



**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

IN THE MATTER OF	§	
PHILIP M. KLEINSMITH	§	CAUSE NO. 60098
STATE BAR CARD NO. 11567650	§	

JUDGMENT OF DISBARMENT

On the 20th day of April 2018, the above-styled and numbered disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner Commission for Lawyer Discipline of the State Bar of Texas appeared by attorney and announced ready. Respondent, Philip M. Kleinsmith, although duly cited to appear and having notice of the hearing, failed to answer or appear and wholly made default. All questions of fact and all issues of law were submitted to the Board of Disciplinary Appeals for determination. Having considered the pleadings on file, having received evidence, and having heard the argument of counsel, the Board of Disciplinary Appeals is of the opinion that Petitioner is entitled to entry of the following findings and orders:

Findings of Fact. The Board of Disciplinary Appeals finds that:

- (1) Respondent, Philip M. Kleinsmith, State Bar Card Number 11567650, is licensed but not currently authorized to practice law in the State of Texas due to being administratively suspended.
- (2) On or about July 1, 2016, a Complaint was filed with the Presiding Disciplinary Judge, Supreme Court, State of Colorado, in a matter styled: *Complainant: The People of the State of Colorado, Respondent: Philip M. Kleinsmith, #1063*, in Case No. 16 PDJ 031.

- (3) On or about November 18, 2016, an Opinion and Decision Imposing Sanctions under C.R.C.P. 251.19(b) was entered in the Supreme Court, State of Colorado, before the Office of the Presiding Disciplinary Judge (“PDJ”) in a matter styled: *Complainant, People of the State of Colorado, Respondent: Philip M. Kleinsmith*, in Case No. 16PDJ031.
- (4) On or about December 21, 2016, an Order and Notice of Disbarment was entered in the Supreme Court, State of Colorado, before the Office of the Presiding Disciplinary Judge in a matter styled: *Complainant, People of the State of Colorado, Respondent: Philip M. Kleinsmith*, in Case No. 16PDJ031, that states in pertinent part as follows:

Under C.R.C.P. 251.28(a), the Presiding Disciplinary Judge (“the PDJ”) hereby ORDERS that PHILIP M. KLEINSMITH, attorney registration number 01063, is DISBARRED from the practice of law....

- (5) The Opinion and Decision Imposing Sanctions found that Respondent was a solo practitioner and the sole shareholder at the law firm of Kleinsmith & Associates, PC (“K&A”). K&A represented U.S. Bank in seventy-four real estate foreclosure actions in Idaho and Montana between 2012 and 2014. In the course of this representation, K&A retained First American Title Company, LLC, and First American Title of Montana, Inc. (jointly, “First American”) to provide title services for these foreclosure cases. First American invoiced K&A a total of \$57,338.00 for those services.

K&A billed U.S. Bank for First American's services. These "title services" were identified in K&A's invoices as "title commitment," with no specific reference to First American. U.S. Bank paid K&A for First American's services. K&A failed to pay First American, however. Instead, Respondent placed the funds provided by U.S. Bank into the firm's operating account and used those funds to pay other firm expenses.

First American obtained a judgment against K&A in Montana for its unpaid invoices in the amount of \$55,782.00, and it domesticated the judgment in Colorado. First American has been able to collect just \$1,179.20 from Respondent through bank garnishments.

The PDJ concluded that Respondent violated Colo. RPC 1.15A(b), which provides that a lawyer shall promptly deliver to a third person any funds that the third person is entitled to receive. Respondent transgressed this rule by failing to promptly transmit to First American the funds he received from U.S. Bank funds that were intended to pay for title services that First American had provided.

The PDJ also determined that Respondent's decision to exercise dominion over these funds, using them to pay other firm expenses, also amounted to

knowing conversion under Colo. RPC 8.4(c), which proscribes conduct involving dishonesty.

- (6) Respondent, Philip M. Kleinsmith, is the same person as the Philip M. Kleinsmith who is the subject of the Order and Notice of Disbarment described above.
- (7) Respondent was personally served with the Board's Order to Show Cause and hearing notice and the Petition for Reciprocal Discipline on March 8, 2018, and the affidavit of service was filed with the Board on March 26, 2018.

Conclusions of Law. Based upon the foregoing findings of fact the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this matter. Texas Rules of Disciplinary Procedure ("TRDP") Rule 7.08(H).
- (2) Reciprocal discipline identical to that imposed by Supreme Court of Colorado is warranted in this case. TRDP 9.03.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Philip M. Kleinsmith, State Bar Card No. 11567650, be and he is hereby **DISBARRED** from the practice of law in the State of Texas and his license to practice law in this state be and is hereby revoked.

It is further **ORDERED, ADJUDGED and DECREED** that Respondent, Philip M. Kleinsmith, is prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel in any proceeding in any Texas court or before any administrative body or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

It is further **ORDERED** that Respondent, Philip M. Kleinsmith, shall immediately notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and

every court, if any, in which Respondent, Philip M. Kleinsmith, has any legal matter pending, if any, of his disbarment of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), not later than thirty (30) days from the date of this Order, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further **ORDERED** that Respondent, Philip M. Kleinsmith, shall immediately notify each of his current clients and opposing counsel, if any, in writing, of his disbarment. In addition to such notification, Respondent is **ORDERED** to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in his possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days after the date on which this Judgment is signed by the Board. Respondent is further **ORDERED** to file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days, an affidavit stating that all current clients and opposing counsel have been notified of his disbarment and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent

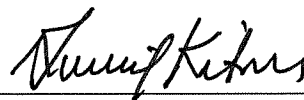
with respect to each particular client and the cause of his inability to return to said client any file, paper, money or other property.

It is further **ORDERED** Respondent shall file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), not later than thirty (30) days from the date of this Order, an affidavit stating all current clients and opposing counsel have been notified of Respondent's disbarment and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further **ORDERED** that Respondent, Philip M. Kleinsmith, immediately surrender his Texas law license and permanent State Bar Card to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further **ORDERED** that a certified copy of the Petition for Reciprocal Discipline on file herein, along with a copy of this Judgment, be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

Signed this 23 day of April 2018.



CHAIR PRESIDING