to set-aside and the hearing thereon. On January 29, 2008, issued a letter opinion in which it vacated the default judgment on the grounds that it was not a final order, quashed Cavalier's garnishment summons and allowed Step-9 leave to respond to Cavalier's complaint. On February 14, 2008, the Court entered an Order to this effect.

II. NATURE OF MISCONDUCT

The Court finds that such conduct by Troy Savenko constitutes misconduct in violation of the following Rule of Professional Conduct:

RULE 3.3 Candor Toward The Tribunal

- (c) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Court **ORDERS** that the Respondent receive an **Admonition**.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of this Court shall send a copy *teste* of this order to Troy Savenko by certified mail at Post Office Box 2470, Richmond, Virginia 23218-2470, his address of record with the Virginia State Bar, and by regular mail to his counsel, Michael L. Rigsby, at Post Office Box 29328, Henrico, Virginia 23242, to Edward L. Davis, Bar Counsel, and Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

Valarie L.S. May, RPR, Post Office Box 9349, Richmond, Virginia 23227, tel. 804-730-1222, was the court reporter for the hearing and transcribed the proceedings.

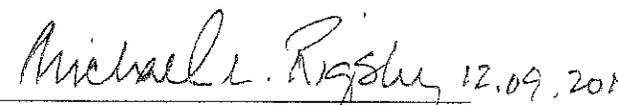
ENTERED this 15th day of December, 2011

CIRCUIT COURT, CITY OF VIRGINIA BEACH

By: 
Joanne F. Alper
Chief Judge Designate

WE ASK FOR THIS:


Edward L. Davis, Bar Counsel
Virginia State Bar

 12.09.2011
Michael L. Rigsby, Esq.
Counsel for Troy Savenko

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