



VIRGINIA:

BEFORE THE FIFTH DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Daniel Lewis Hawes

VSB Docket No. 18-052-110973

AMENDED SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On May 16, 2019 a meeting was held in this matter before a duly convened Fifth District, Section II Subcommittee consisting of Richard Brent Orsino, Chair Presiding; Susan Marie Butler, Member; and Stephen J. McArdle, Jr., Lay Member. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand without Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Elizabeth K. Shoenfeld, Assistant Bar Counsel, and Daniel Lewis Hawes, Respondent, *pro se*.

WHEREFORE, the Fifth District, Section II Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand without Terms:

I. FINDINGS OF FACT

1. In March 2009, Phillip Leiser and the law firm of Leiser, Leiser & Hennessy, PLLC ("LLH 1")¹ sued August McCarthy and his wife for breach of fiduciary duty, tortious interference with business expectancy, and conspiracy. In February 2010, Leiser and LLH 1 sued McCarthy for breach of contract. Respondent represented McCarthy in both cases, which were consolidated. The plaintiffs nonsuited the consolidated cases on the eve of trial.
2. In October 2011, Leiser and LLH 1 re-filed the breach of fiduciary duty and tortious interference claims against McCarthy. In March 2012, Leiser and LLH 1 re-filed the breach of contract claim against McCarthy. Respondent continued to represent McCarthy in both cases.

¹ Phillip Leiser represented himself and his law firm in all litigation referred to within this agreed disposition.

3. In 2013, while the litigation between Leiser, LLH 1, and McCarthy was still pending, Leiser mistakenly allowed the corporate registration for LLH 1 to lapse.
4. On September 17, 2013, Respondent registered a PLLC called Leiser, Leiser, & Hennessy, PLLC ("LLH 2").
5. Respondent was the organizer of LLH 2. He subsequently filed a document with the Virginia State Corporation Commission purporting to make McCarthy a member of LLH 2.
6. Respondent formed LLH 2 in an attempt to preclude Leiser from using the name.
7. On September 27, 2013, after learning about Respondent's creation of LLH 2, Leiser reinstated the LLH 1 entity with the State Corporation Commission and changed the entity's name to "The Leiser Law Firm, PLLC."
8. On October 8, 2013, after a week-long trial, McCarthy prevailed on the breach of fiduciary duty and tortious interference with business claims against him.
9. On July 15, 2016, the court entered an amended order finding that Leiser prevailed on the breach of contract claim against McCarthy. Leiser was awarded \$25,000, plus interest and certain costs.
10. On August 3, 2016, Respondent filed a lawsuit on behalf of LLH 2 and against Phillip Leiser, Karen Leiser and The Leiser Law Firm. Respondent alleged claims for misappropriation of LLH 2's name and for legal malpractice.
11. For the misappropriation claim, Respondent alleged that McCarthy had exercised his prerogative to "take over the defunct entity" and that McCarthy had the right to do so because he was previously one of the LLH 1 partners. Respondent sought damages of \$2,000,000.
12. For the legal malpractice claim, Respondent alleged that when Leiser failed to prevail in his actions against McCarthy, Leiser's actions were an act of "legal malpractice" and breach of duty to LLH 2. On this claim, Respondent sought \$188,322.09, plus 12% interest and punitive damages.
13. Respondent did not serve the August 2016 complaint until May 3, 2017. On May 24, 2017, the defendants filed a plea in bar. On May 26, 2017, Respondent filed a motion to strike the plea in bar, which included a motion for sanctions. The motion to strike was denied on June 9, 2017.
14. On June 13, 2017, Respondent tried to nonsuit the matter. The Court entered an order precluding the nonsuit from occurring for 45 days in order to allow the defendants time to file a motion for sanctions.

15. On July 7, 2017, the defendants filed their motion for sanctions. On July 21, 2017, the Court entered an order extending the order suspending the nonsuit until such time that the motion for sanctions could be heard.
16. On October 31, 2017, the Court heard the motion for sanctions. That morning, Respondent wrote a facsimile to the Court stating that he was too ill to attend. The Court agreed to consider the arguments in Respondent's brief but declined to continue the hearing.
17. The Court found that the complaint was "transparently and egregiously frivolous." In particular, it found that the Leisers could not have misappropriated a name that they had used for years, and that McCarthy had no rights as a successor in interest.
18. The Court also rejected the plaintiff's legal malpractice theory. It sanctioned both Respondent for signing the pleadings and McCarthy as the sole owner of the plaintiff PLLC. Pursuant to Virginia Code Sec. 8.01-271.1, the Court entered an order awarding sanctions of \$80,697.50 against Respondent and McCarthy, jointly and severally.
19. On November 22, 2017, Respondent requested that the bar change his membership status from active to retired/disabled. His request was granted. Respondent is not authorized to practice law in Virginia, and has informed the bar that he has no plans to attempt to reinstate his license.
20. Respondent attempted to appeal the sanctions order, but the Supreme Court of Virginia declined to hear the appeal.
21. Respondent has paid the \$80,697.50 sanction in full.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provision of the Rules of Professional Conduct:

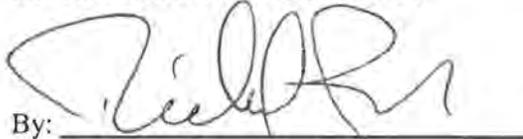
RULE 4.4. Respect For Rights Of Third Persons.

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand without Terms and Daniel Lewis Hawes is hereby so reprimanded. Pursuant to Part 6, § IV, ¶ 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

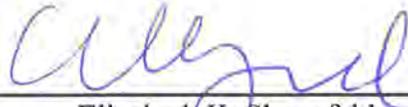
FIFTH DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: 

Richard Brent Orsino
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 6/19/19, a true and complete copy of the Amended Subcommittee Determination (Public Reprimand without Terms) was sent by certified mail to Daniel Lewis Hawes, Respondent, at P.O. Box 100, Broad Run, Virginia 20137, Respondent's last address of record with the Virginia State Bar.



Elizabeth K. Shoenfeld
Assistant Bar Counsel