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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

VIRGINIA STATE BAR EX REL
FIFTH DISTRICT, SECTION III COMMITTEE
VSB Docket No. 19-053-114483

v.

Case No. CL19-3389

Vincent Mark Amberly.

FINAL JUDGMENT MEMORANDUM ORDER

THIS MATTER came to be heard on December 5, 2019 by a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Honorable Nolan B. Dawkins, Judge of the Eighteenth Judicial Circuit; the Honorable Dennis Lee Hupp, Retired Judge of the Twenty-sixth Judicial Circuit, and the Honorable Patricia Kelly, Judge of the Fifteenth Judicial Circuit ("Chief Judge") and designated Chief Judge of the Three-Judge Circuit Court (collectively, "the Court").

Senior Assistant Bar Counsel Elizabeth K. Shoenfeld represented the Virginia State Bar ("VSB"). Respondent Vincent Amberly, having received proper notice of the proceeding, appeared *pro se*.

The Chief Judge swore the court reporter and each member of the Court verified that he or she had no personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in this matter.

WHEREUPON a hearing was conducted upon the Rule to Show Cause issued against Respondent. The Rule directed Respondent to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked or otherwise

sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Fifth District Committee, Section III, of the VSB.

The Court received VSB Exhibits 1-26 without objection and Respondent's Exhibit 1 without objection.

The Court received the testimony of the following witnesses for the VSB: Respondent and Brownie Igboegwu, after which the VSB rested.

At the conclusion of the VSB's case in chief, Respondent made a motion to strike, which, upon consideration of the evidence and argument of counsel, the Court denied.

The Court received the testimony of the following witnesses for Respondent: Respondent and Margaret Ferrell, after which Respondent rested.

The Court then heard closing arguments by counsel and retired to deliberate.

Findings of Fact

Upon due deliberation and consideration of the exhibits, witness testimony, and argument of counsel, the Court found that the VSB proved by clear and convincing evidence the following facts:

1. At all relevant times, Respondent was a member of the Virginia State Bar. VSB Ex. 2.
2. In late 2016, Brownie Igboegwu hired Respondent to prepare and file an Intent-to-Use ("ITU")-based trademark application for the mark "High Fashion Thrift" with the United States Patent and Trademark Office ("USPTO"). VSB Exs. 6, 10.
3. Respondent charged a flat fee of \$800, which was comprised of \$525 in attorney's fees and a \$275 filing fee. Respondent's bill stated that the attorney's fees included the preparation and filing of the application, discussions with client about the trademark registration process, and a check of USPTO records to determine availability of the trademark. VSB Exs. 6, 10.
4. Ms. Igboegwu paid the \$800 in three separate installments on November 1, 2016, November 16, 2016 and December 6, 2016. VSB Ex. 8. Respondent accepted the payments via his Square account. The first two payments were immediately transferred from the Square account into Respondent's operating account. Square held the third payment for several months because Respondent had closed the operating account that

was linked to the Square account. The third payment was not deposited into Respondent's new operating account until July 10, 2017. VSB Ex. 9.

5. On December 6, 2016, the date Ms. Igboegwu completed payment of the \$800 fee, Respondent filed the trademark application for Ms. Igboegwu. Respondent provided his contact information as the means by which the USPTO should communicate regarding the application. Respondent authorized receipt of correspondence by email. After Respondent completed the application, an email confirmation advised Respondent to ensure that his server would not treat communications from the USPTO as spam. VSB Ex. 12.
6. Respondent forwarded the completed application to Ms. Igboegwu. He explained that he did not expect any activity for at least three months, but that he would contact Ms. Igboegwu with an update as soon as he heard from the USPTO. He also advised Ms. Igboegwu that "at some point" she would need to file a Statement of Use. He told her that if she was not using the trademark yet, she could file for up to six, six-month extensions. He ended the email: "I will keep you advised on further developments, but feel free to contact me if you should have any questions." VSB Ex. 12.
7. On March 9, 2017, the USPTO issued an Office Action, which was sent via email to Respondent. The Office Action advised that in order to avoid abandonment of the trademark application, Respondent had a "strict deadline" of six months to respond. The Office Action asked Ms. Igboegwu to disclaim "High Fashion" as separate and apart from the mark for "High Fashion Thrift." The email the USPTO sent to Respondent included a link he could click in order to submit a response, and identified the exact language that the response needed to include. VSB Ex. 13.
8. More than two months later, on May 11, 2017, Ms. Igboegwu emailed Respondent to ask for an update on her trademark. She said, "I have tried contacting you several times but haven't heard anything back." VSB Ex. 14.
9. On May 18, 2017, Respondent forwarded the March 9, 2017 Office Action to Ms. Igboegwu. He explained the Office Action and said that it was "very mild" and "I do not see this as a problem." VSB Ex. 15. After Ms. Igboegwu received Respondent's email, she spoke with Respondent and instructed him to accept the Office Action and move forward with the application. Respondent took no action regarding the Office Action.
10. On October 10, 2017, the USPTO issued a Notice of Abandonment regarding Ms. Igboegwu's trademark application. The Notice reflected that it was mailed to Respondent at his correct address. This Notice was sent only to Respondent because he was counsel of record on the trademark application and his address was the only address that he had provided to the USPTO. VSB Ex. 16.
11. The Notice of Abandonment advised that if the delay in responding to the Office Action was unintentional, Respondent could file a petition to revive the application within two months. VSB Ex. 16.
12. Respondent took no action to revive the application.

13. Respondent claimed that he did not receive the Notice of Abandonment. Respondent did not advise Ms. Igboegwu that her application had been abandoned and that he took no action to revive the application.
14. On April 20, 2018, Ms. Igboegwu emailed Respondent and said that she had undertaken several projects under the impression that her business had been trademarked, and that her business was in serious jeopardy. She requested an update by close of business on Monday, April 23. VSB Ex. 18.
15. On April 23, 2018, Ms. Igboegwu's sister, an attorney, emailed Respondent and asked him to either conclude the trademark matter by the end of the week or issue a refund. VSB Ex. 20.
16. On May 7, 2018, Ms. Igboegwu sent Respondent an email with the subject line of "BAR COMPLAINT – HFT Trademark Update." She said that she had not heard anything from Respondent and if she didn't hear from him soon, she would have no choice but to report him to the bar. She also said that she was "stuck with an abandoned trademark." VSB Ex. 21.
17. On May 29, 2018, Respondent emailed Ms. Igboegwu and asked her to call him. Respondent said that he spoke with Ms. Igboegwu and offered to work on a new trademark application, but said that Ms. Igboegwu would have to pay the second filing fee. VSB Ex. 22.
18. On October 1, 2018, Ms. Igboegwu wrote to Respondent. She confirmed that in July 2018, she had asked Respondent for a full refund. She said that Respondent had told her at that time that he was "currently facing financial strains and would be coming into money by August 8, 2018 at which date I should expect a call and payment from you." VSB Ex. 23.
19. Respondent did not refund any of the fee Ms. Igboegwu had paid him.

Rule Violations

Based on the foregoing facts, the Court also found that the VSB proved by clear and convincing evidence that Respondent violated the following Virginia Rules of Professional Conduct:

RULE 1.3 **Diligence**

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

Sanctions Phase

Having found that Respondent violated the Rules of Professional Conduct identified above, the Court continued to the sanctions phase of the proceedings. The VSB introduced a Certification of Respondent's disciplinary record in Virginia as VSB Exhibit 27, which was admitted without objection. The disciplinary record included a Public Admonition with Terms that was effective January 3, 2008; a Public Reprimand with Terms that was effective February 21, 2017; and a Public Reprimand without Terms that was effective August 28, 2018. The VSB also called Respondent to the stand. Respondent acknowledged that as a result of the same conduct that was the basis of the 2008 Public Admonition with Terms in Virginia, the District of Columbia had suspended his license for 30 days and Delaware had suspended his license for six months. The VSB also introduced VSB Ex. 28, which was admitted without objection. The VSB then rested. The Respondent also testified on his own behalf in the sanctions phase.

Counsel for the VSB and Respondent then presented argument regarding the sanction to be imposed on Respondent for the misconduct found, and the Court recessed to deliberate.

Determination

After due consideration of the evidence as to mitigation and aggravation and other arguments of counsel, the Court reconvened to announce its sanction of a Six-Month Suspension, effective on January 5, 2020.

Accordingly, it is hereby ORDERED that Respondent has received a Six-Month Suspension, effective on January 5, 2020.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. 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. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. 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 the suspension. Respondent shall also furnish proof to the VSB within 60 days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if 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 at the VSB. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the VSB Disciplinary Board.

It is further ORDERED that the Clerk shall send a copy teste of this Memorandum Order to Respondent, Vincent Amberly, by certified mail, return receipt requested, at 129 Harrison Street, NE, Leesburg, Virginia 20176, his address of record with the VSB, and to the Honorable DaVida M. Davis, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

The hearing was recorded by Casamo Court Reporting & Videography, 1010 Cameron Street, Alexandria, Virginia 22314, Telephone 703-837-0076.

ENTER: 2 14 2020


The Honorable Patricia Kelly
Chief Judge

Virginia State Bar:



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Seen and AGREED TO :

Vincent Amberly

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A COPY-TESTE
Gary M. Clemens, Clerk
By *[Signature]*
Deputy Clerk