

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

IN THE MATTER OF	§	
LEE ALEXANDER MAGNESS	§	CAUSE NO. 43039
STATE BAR CARD NO. 00795495	§	

INTERLOCUTORY ORDER OF SUSPENSION

On the 12th day of December 2008, the above-styled and numbered disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner appeared by attorney and announced ready. Respondent, Lee Alexander Magness, although duly served and having notice of the hearing date, failed to answer or appear and wholly made default. All questions of fact as well as all issues of law were submitted to the Board of Disciplinary Appeals for determination. Having considered the pleadings on file, received evidence, and 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, Lee Alexander Magness, State Bar Card number 00795495, is licensed by the Supreme Court of Texas but not currently authorized to practice law in the State of Texas due to an indefinite suspension signed August 28, 2008.
- (2) On December 10, 2007, Respondent was charged by Indictment with Misapplication of Fiduciary Property in Cause No. 1145123, in the 338th District Court of Harris County, Texas.
- (3) On August 21, 2008, a Judgment of Conviction by Jury was signed in Case No. 1145123, styled *The State of Texas v. Magness, Lee Alexander*, in the 338th District Court of Harris County, Texas, wherein Respondent was found guilty by a jury of Misapplication of Fiduciary Property \$100,000.00 - \$200,000.00 and was sentenced to 10 years confinement in the Institutional Division of the Texas Department of Criminal Justice and ordered to pay \$440.00 in court costs and \$199,999.00 in restitution.

- (4) Respondent, Lee Alexander Magness, is the same person as the Lee Alexander Magness who is the subject of the Magness criminal case described above.
- (5) Respondent was personally served with the Petition for Compulsory Discipline containing notice of the hearing on the merits on September 18, 2008, and the original affidavit of service was filed on September 30, 2008.
- (6) At the time of the hearing, Respondent had not filed an answer or other pleading or otherwise appeared.
- (7) Following the hearing on the merits on December 22, 2008, the Board received a letter from Respondent's sister attempting to explain his absence from the hearing.
- (8) Respondent's sister acknowledged that Respondent had notice of the date, time, and place of the hearing but was unable to attend.
- (9) The letter did not deny or otherwise respond to or put into issue the allegations in the Petition for Compulsory Discipline.
- (10) The letter did not assert any counterclaims or request any relief or action by the Board of Disciplinary Appeals.
- (11) An amended affidavit of service was filed January 8, 2009.
- (12) Respondent's criminal sentence is not fully probated.
- (13) Respondent has appealed the criminal conviction.

Conclusions of Law. Based upon the foregoing findings of facts 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(G).
- (2) Respondent, Lee Alexander Magness, having been convicted of Misapplication of Fiduciary Property \$100,000.00 - \$200,000.00, has been convicted of an Intentional Crime as defined by TRDP 1.06(T).
- (3) Respondent has also been convicted of a Serious Crime as defined by TRDP 1.06(Z).

- (4) Respondent was duly notified of the hearing on the merits.
- (5) The letter from Respondent's sister received after the hearing on the merits is insufficient to constitute an answer or other pleading which would defeat a default judgment.
- (6) Having been found guilty and convicted of an Intentional and Serious Crime and having appealed such conviction, Respondent, Lee Alexander Magness, should have his license to practice law in Texas suspended during the appeal of his criminal conviction. TRDP 8.04.
- (7) The Board retains jurisdiction to enter a final judgment in this matter when the criminal appeal is final.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Lee Alexander Magness, State Bar Card No. 00795495, is hereby **SUSPENDED** from the practice of law in the State of Texas effective immediately upon entry of this order and continuing hereafter until further order of this Board.

It is further **ORDERED, ADJUDGED and DECREED** that Respondent, Lee Alexander Magness, during said suspension is hereby prohibited, effective immediately, from practicing law in Texas, holding himself out as an attorney at law, performing any legal service for others, accepting any fee directly or indirectly for legal services not completed before the date of this order, appearing as counsel in any proceeding in any Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further **ORDERED** that Respondent, Lee Alexander Magness, shall notify in writing, no later than thirty (30) days from the date of this Order, each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent, Lee Alexander Magness, has any legal matter pending, if any, of his suspension, 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. Respondent is also **ORDERED** to mail copies of all such notifications to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further **ORDERED** that Respondent, Lee Alexander Magness, shall immediately notify each of his current clients, if any, in writing, of his suspension. 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 of this Order. Respondent is further **ORDERED** to file with the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, within the same thirty (30) days, an affidavit stating either (a) that all current clients have been notified of his suspension 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 or (b) that Respondent has no current clients, files, or papers, and that any unearned fees paid in advance or other monies or properties belonging to clients have previously been returned to the appropriate client. If Respondent is 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. Respondent is also **ORDERED** to mail a copy of all notification letters to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

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

It is further **ORDERED** that this Order is interlocutory and that the Board retains jurisdiction to enter a final judgment when the appeal of the criminal conviction is final.

It is further **ORDERED** that Respondent shall promptly notify the Board and the State Bar of Texas Chief Disciplinary Counsel when the appeal of the criminal conviction is final.

It is further **ORDERED** that the Chief Disciplinary Counsel of the State Bar of Texas shall monitor the status of the appeal of the criminal conviction on at least a quarterly basis and promptly file an appropriate motion for entry of final judgment with the Board when the appeal of the criminal conviction is final.

Signed this 27th day of January 2009



CHAIRMAN PRESIDING