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THE BOARD OF DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

No. 202001583

In the Texas
Board of Disciplinary Appeals

CRYSTAL D. HENDERSON
Appellant

v.

COMMISSION OF LAWYER DISCIPLINE
Appellee

Appeal from Case Number 202001583[MAYS]
Heard before the Evidentiary Panel 4-3 of
The State Bar District No. 4 Grievance Committee
Harris County, Texas

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

STATEMENT OF THE CASE

An Evidentiary Hearing on this matter was conducted before the Evidentiary Panel 4-3 of the State Bar of Texas District 4 on February 2, 2022 (C.R. at 175). After examination of the Commission's witnesses and a brief recess, counsel for the Commission *abandoned all* of the allegations that made the basis of the Petition and proceeded solely under Rule 8.04(a)(3). *See* (R.R. at 137). The Evidentiary Panel found that Crystal Henderson committed professional misconduct under Rule 8.04(a)(3) pursuant to a Rule 11 agreement and as defined by Rule 1.06 of the Texas Rules of Disciplinary Procedure. (C.R. at 175). The Evidentiary Panel ordered a Public Reprimand against Ms. Henderson in accordance with the Texas Rules of Disciplinary Procedure. (C.R. at 176). The Respondent appeals this decision. (C.R. at 179).

JURISDICTION

The Board of Disciplinary Appeals ("BODA") is granted jurisdiction in this matter under the Texas Rules of Disciplinary Procedure 7.08 to hear and determine appeals by the Respondent on the record from the judgment of an Evidentiary Panel. Rule 7.08 Tex. Dis. R. Pro. Additionally, the Board of Disciplinary Appeals' Internal Procedural Rules states that BODA may exercise all the powers of an appellate court, as the case may be in hearing and determining proceedings. *See* BODA Internal Procedural Rules 1.02

ISSUES PRESENTED

1. Was the Evidentiary Panel's finding that Appellant committed professional misconduct under 8.04(a)(3) in her initial response to the Commission supported by substantial evidence?

2. Was the Evidentiary Panel's finding that the Appellant committed professional misconduct under 8.04(a)(3) based on her responses to Requests for Admission and Interrogatories supported by substantial evidence?
3. Was the Evidentiary Panel's finding that Appellant committed professional misconduct under 8.04(a)(3) based on the Appellant's handling of the fee arrangement with the Complainant supported by substantial evidence?

STATEMENT OF FACTS

Appellant has been a licensed attorney within the State of Texas since 2005. (R.R. at 145) Prior to the filing of this Petition, she had no prior disciplinary complaints from the Commission for Lawyer Discipline ("the Commission"). On September 18, 2020, the Commission for Lawyer Discipline filed a petition against the Appellant, alleging multiple violations of the Texas Rules of Disciplinary Procedure related to her representation of Moses Mays Jr. (C.R. at 34).

An evidentiary hearing was held on February 2, 2022. After the Commission completed the examination of their witnesses, counsel for the Commission *abandoned* all of the allegations alleged in the petition. (R.R. at 135-36). No amended petition was ever filed by Counsel for the Commission. *Id.* Instead, Counsel for the Commission attempted to proceed under a Rule 11 agreement which included an allegation of an 8.04(a)(3) violation within Paragraph 22 of the Petition. (R.R. at 137). Counsel for the Appellant objected to proceeding under the Rule 11 Agreement and made efforts to withdraw the agreement. (R.R. at 138). The Chair of the evidentiary panel elected to proceed under the Rule 11 agreement. (R.R. at 140).

Counsel for the Commission orally alleged that the Appellant violated 8.04(a)(3), by engaging in misconduct, deceit or misrepresentation related to Appellant's:

1. initial response to the Grievance;
2. amended response to written discovery [specifically her response to Interrogatory No. 19];
and
3. the fee arrangement [involving the use of an title transfer of a BMW].

(R.R. at 142).

I. Appellant's Initial Response to the Commission

Appellant has known Moses Mayes for more than ten years. (R.R. at 72, 145). During the duration of their relationship, she has known him as "Moses Mayes". (R.R. at 147). Upon receiving the grievance, she contacted the Complainant to confirm whether or not he had filed a grievance. (R.R. at 145-46). Appellant was informed by the Complainant that it was Moses's son and wife, Connie Mayes, who filed the grievance. (R.R. at 146). For this reason, Appellant believed that the Complainant's son was Moses Mayes Jr.; Someone who Appellant had never represented at any capacity. (R.R. at 157). Appellant responded to the Commission with the following email:

April 13,2020

Sent via Email: houcdisresponses@texasbar.com

RE: 202001583-Mr./Ms. Moses Mays Jr.-Crystal D. Henderson

Dear Office of Chief Disciplinary Counsel,

In reference to the above named grievance I have reviewed my records and neither of the above are my clients. Also, the information on the form isn't even my office information. Further, I cannot answer any and each allegation(s) because none were name. Therefore, this concludes my response to the above name alleged grievance.

Respectfully,

Crystal D. Henderson.

This response amounts to the first allegation of conduct the Commission alleged to be a violation of 8.04(a)(3). During the course of litigation, Appellant received the following request for admission:

RFA No. 27

Admit that in your April 13, 2020 response to the grievance, you represented to the Office of the Chief Disciplinary Counsel that you “reviewed [you] records and neither [Mr. Mays nor Mrs. Mays] are [your] clients,” which was a false statement, at least with respect to Mr. Mays.

Appellant responded to this request for admission by denying this Admission in part. Appellant explained her responses as follows:

ROG No. 19

If you denied RFA No. 27 in whole or in part, explain in detail as to each part of RFA No. 27 why you denied the request.

RESPONSE:

Respondent’s representation, made to the Chief Disciplinary Counsel, were responsive and truthful to the best of Respondents knowledge. Respondent did not know the Complainant by the name of “Moses Mays, Jr.” Furthermore, Respondent did not represent Connie Mays in any capacity. This allegation was the result of a misunderstanding/miscommunication between the Office of the Chief Disciplinary Counsel and the Respondent.

It should be noted that the Complaint issued by the Commission offered no factual basis to substantiate the claims made by the Complainant, making it impossible for the Respondent to answer the Commission’s request. Only after counsel was retained were the factual allegations that made the basis of the Complaint made discoverable.

(C.R. at 55)

At the evidentiary hearing, Connie Mayes testified, consistent with Appellant’s responses, that Appellant did not represent her in any civil or criminal matter. (R.R. at 26). Appellant expanded on her response during her testimony at the evidentiary hearing, indicating that the Complainants personal information included on the initial grievance did not match the information she had for any client. (See R.R. 145). After this initial records search, Appellant contacted the Complainant. (R.R. at 145). Complainant told the Appellant that it was his son and wife who had filed a grievance against her. (R.R. at 146). Appellant also clarified that Request for Admission 27 was admitted to in part because the request for admission referred to the Complainant as “Moses

Mays” and not “Moses Mays Jr”. (R.R. at 150). This response amounts to the second allegation that Appellant violation 8.04(a)(3).

II. The BMW Fee Arrangement

The Complainant retained the Appellant and Co-counsel Mr. Driver to represent him in the three separate legal matters: 1) the re-negotiation of a lease agreement between Complainant and Quality Trucking [to avoid the Complainant defaulting on his lease agreement], 2) a DUI allegation, and 3) a Theft allegation. (R.R. at 52, 74). The quoted legal fees for this representation exceeded \$12,000. (R.R. at 52). The Complainant lacked the financial resources to pay the quoted amount. (R.R. at 127).

Instead, the parties reached a verbal agreement to allow Appellant and Co-Counsel to hold and use the BMW vehicle as collateral; ultimately transferring title of the vehicle to Appellant once the vehicle was paid off. (R.R. at 53). The BMW was valued at \$9,000 and the parties agreed that the Complainant would continue to make loan and insurance payments on the vehicle until it was paid off. (R.R. at 53).

The Complainant deceived the Appellant when entering into this fee arrangement because the title to the vehicle was in the Complainant’s son’s name.(R.R. at 51). In an effort to remedy this deception, Appellant and Co-Counsel Driver were promised a letter of protection that was never received. Ultimately, the vehicle began to have transmission problems and was taken to a mechanic shop. A lien was placed on the vehicle by the dealership, storage facility, and the mechanic’s shop. (R.R. at 58). Appellant never received title to the vehicle in exchange for her legal services that were rendered. (R.R. at 155).

Despite Complainant’s failure to meet his obligation related to the representation agreement, Appellant and Mike Driver were able to get the Complainant’s theft charge dismissed

and successfully renegotiated the Quality Trucking Lease Agreement. (R.R. at 76). They continued to represent the complainant on the DWI until this grievance was filed. (cite needed).

Ultimately, the evidentiary panel issued findings of fact and conclusions of law that Appellant violated 8.04(a)(3) and ordered that a Public Reprimand be imposed against Appellant. The Panels factual findings do not detail which of the three allegations had been proved up, so Appellant will address all three.

SUMMARY OF THE ARGUMENT

Appellant seeks reversal of this Judgment because the evidence presented at the hearing did not provide sufficient evidentiary basis for a finding that Appellant violated Rule 8.04(a)(3). Specifically, the Counsel for the Commission failed to meet its burden in proving up the fact that Appellant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Counsel for the Commission also failed to provide proof that Appellant committed an intentional falsehood. *Walter v. Commission for Lawyer Discipline*, 2005 WL 1039970, (Tex.App. Dallas 2005) at *5 (emphasis supplied.).

Counsel for the Commission *abandoned* each and every substantive allegation alleged in the Original Petition after concluding his evidentiary presentation. (R.R. at 135-136). Instead, Counsel for the Commission proceeded under a Rule 11 agreement which amended paragraph 22 of the Petition to include an allegation of a violation of 8.04(a)(3). (R.R. at 137). Counsel for the Commission orally alleged that the Appellant violated 8.04(a)(3), by engaging in misconduct, deceit or misrepresentation related to Appellant's 1) initial response to the Grievance, 2) amended response to written discovery [specifically her response to Interrogatory No. 19]; and 3) the fee arrangement [involving the use of an title transfer of a BMW]. (R.R. at 142).

The evidence presented at the hearing established the fact that Appellant and Complainant had known each other for more than 20 years. During that time, Appellant knew the Complainant as “Moses Mays” and not “Moses Mays Jr.”. In her initial response to the Commission, Appellant indicated she reviewed her records and neither Mr. nor Ms. Moses Mays Jr. were Appellant’s clients. During the discovery period, Counsel for the Commission submitted Requests for Admission and Interrogatories. Appellant explained the miscommunication and/or misunderstanding that Appellant did not realize that the Complainant was in fact “Moses Mays Jr.” because Appellant did not know the Complainant by that name. Appellant thoroughly explained this during the discovery process and evidentiary hearing. Similarly, Ms. Mays testified consistently with Appellants responses that Appellant had never represented her. At best, Counsel for the Commission established that Appellants responses amounted to mistakes or miscommunication, as opposed to an intentional dishonesty, deceit, deception, or misrepresentation.

The evidence presented at the hearing also conclusively established that the fee arrangement between the parties included the use, and ultimately the transfer of title, of a BMW for legal services to be performed by the Appellant and attorney Mike Driver. Complainant agreed to continue to pay of the title and insurance for the vehicle, while the attorney held the vehicle as collateral. Ultimately, the vehicle had transmission issues and was taken to a repair shop. The Complainant failed to meet his payment obligation and liens were placed on the vehicle by the dealership, repair shop, and company that stored the vehicle on the dealership’s behalf. Ultimately, Appellant never received title to the vehicle and the Complainant failed to meet his obligation related to the representation agreement. Because Counsel for the Commission

failed to meet its burden of proof in both respects, the decision should be reversed and the grievance dismissed.

ARGUMENTS & AUTHORITIES

In attorney disciplinary cases, the substantial evidence standard of review applies. TEX. GOV'T CODE ANN. Section 81.072(b)(7)(Vernon 2009) (State Bar Act); Tex. R. Disciplinary P. 7.11; *Schaefer*, 364 S.W.3d at 835. The substantial evidence standard focuses on whether there is any reasonable basis in the record for the administrative body's findings. *City of El Paso*, 883 S.W.2d at 182. Rule 8.04(a)(3) states "a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." 8.04(a)(3) TRDP. The disciplinary rules define "fraud" as "conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information". *Eureste v. Commission for Lawyer Discipline*, 76 S.W.3d 184, 198 (Tex.App Houston [14th Dist] 2002, no writ) citing Tex. Dis R. Prof'l Conduct, Terminology.

The disciplinary rules do not define the terms "dishonesty, deceit, and misrepresentation". In such a case, we give that word its "plain meaning unless the statute clearly shows that [it was] used in some other sense". *Coggin v. State*, 123 S.W.3d 82, 88 (Tex.App-Austin 2003, Pet. ref'd). We look to the dictionary or other such sources to determine the words definition. *See Oler v. State*, 998 S.W.2d 363, 368 (Tex. App.- Dallas 1999, Pet. ref'd, untimely filed) (noting that fraud and deception are not statutorily defined and referring to dictionary definition for ordinary usage of terms). Courts have concluded that, consistent with its ordinary meaning, the term "dishonesty" denotes "a lack of honesty, probity, or integrity in principle" and a "lack of straightforwardness", particularly where the attorney acts to promote his own interests. *Rosas v. Comm'n for Lawyer Discipline*, 335 S.W.3d 311, 319 (Tex.App.---San Antonio

2010, no pet.); *Brown v. Comm'n for Lawyer Discipline*, 980 S.W.2d 675, 680 (Tex.App.---San Antonio 1998, no pet.) Courts have also looked to Webster's, which defines "deceit" as "the action or practice of deceiving; concealment of the truth in order to mislead; deception, draug, cheating, and false dealing". *Oler V. State*, 998 S.W.2d 363, 368-9 (Tex.App. Dallas 1999) citing Webster's Third New International Dictionary 584 (1981).

Courts have interpreted 8.04(a)(3) to require an intentional falsehood. *See Walter*, 2005 WL 1039970 ("Rule 8.04(a)(3) prohibits intentionally engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation"); *see also State Bar v. Lerner*, 859 S.W.2d 496, 498-9 (Tex.App. Houston [1st Dist] 1993)([Court] could have reasonably concluded that Lerner's conduct was not done with *intentional dishonesty* in order to defraud or deceive anyone); *Walter v. Commission for Lawyer Discipline*, 2005 WL 1039970, (Tex.App. Dallas 2005) at *5 (emphasis supplied.)

I. The Evidentiary Panel improperly determined a violation under Rule 8.04(a)(3) with respect to the Appellant's initial Response to the grievance notice, and subsequent responses to Request for Admission and Interrogatories because the Commission failed to meet it's burden of proof.

The Record conclusively establishes that the Appellant and Complainant had known each other for more than twenty years. During that time, the Appellant knew the Complainant as "Moses Mays" and not "Moses Mays Jr". Based on this belief, Appellant was truthful in her initial response to the Commission that she did not represent "Mr. or Ms. Moses Mays Jr."

However, going beyond this obligation, Appellant did exercise due diligence in reaching out to the Complainant to confirm he had not in fact filed a grievance. During that correspondence, Appellant became aware of the fact that the Complainant's son and wife had filed the grievance. Appellant clarified her response to the Commission in her response to Counsel for the Commission's Request for Admission Number 27 and Interrogatory Number 19; It is important to

note that Counsel for the Commission referred to the Complainant as “Moses Mays” and “Moses Mays Jr” in these requests¹. These responses establish the carefulness, truthfulness, and diligence Appellant exercised in responding to the Commission. At best, the Counsel for the Commission introduced a *scintilla* of evidence that Appellant’s responses amounted to miscommunication, misunderstanding, or mistake. There was no evidence introduced to show that Appellant *intentionally* engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation with regards to her discovery responses to the Commission.

II. The Evidentiary Panel improperly determined a violation under Rule 8.04(a)(3) with respect to the BMW that was offered to the Appellant and co-counsel as part of their fee agreement, because the Commission failed to meet it’s burden of proof.

The use of the BMW as collateral for legal services was never part of the Petition filed by Counsel for the Commission. There was no evidence offered through the discovery period or evidentiary hearing that would indicate the Appellants handling of the fee arrangement was dishonest, fraudulent, deceitful, or amounted to a misrepresentation. In fact, during the evidentiary hearing, Counsel for the Commission **conceded**, in closing argument, that he failed to meet his burden of proving up an 8.04(a)(3) violation, saying

“that’s really a credibility question between the parties. They’re saying, obviously saying separate things. I’ll just leave that to the Panel.”

(R.R. at 181).

Going a step further, at no point does Counsel for the Commission introduce a *scintilla* of evidence, showing the Appellant **intentionally** engaged in dishonest, deceptive, deceit, or

¹ In fact, Counsel for the Commission seems to use “Moses Mays” and “Moses Mays Jr.” interchangeably in his filings. See *Petitioner’s Original Evidentiary Petition and Request for Admission*. While such a distinction may be trivial to Counsel for the Commission, such a distinction amounts to the difference between President George Bush Sr./Jr. or the difference between Ken Griffey and Ken Griffey Jr.

fraudulent behavior. A mere mistake, or lack of meeting of the minds between the parties does not amount to an 8.04(a)(3) violation.

Conversely, the evidence introduced during the evidentiary hearing established the fact that the Complainant was deceptive to Appellant and co-counsel and failed to meet his end of the fee arrangement. Complainant was, in fact, not the owner of the vehicle when the fee arrangement was entered into and **failed to ever transfer title of the vehicle to the Appellant.** Ultimately, Complainant failed to meet its payment obligation on the vehicle, as Complainant admits the dealership placed a lien on the vehicle, repossessed the vehicle, and ultimately had it transferred to a storage facility. (R.R. 58).

The record establishes the fact that it was the Complainant who was intentionally deceptive, deceitful, and manipulative; Appellant was not compensated for the work she did prior to the filing of the grievance. At no point in time did Appellant engage in *intentional* dishonesty, fraud, deceit, or misrepresentation and for this reason the finding of the disciplinary panel should be reversed.

CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant CRYSTAL HENDERSON, requests the Board of Disciplinary Appeals consider the Brief of the Appellant, sustain Appellant's issues presented herein, reverse the Judgment of the Panel finding professional misconduct and dismiss the grievance, or alternatively modify the Sanction found in the Judgment of the Panel from a Public Reprimand to a Private Reprimand, or alternatively remand the cause for further proceedings before a statewide evidentiary panel, and grant Appellant such other relief to which she may be justly entitled.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded to all counsel of record,
via certified mail and electronic mail on September 15, 2022.

Via electronic mail and certified mail: Michael.Graham@TEXASBAR.COM

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/s/ Brandon R. Cammack
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