STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Eugene A. Goreta, P 14207,

Respondent/Appellant,

Case No. 14-13-GA

Decided: April 17, 2015

Appearances:

John K. Burgess, for the Grievance Administrator, Petitioner/Appellee
Eugene A. Goreta, Respondent, *in pro per,* before the Hearing Panel
Ronald D. French, for the Respondent/Appellant before the Board

BOARD OPINION

Tri-County Hearing Panel #3 issued an order on September 29, 2014, suspending Respondent Eugene A. Goreta's license to practice law for 180 days and ordering him to pay restitution of $5,610 to Suresh C. Choksi. Respondent petitioned for review and the Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record before the hearing panel and consideration of the briefs and arguments presented to the Board at a review hearing conducted on January 21, 2015. For the reasons discussed below, the hearing panel's findings of misconduct, and order entered September 29, 2014, are affirmed.

On February 19, 2014, the Grievance Administrator filed a formal complaint against respondent regarding his representation of Montie Bednarski in an action against the City of Ecorse for its alleged unlawful refusal to issue building permits for a parcel of property located in Ecorse and owned by Mr. Bednarski. During discovery in the case against Ecorse, the City's attorney discovered that Mr. Bednarski owned 70% of the subject property and Suresh Choksi owned 30% of the subject property. Respondent stipulated to add Mr. Choksi as co-plaintiff in the action against

the City of Ecorse.

It was charged that respondent never contacted Mr. Choksi, but filed a case evaluation summary with the court in which he referenced himself as "attorney for plaintiffs"; that he appeared at a case evaluation hearing on behalf of both plaintiffs; that he appeared for a settlement conference on behalf of both plaintiffs and thereafter negotiated an $18,700 settlement with the City on behalf of both plaintiffs; that he prepared and filed with the court a judgment reflecting the terms of the settlement in which he indicated that the parties were "being represented by their respective attorneys"; upon receiving the settlement check from the City of Ecorse, respondent did not contact Mr. Choksi, but rather deposited the check into his IOLTA, drafted a check to himself for a 1/3 contingency fee, which he then deposited into his business checking account, and wrote a check for the remainder of the funds payable to Mr. Bednarski. The formal complaint specifically charged that respondent violated MRPC 1.15(b)(3), (c), and (d); 3.3; 4.1; 8.4(b); and MCR 9.104(2) and (3).

Respondent filed an answer to the formal complaint in which he essentially admitted all of the factual statements set forth in the complaint, but denied that he committed misconduct. Respondent also filed affirmative defenses in which he admitted that he appeared at hearings and filed pleadings on behalf of both plaintiffs, but he maintained that he had authority to do so as his client was an agent of a partnership that existed between Mr. Bednarski and Mr. Choksi, as defined by MCL § 449.9 of the Uniform Partnership Act (UPA), and which he relied on. Respondent's position in this regard continued at the misconduct hearing held before the panel on April 17, 2014, and he was extensively questioned about the validity of this defense at the hearing.

On June 27, 2014, the hearing panel issued its misconduct report in which it found, based on respondent's admissions in his answer to the formal complaint and admissions that he made while testifying at the April 17, 2014 misconduct hearing, that all of the allegations of misconduct charged in the formal complaint were proven by the Grievance Administrator. A review of the record reveals that the hearing panel did not agree that, a partnership, as defined by the UPA, existed between respondent's client and Mr. Choksi. (Tr 4/17/14, pp 46-47.)

Thereafter, a sanction hearing was held on July 22, 2014. The Grievance Administrator requested that the panel impose a suspension of at least one year, but no less than 180 days, along with restitution to Mr. Choksi. Respondent argued for the imposition of a reprimand. On September

29, 2014, the panel issued its sanction report and order suspending respondent's license for 180 days and ordering $5,610[1] in restitution payable to Mr. Choksi.

Respondent petitioned the Attorney Discipline Board for review of the hearing panel's order on the grounds that the panel erred in finding that respondent committed misconduct because his client and Mr. Choksi had a partnership, thus any action respondent took on behalf of his client, the majority partner, was authorized under MCL § 449.9(1)[2] of the UPA. On review, respondent requested that the hearing panel's finding of misconduct be reversed and that the formal complaint be dismissed.[3] Respondent also petitioned for a stay of the discipline ordered by the hearing panel pursuant to MCR 9.115(K), which request was denied. As a result, the 180-day suspension of respondent's license to practice law became effective October 21, 2014.

On review, the Attorney Discipline Board must determine whether the hearing panel's findings of misconduct have evidentiary support in the whole record. *In re Daggs*, 411 Mich 304, 318-319 (1981); *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). In applying that standard of review to a panel's factual findings, it is not the Board's function to substitute its own judgment for that of the panel's or to offer a de novo analysis of the evidence. *Grievance Administrator v Carrie L.P. Gray*, 93-250-GA (ADB 1996). However, the Board reviews questions of law de novo. *Grievance Administrator v Jay A. Bielfield*, 87-88-GA (ADB 1996);

---

[1] The panel's sanction report noted that respondent had been unable to provide proof of any payments made to Mr. Choksi, therefore, it was awarding restitution in the full amount Mr. Choksi was entitled to, 30% of the $18,700, and noting that respondent could still provide written proof of any payments he claimed were already made to Mr. Choksi to receive credit for those payments. Respondent has since provided written proof that he paid Mr. Choksi the entire $5,610.

[2] Section 449(1) of the UPA states:

> Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

[3] Respondent's petition for review did not request that the Board review the discipline imposed by the hearing panel nor did it offer an alternative argument for lesser discipline if the hearing panel's findings of misconduct were affirmed.

Grievance Administrator v Geoffrey N. Fieger, 94-186-GA (ADB 2002).

The underlying facts, as set forth in the formal complaint, were not in dispute by virtue of respondent's admissions. However, before deciding whether these undisputed facts constituted misconduct, it was necessary for the hearing panel to determine whether respondent's actions were allowable under the relevant provisions of the UPA. Again, the record is clear that after extensively questioning respondent, the hearing panel did not find sufficient evidence to conclude that a partnership existed between respondent's client and Mr. Choksi. The critical dispute in this review proceeding is over the question whether a partnership did in fact exist between respondent's client and Mr. Choksi.

Under section 449.6(1) of the UPA, a partnership is defined, in relevant part, as "an association of 2 or more persons, which may consist of husband and wife, to carry on as co-owners of a business for profit . . ." Respondent and Mr. Choksi both testified that the only writing evidencing any co-ownership of the property in question was the quit claim deed executed on April 6, 2007, that gave Mr. Choksi a 30% interest and Mr. Bednarski a 70% interest in the property. (Tr 4/17/14, pp 22-24, 40; Petitioner's Ex 1.) This is a writing that respondent admitted he never saw, or asked to see even after it was discovered that Mr. Choksi apparently had an interest in the property. (Tr 4/17/14, pp 35-36.) While the quit claim deed evidences that Mr. Bednarski and Mr. Choksi co-owned the property, it does not indicate in any way that they were "[carrying] on as co-owners of a business for profit." Furthermore, section 449.7(2) of the UPA provides that "joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property."

We find that the evidence submitted to the panel was insufficient to show that Mr. Bednarski and Mr. Choksi were in fact partners in a partnership, as defined by the UPA. As a result, respondent had no authority, pursuant to MCL 449.9(1), to act on Mr. Choksi's behalf and the hearing panel committed no error in determining that misconduct occurred based on respondent's admissions.

For the reasons discussed above, we conclude that the 180-day suspension of respondent's license is the appropriate sanction to impose in this matter, and we will enter an order affirming the hearing panel's order of suspension and restitution.

Board members James M. Cameron, Jr., Dulce M. Fuller, Rosalind E. Griffin, M.D., Louann Van Der Wiele, Michael Murray, and James A. Fink, concur in this decision.

Board members Lawrence G. Campbell, Sylvia P. Whitmer, Ph.D., and John W. Inhulsen were absent and did not participate.