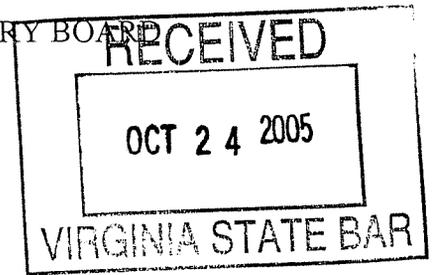


VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JAMES B. HOVIS, ESQUIRE

VSP Docket No. 05-041-0517



ORDER OF SUSPENSION

THIS MATTER came to be heard on September 23, 2005, before a duly convened panel of the Disciplinary Board consisting of James L. Banks, Jr., Acting Chair, William H. Monroe, Jr., Robert E. Eicher, William E. Glover, and V. Max Beard, Lay Member. The Virginia State Bar was represented by Seth M. Guggenheim, Assistant Bar Counsel. James B. Hovis (the "Respondent") did not appear, but was represented by counsel Charles E. Ayers, Jr. The Acting Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

Tracy Stroh, Court Reporter of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings. All required notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

This matter came before the Board on the Subcommittee Determination (Certification) served by mail upon the Respondent on April 28, 2005 after duly being issued by a subcommittee of the Fourth District Committee duly convened on January 12, 2005.

On June 1, 2005, the Board entered a Pre-Hearing Order, which among other things, set deadlines for filing witness lists and exhibits. The Pre-Hearing Order was served upon the Respondent by the Clerk of the Disciplinary System. The Respondent did not file any exhibits or witness lists. Furthermore, as set forth in the Certification Regarding Stipulations filed by Bar Counsel, the Virginia State Bar, despite the exercise of due diligence and the making of a good faith effort to secure the Respondent's cooperation in entering into stipulations, was unsuccessful in procuring any stipulations. The Virginia State Bar's exhibits, designated as numbers 1 through 12 were admitted without objection during the pre-hearing conference which was conducted by telephone on Wednesday, September 14, 2005 at 9:00 a.m. The respondent failed to attend the pre-hearing conference.

On September 12, 2005, the Virginia State Bar received a letter from Charles E. Ayers, Jr., counsel for James B. Hovis. That letter requested a continuance of the hearing set for September 23, 2005. On September 12, 2005, Seth M. Guggenheim, Assistant Bar Counsel, responded to the request for continuance objecting to the request and informing counsel for the Respondent that the continuance request would be decided by the Board during its telephone conference of September 14, 2005.

James L. Banks, Jr., Acting Chair conducted the pre-trial conference on September 14, 2005, heard the request for continuance and denied it.

At the beginning of the hearing, before the presentation of evidence by the Bar, counsel for the Respondent renewed his Motion for a continuance and offered Respondent's Exhibit 1 which purported to be a copy of a Subpoena issued by the Securities and Exchange Commission for an appearance by the Respondent before the Securities and Exchange Commission on

September 23, 2005, that Subpoena having been issued on or about August 11, 2005. In answer to a question from the Board, counsel for the Respondent stated that he did not know if the Subpoena had been served. The Board considered the request for a continuance and denied the Motion.

Counsel for the Respondent made a motion that the complaint against the Respondent should be dismissed for lack of jurisdiction. Counsel for the Respondent argued that the Respondent's license had been suspended on October 13, 1998 for failure to complete the CLE requirements then in effect, had been suspended on October 26, 1998 for non-payment of annual dues and non-filing of mandatory insurance, and had been cancelled on January 10, 2001 for non-payment of annual dues. Counsel for the Respondent argued that these actions by the Bar took the Respondent outside the jurisdiction of the Virginia State Bar and stripped the Bar of jurisdiction in the pending disciplinary matters.

Assistant Bar Counsel offered Exhibits 13 and 14, consisting of a transcript of the September 14, 2005 telephone conference and the Bar's Affidavit of Standing. The exhibits were admitted without objection. The Board deliberated on the Motion to Dismiss for lack of jurisdiction and then denied the Motion. The Board then heard opening statements from Bar Counsel and counsel for the Respondent. The Bar Counsel then presented its case. The Respondent presented no evidence and called no witnesses.

Following the conclusion of the presentation of evidence, the matter was argued by Assistant Bar Counsel and by counsel for the Respondent. The Board then deliberated and made the following findings of fact on the basis of clear and convincing evidence:

I. FINDINGS OF FACT

1. At all times relevant to the matters set forth herein, James B. Hovis, Esquire (hereafter “Respondent”), was an attorney licensed to practice law in the Commonwealth of Virginia, although not in good standing.

2. On August 3, 2000, Justice Ira Gammerman of the Supreme Court, New York County, New York, entered an Order of Commitment, which, *inter alia*, declared the Respondent guilty of contempt of court for having willfully disobeyed a prior order of that Court directing the Respondent to appear for an examination to be conducted by counsel for a judgment creditor of PHLO Corporation.

3. In a civil matter pending before the United States District Court for the Southern District of New York, the Respondent was ordered to appear before United States District Judge Denny Chin on February 15, 2002, to show cause why an order for Respondent’s arrest should not be issued. The Respondent failed to appear pursuant to such order to show cause.

4. In the same civil matter pending before the United States District Court for the Southern District of New York, the Respondent was ordered to appear before the Court on March 12, 2002, to explain why he should not be held in further contempt of that Court. The Respondent failed to appear pursuant to such order.

5. In consequence of Respondent’s failures to appear in the federal court matter, as referred to above, the United States District Court for the Southern District of New York issued a warrant for Respondent’s arrest on May 21, 2002.

6. On or about August 20, 2004, with regard to a matter that had been pending before the Superior Court of New Jersey, Hudson Vicinage, the Respondent transmitted by facsimile a letter bearing his signature to Superior Court Judge Maurice J. Gallipoli. *Inter alia*,

the Respondent, a principal of one or more corporate parties that had been proceeded against in litigation before the said judge, accused the judge of having acted improperly, illegally, with impunity, wrongfully, and as part of the opposing party's "team." The letter further stated to the judge that the Respondent's corporation "is aware that the New Jersey media has reported allegations that you have ruled on another case based on your political connections to the Hudson County Democratic Organization and that you once again ignored very clear statutory law for some alternative agenda."

7. On November 16, 2004, Virginia State Bar Investigator James W. Henderson contacted the Respondent by telephone regarding a complaint that had been filed against the Respondent with the Virginia State Bar. The Respondent advised the investigator that he hadn't practiced law in eight years and that he did not give "a rat's ass" about a complaint in Virginia. The investigator asked the Respondent for an address to which could be mailed a copy of the Complaint inasmuch as the Respondent had failed to maintain an accurate address of record with the Virginia State Bar. The Respondent stated to the investigator that he did not have to deal with a "scumbag piece of shit," and hung up.

8. In response to concerns raised on Respondent's behalf concerning the manner in which the Bar Complaint in this matter was being investigated and prosecuted, Bar Counsel wrote to the Respondent on February 10, 2005, stating, *inter alia*, as follows:

Your current address of record is 124 West 60th Street, Apartment 45-F, New York, New York 10023. Mail sent to that address is returned. A written request to change your address of record should be directed to Diana L. Balch, Membership Director, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219. Failure to change your address of record may result in your not receiving notices and a disciplinary charge under Rule of Professional Conduct 3.4(d) for knowingly disobeying a standing rule of a tribunal.

9. The Respondent acknowledged Bar Counsel's February 10, 2005, letter in a letter dated March 21, 2005. Bar Counsel responded to the Respondent by letter dated March 23, 2005, observing, *inter alia*, that Respondent's current address of record was still the New York address set forth above. The Respondent was once again admonished to change his address of record. In her letter, Bar Counsel set forth an excerpt of the Rules of the Supreme Court of Virginia regarding the duty to promptly advise the Virginia State Bar's membership department of changes of address, and she again set forth the Rules of Professional Conduct applicable thereto.

10. Notwithstanding Bar Counsel's two written notices to the Respondent that he had a duty to change his address of record with the Virginia State Bar, the Respondent failed to make the noticed change of address.

II. NATURE OF MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 3.4 Fairness to Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

RULE 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer[.]

III. DISPOSITION

Upon review of the evidence presented including the exhibits presented by Bar Counsel on behalf of the Virginia State Bar, and considering argument by counsel for the Virginia State Bar and by counsel for the Respondent, at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its unanimous findings as follows:

The Board determined that the Bar proved, by clear and convincing evidence, that the Respondent had violated Rules 3.4(d), 8.1(c), 8.2, and 8.4(b). Thereafter, the Board called for evidence of aggravation and mitigation of the violations found. The Bar presented a certificate that the Respondent had no prior disciplinary record in Virginia. The Board also heard argument from Bar Counsel and from counsel for the Respondent as to the appropriate sanction. The Board then recessed to deliberate the appropriate sanction to impose upon its findings of misconduct by the Respondent.

IV. SANCTION

After due deliberation, the Board reconvened to announce the sanction imposed. The Board unanimously imposed the sanction of a five-year suspension of the Respondent's license to practice law in the Commonwealth of Virginia, with such suspension effective immediately.

The Board's unanimous sanction decision is based on the totality of the circumstances. The Board has found that the Virginia State Bar had acted with diligence to communicate with the Respondent to make certain that the Respondent was aware of the requirements to remain in good standing as a member of the Virginia State Bar. In addition, the Board found that the Virginia State Bar made substantial and consistent efforts to notify the Respondent of the charges against him and give him an opportunity to participate in the disciplinary process in Virginia, and to defend himself in that process.

The Respondent's abusive and profane treatment of the Bar's investigator, the Respondent's stark indifference to the authority of and respect for a federal district court, and his intemperate language toward a judge of a state court in New Jersey influenced the Board's decision as to the appropriate sanction. The Board took into consideration the fact that the Respondent had no previous disciplinary record in Virginia.

Accordingly, it is ORDERED that the license of the Respondent, James B. Hovis, Esq., to practice in the Commonwealth of Virginia is hereby suspended for five (5) years effective September 23, 2005.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, Section 13(M) of the Rules of the Supreme Court of Virginia. The 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 suspension, and make such arrangements as are required herein within 45 days of the effective date of this suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of this suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13(M), shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing for a three-judge court.

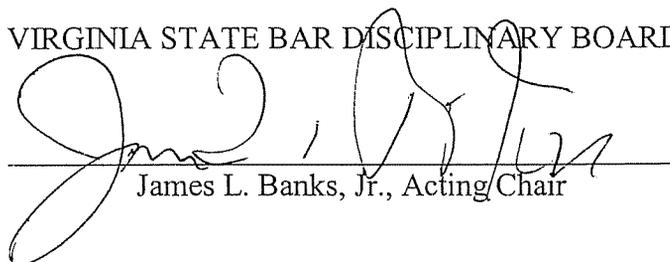
It is further ORDERED that pursuant to Part Six, § IV, Section 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent, James B. Hovis, at his address of record with the Virginia State Bar, being 124 West 60th Street, Apartment 45F, New York, New York 10023, by certified mail, return receipt requested, and by regular mail to Seth M. Guggenheim, Assistant Bar Counsel, Virginia State Bar,

100 North Pitt Street, Suite 310, Alexandria, Virginia 32314.

ENTERED this 21st day of October, 2005

VIRGINIA STATE BAR DISCIPLINARY BOARD

A handwritten signature in black ink, appearing to read "James L. Banks, Jr.", is written over a horizontal line. The signature is stylized and cursive.

James L. Banks, Jr., Acting Chair