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ON GRIEVANCES & DISCIPLINE

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

FILED
DEC 15 2014
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In re:

Complaint against

Sam Patrick Cannata, Esq.
30799 Pinetree Rd., #254
Cleveland, OH 44124

Attorney Registration No. (0078621)

Respondent,

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator.

No. 14-091

COMPLAINT AND CERTIFICATE

(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.)

Now comes the relator and alleges that respondent, Sam Patrick Cannata, an attorney at law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent was admitted to the practice of law in the state of Ohio on January 20, 2005.

2. As an attorney, respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

Background Facts

3. Gerald Wayne Phillips was admitted to the practice of law in the State of Ohio on November 4, 1977.

4. In or about May 2009, respondent and Phillips formed Cannata Phillips LPA, LLC and practiced law together as that entity.

5. At all times relevant to this complaint, Phillips also practiced law under the name Phillips & Co., L.P.A; however, according to the Ohio Secretary of State's Office, this entity was cancelled in November 1982 and not reinstated until October 17, 2014.

6. Sometime during the mid 1990s, respondent and David Snider (Snider) decided to form several real estate and property management businesses together. In furtherance of this pursuit, respondent, Snider, and their respective wives, Jill Cannata and Robin Snider, formed a number of corporate entities in which respondent and/or his entities and Snider and/or his entities were 50% co-owners or co-managers.

7. These entities, along with respondent, Snider, and their wives, purchased and managed several real estate properties in Northeast Ohio.

8. Amongst the various entities that respondent and Snider formed were:

    a. Vista Way Partners, LLC, which was owned 50% by Snider Interests, LLC (a Snider entity) and 50% by Cannata Vista Way (an entity associated with respondent) and co-managed 50/50 by Robin Snider and respondent;

    b. Snider-Cannata Property Management, LLC, which was co-owned and co-managed 50% by Snider and 50% by respondent and which served as the property manager for all properties owned by Vista Way Partners, LLC; and

    c. Bridgeview Center South, LLC, which was owned 50% by Snider Interests, LLC (a Snider entity) and 50% by Cannata-Infinity, LLC (an entity associated with respondent) and co-managed 50/50 by Robin Snider and respondent.

9. Between at least 2009 and May 2011, respondent's and Phillips' firm, Cannata-Phillips LPA, LLC, and Phillips' defunct firm, Phillips & Co., LPA, rendered legal services to a

number of respondent's and Snider's entities, including but not limited to, Bridgeview Center South, LLC.

10. In or about 2008, the real estate market took a downturn. As a result, respondent, Snider, and many of their various entities were negatively impacted.

11. In or around 2011, respondent and Snider began the process of winding up their businesses together and separating their interests. During this process, the personal and professional relationship between respondent and Snider became increasingly hostile with each blaming the other for the current status of their various businesses.

Count One

12. On July 13, 2012 at 8:38 AM, Phillips filed a complaint on behalf of Vista Way Partners, LLC, against Snider-Cannata Property Management, LLC for breach of a lease agreement.

13. Phillips filed this complaint at the request of respondent, who was a co-manager of Vista Way Partners, LLC, but without the knowledge or consent of Snider Interests, LLC, a 50% owner of Vista Way Partners, LLC or Robin Snider, the other owner co-manager.

14. On July 13, 2012 at 8:38 AM, the same time that the complaint was filed, respondent filed a Waiver of Service on behalf of Snider-Cannata Property Management, LLC acknowledging that the corporation had already received a copy of the complaint from Phillips.

15. On July 13, 2012 at 8:42 AM, four minutes after the complaint was filed, respondent filed an answer to the complaint on behalf of Snider-Cannata Property Management, LLC of which he was also a 50% co-owner and co-manager.

16. Respondent filed this answer without the knowledge or consent of David Snider, who was the other 50% co-owner and manager.

17. In his answer, respondent admitted the key allegations of the complaint including, but not limited to, the fact that Snider-Cannata Property Management, LLC had breached the lease agreement with Vista Way Properties, LLC, and that as such, rent was owed to Vista Way Properties, LLC.

18. Respondent and Phillips then drafted a Stipulated Judgment Entry for Judge John P. O'Donnell to sign. The judgment entry specifically provided that "any and all of the defendant's employees and managers shall not be entitled to occupy and be within the leased premises at 9555 Vista Way Suite 200, Garfield Hts., Ohio 44125 after July 16, 2012 and there (sic) will be deemed trespassers after said date and may be remove (sic) from the leased premises by proper law enforcement officers."

19. This entry would have effectively evicted Snider (and respondent) from his office at Snider-Cannata Property Management, LLC.

20. Later in the day on July 13, 2012, respondent appeared with Phillips in Judge Richard McMonagle's chambers in a separate, but related, matter regarding respondent's and Snider's joint interests and properties. Respondent and Phillips appeared on behalf of respondent and his entities, but adverse to Snider Interests, LLC, Robin Snider, and David Snider. Respondent and Phillips did not say anything about the answer, complaint, or draft judgment entry that they had just filed.

21. Judge O'Donnell was unavailable to sign the Stipulated Judgment Entry drafted by respondent and Phillips; therefore, it was transferred to Judge McMonagle for signature.

22. Upon seeing the draft judgment entry and realizing that Snider and/or his entities were not aware of it, Judge McMonagle refused to sign it. The case was eventually dismissed.

23. Respondent's conduct as outlined above violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 1.7(a)(2) (prohibiting a lawyer from accepting or continuing the representation of a client if there is substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, a third person, or the lawyer's own personal interests); Prof. Cond. R 1.10(a) (prohibiting a lawyer associated in a firm from knowingly representing a client when the lawyer knows or reasonably should know that another lawyer in the firm would be prohibited from doing so under Prof. Cond. R. 1.7 or Prof. Cond. R. 1.9); Prof. Cond. R. 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice); and Prof. Cond. R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

Count Two

24. Relator herein incorporates paragraphs 1-23.

25. Bridgeview Center South, LLC (BCS) was one of the entities incorporated by respondent and Snider in pursuit of their real estate business. BCS was owned 50% by Snider Interests, LLC and 50% by Cannata-Infinity, LLC, and it was co-managed 50/50 by Robin Snider and respondent with neither having specific authority to act unilaterally on behalf of the corporation.

26. In or about April 2009, BCS sold property commonly referred to as the "Roadway Property" to Bridgeview Crossing, LLC for $2,000,000. In turn, Bridgeview Crossing, LLC granted BCS a mortgage in the Roadway Property.

27. Bridgeview Crossing, LLC subsequently defaulted on the mortgage, and in February 2010, BCS obtained a judgment against Bridgeview Crossing, LLC in the amount of $2,366,575.34. Phillips represented BCS in the matter, and respondent represented Bridgeview Crossing, LLC. (Cuyahoga County Court of Common Pleas, Case No. CV-10-717293.)

28. Bridgeview Crossing, LLC was also subject to a judgment lien obtained by Huntington National Bank in January 2009 for $29,348,397.05. Huntington Bank subsequently sold the judgment lien to Garfield Hope Loan Acquisition, LLC (GHLA).

29. GHLA claimed that it had the first and best lien against the Roadway Property; however, respondent and Phillips disagreed with this position and intended to challenge it.

30. On May 19, 2011, respondent, as co-manager of BCS, assigned BCS's lien on the Roadway Property jointly to Phillips's defunct corporation, Phillips & Co., LPA, his firm with respondent, Cannata-Phillips LPA, LLC, and his entity, Cannata-Infinity, LLC, as payment for past legal services performed by Phillips & Co., LPA and in consideration of future legal services, such as the legal challenge to GHLA's priority claim.

31. Respondent assigned the BCS mortgage without the knowledge and/or consent of Snider Interests, LLC or Robin Snider.

32. Phillips signed the mortgage assignment on behalf of his defunct corporation, Phillips & Co., and on behalf of his law firm with respondent, Cannata-Phillips LPA, LLC.

33. Respondent signed the mortgage assignment on behalf of his entity, Cannata-Infinity, LLC.

34. The mortgage assignment provided that upon sale, disposition, or other transfer of the Roadway Property, payments would be made in the following order of priority with the remainder going to BCS:

A. Legal fees for services rendered through Phillips' defunct corporation, Phillips & Co, LPA;

B. Legal Fees owed to Cannata-Phillips LPA, LLC; and

C. Repayment of funds advanced by members of BCS, Cannata Infinity, and "the other member" (Snider Interests, LLC).

35. Snider did not learn of the mortgage assignment until several months after it occurred.

36. Respondent's conduct as outlined above violates Prof. Cond. R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

Count Three

37. Relator herein incorporates the allegations alleged in paragraphs 1-36.

38. On June 27, 2012, Phillips filed suit against Snider Interests, LLC, Bridgeview Center South, LLC, and several other defendants on behalf of respondent and his entity, Cannata-Infinity LLC. This suit was filed in the Cuyahoga County Court of Common Pleas and was assigned case no. CV-12-785850.

39. On July 9, 2012, Snider, Snider Interests LLC, and Robin Snider filed suit against respondent, Snider-Cannata Property Management, LLC, Bridgeview Center South, LLC, Cannata-Infinity, LLC, Vista Way Partners, LLC, Cannata Vista Way, LLC, and other

defendants in the Cuyahoga County Court of Common Pleas. This case was assigned case no. CV-12-786574.

40. Case nos. CV-12-785850 and CV-12-786574 were consolidated on or about July 16, 2012 and assigned to the docket of Judge Richard J. McMonagle.

41. On July 18, 2012, Attorneys Philip Kushner and Robert Glickman filed a Motion to Disqualify respondent and Phillips from serving as counsel for any party in the consolidated action, as well as the eviction action (Count One) due to multiple conflicts of interest.

42. On October 1, 2012, a hearing was held on Kushner's and Glickman's Motion to Disqualify. During this hearing, Judge Richard McMonagle informed all parties that he was going to grant the Motion to Disqualify.

43. On October 3, 2012, Judge McMonagle issued a written decision on the Motion to Disqualify. Judge McMonagle's decision specifically stated that "Gerald Phillips and Sam Cannata are disqualified as counsel and shall not represent any party in the above captioned consolidated matters (the Court notes that Sam Cannata is a party to the case and he is permitted to represent himself *pro se*)."

44. Despite the court's October 3, 2012 order, respondent continued to represent and file documents and pleadings on behalf of parties in the consolidated case. Amongst other documents, respondent filed the following:

    a. Cannata-Infinity, LLC's Objections to Disqualification Order, October 31, 2012;

    b. Objection to Receiver's Accounts and Accounting, December 5, 2012;

    c. Cannata-Infinity, LLC's Motion to Disqualify, December 19, 2012;

    d. Motion for Stay, December 21, 2012;

e. Cannata-Infinity, LLC's Objections to Motion of Receiver for Sale of BCS Property, December 24, 2012;

f. Cannata-Infinity, LLC's Request for Production of Documents and Inspection, January 11, 2013;

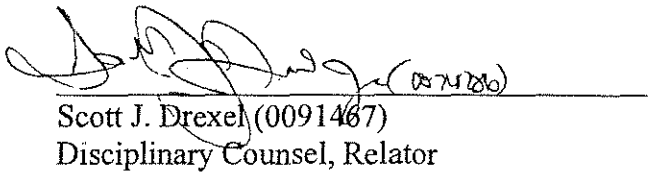
g. Cannata-Infinity, LLC's Brief in Opposition to Motion for Expansion of Receivership, January 30, 2013; and

h. Cannata-Infinity, LLC's Supplemental Brief in Opposition to Motion for Expansion of Receivership, February 2, 2013.

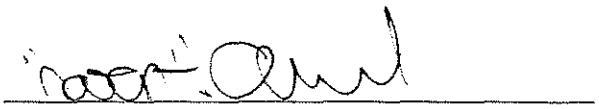
45. Respondent's conduct as outlined above violates Prof. Cond. R. 1.7(c)(1) (prohibiting a lawyer from continuing the representation of a client if the representation is prohibited by law); and Prof. Cond. R. 3.4(c) (prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal).

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct and requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



Scott J. Drexel (0091467)
Disciplinary Counsel, Relator



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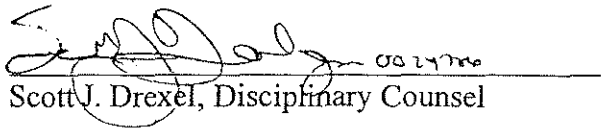
CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Karen H. Osmond is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: November 14, 2014



Scott J. Drexel, Disciplinary Counsel

Gov. Bar R. V, § 4(I) ***Requirements for Filing a Complaint.***

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

* * *

(7) Complaint Filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, or chair of the Certified Grievance Committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court. The complaint also may be signed by the grievant.

(8) Complaint Filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Secretary of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.