

TO BE PUBLISHED

Supreme Court of Kentucky

2002-SC-0882-KB

FINAL
DATE 3-4-03 SIA Court, D.C.

KENTUCKY BAR ASSOCIATION

APPELLANT

V.

IN SUPREME COURT

STEPHEN P. BASINGER

APPELLEE

OPINION AND ORDER

The Kentucky Bar Association brought this action against Respondent, Stephen Paul Basinger, for alleged professional misconduct committed in a real estate transaction. Respondent tendered no response, and the KBA Board of Governors found him guilty of the charged misconduct. Pursuant to SCR 3.370(10), which governs default cases, this Court hereby adopts the decision of the of the Board of Governors.

Respondent was admitted to the practice of law in the Commonwealth on May 1, 1991. His last known address is P.O. Box 8, California, Kentucky, 41007. On May 6, 2002, Respondent was charged with violating Rule 3.130-8.3(c), which states, "It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

The conduct giving rise to this charge occurred as follows. In May 1995, Virginia Lee Cordova and her husband entered into a land contract for the purchase of a house and property in Alexandria, Kentucky from Respondent and his wife, Deborah

Basinger.¹ The purchase price of the property was \$18,000, with \$4,000 as a down payment and the balance to be financed by the sellers over a period of twenty years with monthly payments of \$135.11.

The Cordovas filed bankruptcy on January 15, 1996, and they divorced in December 1996. Ms. Cordova reaffirmed the land contract with the Basingers on February 24, 1997 and continued to make monthly payments under the contract. Also, Ms. Cordova had understood that Respondent would record the land contract, yet he did not do so despite her repeated requests. Respondent also failed to pay property taxes for which Ms. Cordova had given him money.

In May 1998, Respondent asked Ms. Cordova if she would exchange a piece of the property in question for one owned by neighbors Clarence and Gale Gaskins to complete a sixty acre contiguous tract for development. Ms. Cordova refused. Thereafter, without Ms. Cordova's knowledge, Respondent sold or traded a part of the tract to the Gaskins' in August 1998.

Consequently, Ms. Cordova filed a civil action in Campbell County Circuit Court on September 28, 2001 against the Basingers and other defendants to quiet her title, to record the land contract in question, and for damages. Respondent and his wife could not be served in the civil action, and a motion for a Warning Order Attorney was filed by Ms. Cordova's attorney.

The Board of Governors found that by conveying a part of Ms. Cordova's property to Mr. and Ms. Gaskins when Respondent knew that the property did not belong to him and his wife or corporation, and by accepting funds for the payment of taxes and then failing to pay taxes, Respondent engaged in conduct involving

¹ The house and property in question had been held in the name of a corporation, Heaven Can Wait, Inc., of which Respondent was the President and initial Director. The corporation was dissolved for failure to file its annual report.

dishonesty, fraud, deceit, and misrepresentation in violation of SCR 3.130-8.3(c). In light of this finding and Respondent's prior disciplinary sanctions of a public reprimand² and a two year and sixty day suspension,³ the Board recommended a two year suspension to follow the expiration of the current suspension

Upon the foregoing facts and charges, it is hereby ordered that the decision of the Board of Governors be adopted. It is further ordered that:

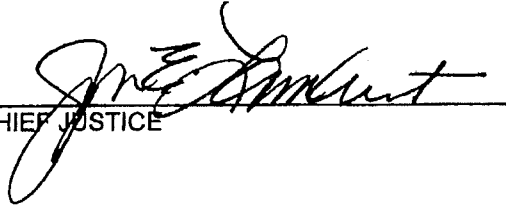
1. Respondent, Stephen Paul Basinger, be suspended from the practice of law for two years for his professional misconduct. The suspension shall commence on September 20, 2003, the concluding date of his prior two year suspension ordered by this Court on September 20, 2001. The suspension shall continue until he is reinstated to the practice of law by order of this Court pursuant to SCR 3.510.

2. Respondent, Stephen Paul Basinger, is directed to pay costs of this action in accordance with SCR 3.450, said sum being \$104.37, and for which execution may issue from this Court upon finality of this Opinion and Order.

3. In accordance with SCR 3.390, if he has not already done so, Respondent, Stephen Paul Basinger, shall within ten (10) days of the entry of this Opinion and Order notify all his clients of his inability to represent them and furnish copies of said letters of notice to the Director of the Kentucky Bar Association. He shall also provide such notification to all courts in which he has matters pending.

All concur.

ENTERED: February 20, 2003.


CHIEF JUSTICE

² May 18, 2000.

³ September 20, 2001.

COUNSEL FOR APPELLANT:

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2001-SC-0191-KB

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2001-SC-0484-KB

DATE 9-20-01 EIA Grou-H, DC

KENTUCKY BAR ASSOCIATION

COMPLAINANT

V.

IN SUPREME COURT

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RESPONDENT

OPINION AND ORDER

Respondent, Stephen P. Basinger, whose last known address was 800 Alexandria Pike, Suite 2, Ft. Thomas, Kentucky 41075, was admitted to the practice of law in the Commonwealth of Kentucky on May 1, 1991. The instant action consolidates for consideration two separate complaints against Basinger-KBA Files 7615 and 7646.

KBA File 7615

On May 15, 2000, the Inquiry Commission issued a two-count charge against Basinger in connection with his representation of a Mr. and Mrs. Stone in a case involving a faulty home furnace. The KBA filed charges against Basinger on May 15, 2000. Basinger did not answer the charges. Consequently, on August 25, 2000, the case was submitted to the Kentucky Board of Governors (Board) by order of the

Inquiry Commission pursuant to SCR 3.210(1) for consideration in its September 22, 2000 meeting. Basinger submitted an answer denying all charges on September 22, 2000. Pursuant to SCR 3.210(3), the Board returned the case to the disciplinary clerk to appoint a trial commissioner. We appointed a trial commissioner on October 19, 2000.

Thereafter, the appointed trial commissioner entered an order requiring each party to submit a list of witnesses for the hearing. Basinger did not comply with this order. The trial commissioner held a pre-hearing conference on November 21, 2000. At this conference the trial commissioner issued an order requiring the parties to file pre-trial briefs. Again, Basinger did not comply with this order. The hearing was held as scheduled on January 25, 2001. Basinger did not attend this hearing. A continuance was granted and the record was left open to give Basinger an opportunity to respond to the charges. A supplemental hearing was held March 26, 2001. Basinger did not attend this hearing and the record was closed on March 30, 2001. Neither party filed a notice of review of the trial commissioner's decision within the thirty-day limit established by SCR 3.360(4). Therefore, we adopt the decision of the trial commissioner pursuant to SCR 3.370(10).

The trial commissioner found that: (1) an attorney-client relationship existed between Basinger and the Stones; (2) the Stones did not have a clear understanding of the type of fee that Basinger was to receive, viz., whether he was to be paid hourly or on a contingency basis; (3) that Basinger failed to promptly return the Stones' telephone calls; and (4) that Basinger failed to inform the Stones that he had filed a lawsuit on their behalf in the Madison Circuit Court. Based on these facts, the trial

commissioner concluded that Basinger violated SCR 3.130-A .5(b) by failing to communicate to the Stones the nature of his fee. The trial commissioner further concluded that Basinger violated SCR 3.130-I .4(a) by failing to return the Stones' phone calls and to inform them of the lawsuit filed on their behalf.

The trial commissioner recommended that Basinger be suspended from the practice of law for sixty days. Neither party filed a notice of review of the trial commissioner's report within the thirty-day limit established by SCR 3.370(10). Pursuant to SCR 3.370(10), we hereby adopt the trial commissioner's report and recommendation.

KBA File 7646

On September 14, 2000, the Inquiry Commission issued a multi-count charge against Basinger in connection with his representation of a Mr. and Mrs. Reinhardt in a case involving a lease/option agreement to purchase property located in the Cincinnati, Ohio, area. Basinger did not answer the charges. The case was then submitted to the Board as a default case pursuant to SCR 3.210(1). The Board entered its decision after a hearing on the matter on March 9, 2001. Neither party filed a notice of review within the thirty-day limit established by SCR 3.360(4). Basinger filed a motion for extension of time to file his notice of review, which we conditionally granted on May 17, 2001. However, Basinger failed to comply with this order; consequently, the motion was denied. We therefore adopt the decision of the Board of Governors pursuant to SCR 3.370(10) as follows.

In April of 1994, Basinger was hired by Mr. and Mrs. Reinhardt to help them resolve a conflict with the owners of property they were leasing. Basinger told the

Reinhardtts that he would file suit against the owners on the Reinhardtts' behalf.

Basinger also instructed the Reinhardtts to make their monthly payments to him and informed them that he would hold the monthly payments in escrow until the dispute was resolved. Basinger did not file the lawsuit and he did not hold the monthly payments in escrow. Instead, he made the payments to the landowners without the Reinhardtts' knowledge.

In December of 1996, the Reinhardtts received a letter from the landowners' attorney stating that the landowners had not received rental payments for November and December. Basinger contacted the landowners, instead of the landowners' attorney, notifying them that he was holding the payments pending resolution of the dispute. The landowners' attorney made a settlement offer that Basinger accepted without consulting or notifying the Reinhardtts. Basinger later released the settlement monies to the Reinhardtts when the Reinhardtts terminated Basinger as their counsel.

Basinger is charged with seven counts. On count one, the Board found that Basinger violated SCR 3.130-4.2 by making contact with represented parties he knew to be represented. On count two, the Board found that Basinger violated SCR 3.130-8.3(c) by settling the Reinhardtts' claims without their knowledge and consent. On count three, the Board found that Basinger violated SCR 3.130-8.3(c) by misleading the Reinhardtts into believing he had filed a lawsuit on their behalf and by misleading the Reinhardtts into believing he had set up an escrow account into which he was placing the rent money. On count four, the Board found that Basinger violated SCR 3.130-I .3 for failing to act with reasonable diligence in representing the Reinhardtts, that Basinger violated SCR 3.130-I .4 for failing to keep his clients reasonably informed and for failing

to explain matters so that the Reinhardts could make decisions about their case, and lastly that Basinger violated SCR 3.130-I .1 5(b) for failing to promptly release the settlement monies to the Reinhardts. On count five, the Board found that Basinger violated SCR 1 .1 30-I .5(a) in an unrelated matter involving the Reinhardts' daughter by attempting to charge a contingency fee when he had indicated he would charge an hourly fee. On count six, the Board found that Basinger violated SCR 3.130-8.3(c) by attempting to charge a contingency fee when he was only entitled to an hourly fee. Finally, on count seven, the Board found that Basinger violated SCR 3.130-I .5(c) by failing to have a written contingency agreement. By a vote of 12 to 5, the Board of Governors voted to recommend a two-year suspension from the practice of law. We adopt the Board's findings and recommendation.

Upon the foregoing facts and charges, it is ordered that:

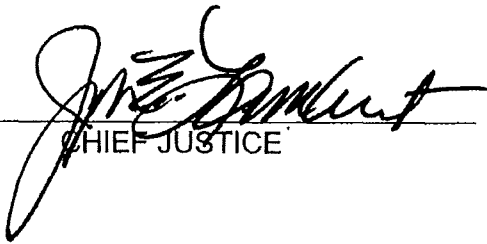
(1) Respondent, Stephen P. Basinger, is hereby suspended from the practice of law in the Commonwealth of Kentucky for a period of two years in connection with KBA File 7646, to run consecutively with the sixty-day suspension in connection with KBA File 7615, and to run consecutively with any and all current suspensions. The period of suspension shall continue until such time as Basinger is reinstated to the practice of law pursuant to SCR 3.510, or any controlling amendment to SCR 3.510.

(2) Pursuant to SCR 3.390, Basinger shall provide notice to any clients, if applicable, he currently represents of his inability to provide further legal services, to notify all courts in which he has matters pending of his suspension, and to provide the Director of the Kentucky Bar Association with a copy of all such letters simultaneously to their mailing.

(3) In accordance with SCR 3.450 and SCR 3.480(3), Basinger is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$961.40. Upon the finality of this opinion, an order of execution may issue from this Court for said costs.

All concur.

Entered: September 20, 2001.



CHIEF JUSTICE

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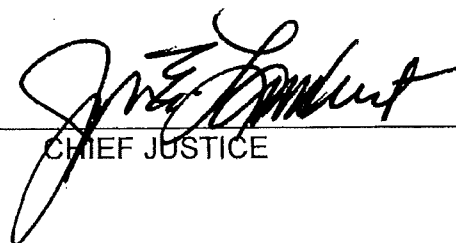
RESPONDENT

ORDER

On the Court's own motion, the Opinion and Order entered herein on August 23, 2001, is hereby withdrawn and substituted with the Opinion and Order attached hereto. Modifications, not affecting the holding, were made on several pages to correct typographical errors.

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Thereafter, the appointed trial commissioner entered an order requiring each party to submit a list of witnesses for the hearing. Basinger did not comply with this order. The trial commissioner held a pre-hearing conference on November 21, 2000. At this conference the trial commissioner issued an order requiring the parties to file pre-trial briefs. Again, Basinger did not comply with this order. The hearing was held as scheduled on January 25, 2001. Basinger did not attend this hearing. A continuance was granted and the record was left open to give Basinger an opportunity to respond to the charges. A supplemental hearing was held March 26, 2001. Basinger did not attend this hearing and the record was closed on March 30, 2001. Neither party filed a notice of review of the trial commissioner's decision within the thirty-day limit established by SCR 3.360(4). Therefore, we adopt the decision of the trial commissioner pursuant to SCR 3.370(10).

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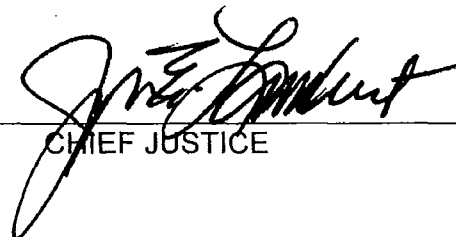
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