

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF EVAN STUART ELAN

VS B Docket No: 22-021-126025

MEMORANDUM ORDER OF REVOCATION

This matter came to be heard on May 19, 2023, before a panel of the Virginia State Bar Disciplinary Board (the “Board”) comprised of David J. Gogal, Chair, Carolyn V. Grady, Michael J. Sobey, James L. Banks and Tammy D. Stephenson, lay member. The Virginia State Bar (“the Bar”) was represented by Shelley L. Spalding, Assistant Bar Counsel (“Bar Counsel”). Mr. Evan Stuart Elan (the “Respondent”) failed to appear in person or by counsel. Lisa A. Wright, Registered Professional Reporter of Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227 (804-730-1222), having been duly sworn, reported the hearing.

The Chair opened the hearing by calling the case in the hearing room and causing the Assistant Clerk to call Respondent’s name three times in the adjacent hall. The Respondent did not answer or appear. The Chair inquired of the members of the panel whether any of them had a personal or financial interest, or any bias, which would preclude, or could be perceived to preclude, their hearing the matter fairly and impartially. Each member of the panel answered the inquiry in the negative.

The matter came before the Board pursuant to a certification of misconduct by the Second District Subcommittee on February 7, 2023. The Second District Subcommittee certified violations of Rule 1.3(a) and 1.3(b), Rule 1.4(a) and 8.1(c). All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (Clerk) in the matter prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-20 of the Rules of Court to the Respondent’s address of record with the Virginia State Bar. The following witnesses testified as witnesses for the Bar, either live or remotely through Microsoft Teams: Renee Sallit,

Complainant, Danielle A. Matie, Attorney, and John Pucky, VSB Investigator. The Respondent was not present to cross examine any of these witnesses and the Board asked several questions of all witnesses. The Bar's exhibits 1 to 47 were admitted without objection at the onset of the hearing and Exhibit 48 (lack of any disciplinary record) was introduced in the sanction phase.

Findings of Fact

This matter arises out of a complaint filed on June 10, 2022. The Board heard the uncontested evidence of the violations as certified by the Second District Subcommittee on February 7, 2023. The Respondent failed to appear in person or by counsel to answer to the charges. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia. Respondent was licensed in 2016.
2. By contingency fee agreement signed September 13, 2018, Respondent represented Renee Sallit ("Complainant") and her family in her claim against a rental company and the owner of a rental home. Complainant and her family rented a vacation home in Virginia Beach in July 2018. The house was infested with bed bugs and several family members were bitten. After failing to get a full refund from the rental company, Complainant hired Respondent to represent her and her family members in making a claim.
3. Complainant stated communication from Respondent was poor from the beginning of the representation. Complainant told the VSB's investigator that "about 75% of the time" Respondent failed to timely respond to her communication attempts.
4. Respondent did not communicate with Complainant during the period of April 16-May 16, 2019.
5. Complainant sent a text message to Respondent on August 19, 2019. Respondent did not reply to Complainant's text until one month later, on September 19, 2019.
6. On October 9, 2019, Respondent filed a Complaint on behalf of Complainant and her family in Richmond Circuit Court. The Complaint sought \$5 million in relief from the defendants, property owner Evan Reiter and rental company Sandbridge Blue LLC. On February 20, 2020, counsel for Mr. Reiter filed an Answer to the Complaint, a Motion to Transfer Venue, a Motion to Drop and/or Sever, a Motion Craving Oyer,

and a Demurrer. On March 24, 2020, counsel for Sandbridge Blue LLC filed an Answer to the Complaint, a Motion to Transfer Venue, a Motion to Drop and/or Sever, a Motion Craving Oyer, and a Demurrer. On November 10, 2020, the case was transferred to the Circuit Court for the City of Virginia Beach by agreement of all parties.

7. On July 6, 2021, Complainant texted Respondent to ask if she needed to be present at an upcoming August 2, 2021 hearing. Respondent replied that it was just a Motion to Sever the cases and that only the lawyers needed to be there.
8. On August 2, 2021, a hearing was held in the Circuit Court for the City of Virginia in which the remaining motions of defendants were presented, including the demurrers defendants filed in Richmond Circuit Court. Respondent did not appear, and pursuant to Respondent's instructions, Complainant did not appear. By final order entered August 17, 2021, the case was dismissed. That Order noted: "It appearing to the Court that neither Plaintiff's counsel nor any of the Plaintiffs were present for the hearing despite actual notice having been provided to counsel, and it further appearing to the Court that Plaintiff's counsel could not be reached despite several contact attempts by the Court at the time of the scheduled hearing."
9. At 12:30 PM on August 5, 2021, Complainant texted Respondent: "Hello. I thought I would have heard from you after the hearing. How was it?" Respondent did not respond to Complainant's August 5, 2021 text.
10. Opposing counsel Danielle A. Matie received an email from Respondent on August 5, 2021 at 2:05 PM, which stated: "What did the Judge order on Monday? I'm going to file a motion for rehearing/reconsideration to explain my absence. No such motion was filed.
11. Again on August 25, 2021, Complainant texted Respondent: "What is going on? Virginia website says case dismissed. Why aren't you answering my texts or emails?" According to Complainant, she did not receive a response.
12. On September 16, 2021, Respondent filed a Notice of Appeal in the Circuit Court for the City of Virginia Beach, but did not file a Petition for Appeal with the Supreme Court of Virginia.
13. On June 10, 2022, Complainant submitted her bar complaint. Although Respondent never submitted a written answer to the bar complaint, he gave a telephonic interview to the VSB's investigator. He described Complainant's case as being "straightforward with no significant injuries." He said the case was filed before COVID and then slowed down considerably because of pandemic-related delays.
14. In his interview with the VSB's investigator, Respondent offered no explanation why he failed to appear at the August 2, 2021 hearing.

15. Complainant sent Respondent a text on September 11, 2022 and learned that his phone was disconnected.
16. In his interview with the VSB's investigator, Respondent admitted the allegations in Complainant's bar complaint. He said that his communication was "subpar" and that the case was not handled properly. Respondent told the VSB's investigator that he closed his law practice, notified all clients, and that he does not intend to practice law again. "I'm done," he stated.
17. As part of its investigation, the VSB issued a subpoena duces tecum on August 17, 2022, summoning Respondent to produce Complainant's file materials to the VSB on or before September 12, 2022 (the "Subpoena"). Respondent was served with the Subpoena via certified mail on August 19, 2022.
18. On September 20, 2022, the VSB mailed a letter to Respondent's address of record that stated:

On August 17, 2022, a subpoena duces tecum was served on you by certified mail. The subpoena required you to produce on or before September 12, 2022, certain documents relating to your representation of Renee Sallit. You did not respond to the subpoena or produce the documents ... If the subpoenaed documents are not received by this office by September 27, 2022, I will file a notice of noncompliance with the Disciplinary Board and request that your license be suspended on an interim basis.
19. Respondent did not respond to the VSB's letter of September 20, 2022.
20. On October 17, 2022, the VSB, by and through Assistant Bar Counsel, filed a Notice of Noncompliance and Request for Interim Suspension with the Disciplinary Board and served Respondent with a copy at his address of record. The Notice of Noncompliance also advised Respondent that he could petition the Board for a hearing within 10 days of service. The VSB requested that hearing be set for November 19, 2022, if necessary. Respondent did not request a hearing or otherwise respond.
21. On October 19, 2022, the VSB, by and through Assistant Bar Counsel, filed an Amended Notice of Noncompliance and Request for Interim Suspension with the Disciplinary Board and served Respondent with a copy at his address of record. The Amended Notice of Noncompliance and Request for Interim Suspension differed only that it requested the hearing be set for November 18, 2022, if necessary. Respondent did not request a hearing or otherwise respond to the Amended Notice of Noncompliance and Request for Interim Suspension.
22. Respondent failed to comply with the Subpoena and his license to practice law was suspended by an Interim Suspension Order dated November 1, 2022. As of the date of

the hearing, Respondent still has not complied with the Subpoena.

The Bar presented evidence on the following violations, which proof the Board found by clear and convincing evidence.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services but may withdraw as permitted under Rule 1.16.

The Board found by clear and convincing evidence that by failing to appear at the August 2, 2021, hearing for his client, by failing to file a Motion for Reconsideration, by failing to file a Petition for Appeal and by abandoning the Complainant and her case, the Respondent violated Rule 1.3(a) and 1.3(b).

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Board found by clear and convincing evidence that the Respondent failed to respond to Complainant's emails and texts, and failed to advise Complainant that her case had been dismissed, and that these actions constituted a violation of Rule 1.4(a).

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

The Board found by clear and convincing evidence that the Respondent failed to respond to the bar complaint filed by Complainant, and by failing to respond to the Subpoena, the Respondent violated Rule 8.1(c).

Sanction

The Board received evidence and argument from Bar Counsel as to which sanction to impose: Bar Counsel argued for revocation of Respondent's license to practice law. Bar Counsel then presented several cases for the Board's consideration and Bar Counsel argued regarding the aggravating and mitigating factors. The following aggravating factors were found by the Board: multiple offenses to the client, bad faith obstruction of the Bar's investigation through evasive answers and ignoring subpoena process and refusal to acknowledge wrongful conduct. The only mitigating evidence was the Respondent's lack of any prior discipline. The Board then retired to deliberate the appropriate sanction.

During its deliberation, the Board considered the mitigating and aggravating factors set forth herein below as well as the American Bar Association's Standards for Imposing Lawyer Sanctions. According to the ABA Standards, "disbarment is generally appropriate when a lawyer ... causes serious or potentially serious injury to a party or causes a significant or potentially significant adverse effect on the legal proceeding." In this matter, the Board was particularly troubled by the harm caused to the Complainant by Respondent's conduct. The Respondent abandoned Complainant's case and denied her a day in court and compensation for her alleged injuries. The Respondent also did not cooperate and actually obstructed the Bar's investigation of his conduct.

After due deliberation, the Board reconvened and announced that, based upon the Respondent's misconduct, and the nature of that misconduct, and the harm to his client, the Bar and the public, the appropriate sanction to protect the public and the integrity of the Bar was the revocation of the Respondent's license to practice law. The Board finds that the Respondent's

conduct justified revocation, as any lesser sanction would be a disservice to the Virginia legal community and the public at large.

Accordingly, it is

ORDERED that the license of Evan Stuart Elan to practice law in the Commonwealth of Virginia be and hereby is REVOKED, effective May 19, 2023;

It is further ORDERED that, as directed in the Board's May 19, 2023 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice of the date of Revocation of his license to practice law in the Commonwealth of Virginia by certified mail, return receipt requested, to all clients for whom Respondent is currently handling matters and to all opposing attorneys. Respondent shall give such notice within 14 days of the effective date of the Summary Order, and make such arrangements as are required herein within 45 days of the effective date of the Summary Order. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Summary Order that such notices have been timely given and such arrangements made for the disposition of matters and

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the Summary Order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court; and

It is further ORDERED that, pursuant to Part 6, Section IV, Paragraph 13- 9(E) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs

against the Respondent; and

It is further ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order, by certified mail, return receipt requested to Respondent at his last address of record with the Virginia State Bar, that being Evan Stuart Elan, The Elan Law Firm, 1629 K Street, NW, Ste. 300, Washington, DC 20006, and a copy by regular mail to Shelley L. Spalding, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 13th DAY OF JUNE 2023

VIRGINIA STATE BAR DISCIPLINARY BOARD



David J. Gegal, Chair

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF EVAN STUART ELAN

VS B Docket No: 23-000-128428

MEMORANDUM ORDER OF REVOCATION

This matter came to be heard on May 19, 2023, before a panel of the Virginia State Bar Disciplinary Board (the “Board”) comprised of David J. Gogal, Chair, Carolyn V. Grady, Michael J. Sobey, James L. Banks and Tammy D. Stephenson, lay member. The Virginia State Bar (“the Bar”) was represented by Shelley L. Spalding, Assistant Bar Counsel (“Bar Counsel”). Mr. Evan Stuart Elan (the “Respondent”) failed to appear in person or by counsel. Lisa A. Wright, Registered Professional Reporter of Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227 (804-730-1222), having been duly sworn, reported the hearing.

The Chair opened the hearing by calling the case in the hearing room and causing the Assistant Clerk to call Respondent’s name three times in the adjacent hall. The Respondent did not answer or appear. The Chair inquired of the members of the panel whether any of them had a personal or financial interest, or any bias, which would preclude, or could be perceived to preclude, their hearing the matter fairly and impartially. Each member of the panel answered the inquiry in the negative.

The matter came before the Board pursuant to a Rule to Show Cause for non-compliance with Part Six, §IV, ¶13-29 and the Petition for Rule to Show Cause and the Rule to Show Cause issued on March 8, 2023. The Board took judicial notice of these documents and received them as Board Exhibits 1 and 2. All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (Clerk) in the matter prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-20 of the Rules of Court to the Respondent’s address of record with the Virginia State Bar. The following witnesses testified as witnesses for the Bar,

either live or remotely through Microsoft Teams: Barrett J. Enix, Esq., Ghada Rashid, Jeffrey Powers, Andre Papalexis, and Jovonne Osborne. The Respondent was not present to cross examine any of these witnesses and the Board asked several questions of all witnesses.

Additionally, affidavits of Karen M. Myers, Frank D. Hargrove, Jr., Gregory John Sauer, Wanda Collier and Kara Kristie Bennis were accepted as Bar Exhibits 22 through 26. The Bar's exhibits 1 to 21 were admitted without objection at the onset of the hearing and the Affidavit of Alexa Carroll, Assistant Clerk, as to lack of any disciplinary record was introduced in the sanction phase. In the sanction phase, the Board took Judicial Notice that the Respondent was revoked by separate order that same day.

Findings of Fact

This matter arises out of a Rule to Show Cause issued on March 8, 2023. The Board heard the uncontested evidence of the failure to comply with ¶13-29. The Respondent failed to appear in person or by counsel to show cause as to why he should not be revoked or suspended for failure to comply with ¶ 13-29. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia. Respondent was licensed in 2016.
2. Respondent was served with an Interim Order of Suspension (exhibit 8) and an Amended Interim Order of Suspension (exhibit 10) which specifically ordered compliance with ¶13-29. Bar exhibit 17, an affidavit from the Clerk of the Disciplinary System, indicates that Respondent failed to submit proof of compliance.

3. Respondent failed to notify multiple clients, including Jeffrey Powers, Gregory Sauer, Andre Papalexis, Jovonne Osborne, and Ghada Rashid that he had been suspended from the practice of law.
4. Respondent failed to notify the Rockingham County Circuit Court, the Hanover County Circuit Court, and the Loudon County Circuit Court that he had been suspended from the practice of law.
5. Respondent failed to notify opposing counsel that he had been suspended from the practice of law.
6. Respondent abandoned his clients, including Ghada Rashid, Jeffrey Powers, Andre Papalexis, and Jovonne Osborne, with litigation still pending. Clients were left in vulnerable positions with motions to dismiss pending and no attorney to represent them. The clients testified how they had to beg the judge to grant time to obtain new counsel. Clients also testified how, as a result of Respondent's conduct, they can no longer trust lawyers.
7. Respondent did not appear to show any cause why he should not be sanctioned for failure to comply with ¶13-29.
8. Respondent's actions showed an egregious disregard for the welfare of his clients. His utter disregard for his clients left them vulnerable and stands as an affront to the legal profession. Respondent left a trail of destruction behind him as he abandoned vulnerable clients and displayed disrespect for the profession and the judicial system.

The Board found by clear and convincing evidence that the Respondent failed to comply with ¶13-29. Respondent failed to provide any evidence to show cause as to why he should not be further sanctioned.

Sanction

The Board received evidence and argument from Bar Counsel as to which sanction to impose: Bar Counsel argued for revocation of Respondent's license to practice law. Bar Counsel then presented several cases for the Board's consideration and Bar Counsel argued regarding the aggravating and mitigating factors. The following aggravating factors were found by the Board: multiple offenses to several clients, bad faith obstruction of the Bar's investigation through evasive answers and ignoring subpoena process, refusal to acknowledge wrongful conduct, actual harm to the public, and actual harm to the profession. The Board then retired to deliberate the appropriate sanction.

During its deliberation, the Board considered the mitigating and aggravating factors set forth herein below as well as the American Bar Association's Standards for Imposing Lawyer Sanctions. According to the ABA Standards, "disbarment is generally appropriate when a lawyer ... causes serious or potentially serious injury to a party or causes a significant or potentially significant adverse effect on the legal proceeding." In this matter, the Board was particularly troubled by the harm caused to the Complainant by Respondent's conduct. The Respondent abandoned several clients. His actions denied some their day in court and severely tarnished the reputation of the legal profession. The Respondent also did not cooperate and showed contempt towards the Bar and this process.

After due deliberation, the Board reconvened and announced that, based upon the Respondent's misconduct, and the nature of that misconduct, and the harm to his clients, the Bar

and the public, the appropriate sanction to protect the public and the integrity of the Bar was the revocation of the Respondent's license to practice law. The Board finds that the Respondent's conduct justified revocation, as any lesser sanction would be a disservice to the Virginia legal community and the public at large.

Accordingly, it is

ORDERED that the license of Evan Stuart Elan to practice law in the Commonwealth of Virginia be and hereby is REVOKED, effective May 19, 2023;

It is further ORDERED that, as directed in the Board's May 19, 2023 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice of the date of Revocation of his license to practice law in the Commonwealth of Virginia by certified mail, return receipt requested, to all clients for whom Respondent is currently handling matters and to all opposing attorneys. Respondent shall give such notice within 14 days of the effective date of the Summary Order, and make such arrangements as are required herein within 45 days of the effective date of the Summary Order. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Summary Order that such notices have been timely given and such arrangements made for the disposition of matters and

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the Summary Order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court; and

It is further ORDERED that, pursuant to Part 6, Section IV, Paragraph 13- 9(E) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent; and

It is further ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order, by certified mail, return receipt requested to Respondent at his last address of record with the Virginia State Bar, that being Evan Stuart Elan, The Elan Law Firm, 1629 K Street, NW, Ste. 300, Washington, DC 20006, and a copy by regular mail to Shelley L. Spalding, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 14th DAY OF JUNE 2023

VIRGINIA STATE BAR DISCIPLINARY BOARD



David J. Gogal, Chair