BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO

IN RE:	CASE NO. 2014-085
COMPLAINT AGAINST:	
KENNETH R. DONCHATZ (BAR NO. 0062221) 4313 SMOTHERS ROAD WESTERVILLE OHIO 43081, Respondent, v. CLEVELAND METROPOLITAN BAR ASSOCIATION, Relator.	**AMENDED COMPLAINT**

Pursuant to the Panel Chair's Order dated January 15, 2015, providing for the amendment of pleadings on or before March 20, 2015, Relator Cleveland Metropolitan Bar Association ("Relator"), for its Amended Complaint against Respondent Kenneth R. Donchatz ("Respondent"), states as follows:

INTRODUCTION

1. This action arises out of Respondent's conduct in connection with his *pro se* representation in a civil matter where, among other things, he filed an unsupported Satisfaction of Judgment; his representation of and an undocumented loan transaction with a client; his representation of a client in a disciplinary proceeding where, among other things, he misled a tribunal regarding discovery from relator's counsel; and his representation of his company

Recovery Funding LLC where he misled a tribunal over the filing of a "Stipulated Entry and Consent Judgment," all of which has resulted in violations of the Ohio Rules of Professional Conduct. As a result of Respondent's conduct and other aggravating factors, Relator requests that the Board discipline Respondent in a manner that is fair and just and in accordance with the Ohio Rules of Professional Conduct and the Rules of the Government of the Bar of Ohio.

BACKGROUND FACTS

2. Respondent received a juris doctorate in 1993 from Rutgers University School of Law.

3. The Supreme Court of Ohio admitted Respondent to the practice of law in 1993.

4. Respondent's Attorney Registration Number is 0062221.

5. Respondent was formerly a partner with Anspach Meeks Ellenberger LLP.

6. At Anspach Meeks Ellenberger LLP, Respondent marketed himself as "a legal ethicist, practicing in the areas of legal ethics, professional responsibility and complex commercial litigation." (*See* https://web.archive.org/web/20140517033337/http://www.anspachlaw.com/attorney-profiles/columbus,-oh/kenneth-r-donchatz/.)

7. Respondent currently markets himself as someone who provides "advice to practitioners, clients and those who think about, write and teach legal ethics." (*See* www.donchatzlaw.com.)

8. Respondent is a former Assistant Disciplinary Counsel with the Office of Disciplinary Counsel for the Supreme Court of Ohio.

COUNT ONE – Davey Tree

A. Respondent's Misconduct During Davey Tree Litigation

9. The Davey Tree Expert Company ("Davey Tree") was hired by Respondent to perform work and services at his home in 2008.

10. After Respondent did not pay the invoice for the work performed, Davey Tree initiated an action in Franklin County Municipal Court, Case No. 2009 CVF 048480 ("Davey Tree Matter") in November 2009.

11. Service of the Davey Tree Complaint was attempted via certified mail, but it was returned "UNCLAIMED, UNABLE TO FORWARD." The Davey Tree Complaint was then served on December 1, 2009 via ordinary mail service.

12. After Respondent failed to respond to the Davey Tree Complaint, default judgment was entered on January 25, 2010 for $2,180.92 plus interest at 4% annum from January 13, 2009.

13. In April 2010, after Respondent failed to pay his judgment, Davey Tree garnished his bank account and received $536.68. Respondent did not contact Davey Tree or file a motion with the Court following the garnishment. The remainder of the judgment went unsatisfied until May 2, 2014.

14. Nearly two years after Respondent's bank account was garnished, in February 2012, Respondent filed a Satisfaction of Judgment in the Davey Tree Matter despite the fact: (1) the full judgment had not been paid by him; (2) Respondent had no evidence of it being paid by anyone else; and (3) Davey Tree had not authorized Respondent to file the Notice of Satisfaction.

15. Kevin String, the attorney for Davey Tree, contacted Respondent by email and informed him the Satisfaction of Judgment was "entirely inappropriate." He requested

Respondent "withdraw the [S]atisfaction and make payment of the balance . . . or produce proof of payment." Respondent did neither.

16. As a result of Respondent's refusal to withdraw the Notice of Satisfaction, Davey Tree filed a Motion to Vacate the Satisfaction of Judgment in April 2012. Respondent did not oppose the motion, and the Court granted it on May 1, 2012.

17. Nearly 18 months later and over three years after default judgment was entered, on October 15, 2013, Respondent filed a Motion to Reconsider the Default Judgment. In that motion, Respondent argued that the Davey Tree Complaint was not served on him and that he had no knowledge of the Davey Tree Complaint until after default judgment was entered. He also argued that third parties, not he, were legally responsible for payment of the invoice.

18. On February 4, 2014, the Court denied Respondent's Motion, holding that there had been proper service and that Respondent was legally obligated to pay the debt to Davey Tree. The Court also sanctioned Respondent $400, finding the Respondent's motion to be frivolous and without merit.

B. Respondent's Conduct Violated the Rules of Professional Conduct

19. By filing an unsupported Satisfaction of Judgment and then failing to withdraw it after learning that it was improper, Respondent violated Prof. Cond. Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c) & (d).

20. By filing a court-declared frivolous and sanctionable Motion to Reconsider the Default Judgment over three years after default judgment was entered and 18 months after filing an improper Notice of Satisfaction, Respondent violated Prof. Cond. Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c) & (d).

COUNT TWO – Cracknell Representation and Loan

A. Respondent Takes Advantage of His Relationship with the Cracknells

21. Respondent was introduced to Bob and Lin Cracknell through a friend and would see them at social and family functions. Over time, the Cracknells developed a relationship with Respondent as a family friend.

22. Mrs. Cracknell was involved in a contentious family dispute involving dissolution of a family partnership. In 2007, Mrs. Cracknell was frustrated that her then-attorney did not seem to be making any progress in resolving the dispute.

23. Hearing of her dissatisfaction and frustration, Respondent suggested that he take on Mrs. Cracknell's representation in the dissolution of the family partnership. Mrs. Cracknell agreed to the representation.

24. Respondent never presented a written engagement letter to Mrs. Cracknell and never communicated to her what his fee would be during the representation.

25. During the course of the representation, Respondent provided Mrs. Cracknell with invoices that always showed a zero balance.

26. Approximately two years into the representation, in September 2009, Respondent approached Mrs. Cracknell about a loan. Mrs. Cracknell agreed to loan Respondent $100,000, and the parties verbally agreed to 10% annual interest.

27. Respondent drafted a promissory note evidencing the loan, but Respondent never presented the promissory note to Mrs. Cracknell and it was never executed.

28. Respondent never communicated to Mrs. Cracknell in writing that it was desirable for her to seek advice of independent counsel in connection with the loan and did not give her the opportunity to do so.

29. Respondent did not seek informed consent from Mrs. Cracknell in writing or otherwise regarding the essential terms of the loan transaction.

30. Respondent did not inform Mrs. Cracknell of his role in the loan transaction, failing to inform her whether he was representing her in the loan transaction.

31. When the parties met to exchange the cashier's check in September 2009, Respondent was heard to have said, "I didn't think it would be so easy," as he left with the money.

32. By early 2011, Respondent had only repaid approximately $17,000. Upon information and belief, upon the filing of Relator's Original Complaint, Respondent entered into a settlement agreement with the Cracknells.

B. Respondent's Conduct Violated the Rules of Professional Conduct

33. Respondent's conduct in failing to communicate the full nature and scope of his representation of Mrs. Cracknell, including not providing her the basis or rate of his fees for which she would be responsible, violated Prof. Cond. Rule 1.5(b).

34. Respondent's conduct in obtaining a loan from Mrs. Cracknell violated Prof. Cond. Rule 1.8(a).

COUNT THREE – Hampton Representation

A. Respondent Misrepresents Status of Evidence in Disciplinary Proceeding

35. Respondent represented Carol Hampton in a disciplinary proceeding, *Disciplinary Counsel v. Carol Jean Hampton*, Board Case No. 13-017.

36. One count of the Amended Complaint against Ms. Hampton was based upon a grievance filed by attorney JT Holt on behalf of his client Tina White.

37. Mr. Holt had represented Ms. White in her attempt to recover money that she had

entrusted to Ms. Hampton.

38. In connection with this representation, Mr. Holt met with Ms. Hampton on three occasions between November 2011 and February 2013 to discuss the recovery of Ms. White's money. Mr. Holt recorded his conversations with Ms. Hampton during the first two meetings. The third meeting was not recorded.

39. On April 25, 2014, Ms. Hampton testified at her deposition in connection with her disciplinary proceedings that she believed the third meeting with Mr. Holt had been recorded.

40. Following Ms. Hampton's deposition, Respondent sent an email to Assistant Disciplinary Counsel Karen Osmond requesting a copy of the recording from the third meeting between Mr. Holt and Ms. Hampton.

41. Between April 25 and April 29, 2014, Ms. Osmond and Respondent exchanged a series of emails regarding the existence of a recording of the third meeting. Ms. Osmond ultimately informed Respondent that she had spoken to Mr. Holt and that he had confirmed that he had not recorded the third meeting. She even invited Respondent to speak to Mr. Holt directly to have him confirm this information.

42. Despite receiving the representation from Ms. Osmond that a recording of the third meeting did not exist and notwithstanding having been invited to verify the statement with Mr. Holt, Respondent filed a Motion *in Limine* with the Hearing Panel for the Board of Commissioners on Grievances and Discipline on behalf of Ms. Hampton, which stated, in part:

> Moreover, JT Holt recorded this conversation . . . . However, despite two requests to do so, Relator has not produced this recording, instead taking the position that because Relator does not possess it, Relator does not have to produce it.
>
> But this response implicates Relator's basic duties as a prosecutor and calls

> into question the fundamental fairness of pursuing charges against Respondent when the prosecutor is fully aware that exculpatory evidence exists. Respondent now knows without a doubt that a recording exists that contains statements that exonerate the Respondent. . . . Yet, Relator hides behind a discovery rule rather than making sure that justice is fulfilled in this case. Pursuing charges in the face of evidence that disproves those charges implicates not only the integrity of the processes but calls into question the very purpose of this litigation.

B. Respondent's Conduct Violated the Rules of Professional Conduct

43. By filing a misleading Motion *in Limine*, Respondent violated Prof. Cond. Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c) & (d).

COUNT FOUR – Michael McKibben and Leader Technologies

A. Respondent Improperly Files Stipulated Consent Judgment

44. Respondent represented Recovery Funding LLC in a lawsuit against Grievant Michael McKibben and Leader Technologies involving the collection of attorney's fees allegedly owed by them. The matter was *Recovery Funding LLC v. Leader Technologies Inc., et al.*, Case No. 10CV014590, Franklin County Court of Common Pleas.

45. The issues were hotly contested in the litigation, and in the spring of 2012, the parties were involved in mediation discussions.

46. On April 6, 2012, while the parties were still in the midst of mediation discussions, Respondent emailed a "Stipulated Entry and Consent Judgment" to the Magistrate Judge, copying Defendants McKibben and Leader Technologies on the email. In the "Stipulated Entry and Consent Judgment," Respondent noted "Submitted for approval 4/5/12 by KRD" on the signature lines for the Defendants.

47. Three weeks later, on April 27, 2012, despite not having a stipulation or the consent of Defendants, Respondent filed this "Stipulated Entry and Consent Judgment" with the

trial court. Nowhere on the "Stipulated Entry and Consent Judgment" was it noted that it was a draft nor did it expressly state that the Defendants had not yet agreed.

48. The trial court signed and entered the "Stipulated Entry and Consent Judgment" the same day Respondent filed it.

49. Following entry of the judgment, Respondent was repeatedly contacted by counsel for Leader Technologies informing Respondent that the "Stipulated Entry and Consent Judgment" had been improperly filed and requesting that Respondent contact the Court to have the entry withdrawn.

50. On May 11, 2012, counsel for Leader Technologies sent an email to Respondent, writing: "Ken, It's now been 2 weeks since you filed your bogus 'Stipulation and Consent Judgment', which was neither stipulated nor consented to. Despite my demand that you 'unfile' it, it appears you have made no attempt to do so. I now again demand that you take whatever action necessary to remove it, within 7 days."

51. Despite these repeated requests from counsel for Leader Technologies to withdraw the "Stipulated Entry and Consent Judgment," Respondent refused to do so.

52. *Pro se* Defendant Michael McKibben also filed an objection to the "Stipulated Entry and Consent Judgment," stating that there had been no agreement among the parties.

53. In response to the pleading from McKibben, Respondent filed an opposition on May 14, 2012 supporting the propriety of the "Stipulated Entry and Consent Judgment" he had filed. In it, Respondent claimed that he merely filed the document because of a purported agreement on the amount of attorney's fees. At no time did Respondent justify or explain away the misleading nature of his filing or the timing of same.

54. The Court ultimately withdrew the "Stipulated Entry and Consent Judgment" in light of the opposition from the Defendants stating there was no stipulation or consent.

B. Respondent's Conduct Violated the Rules of Professional Conduct

55. By filing an improper "Stipulated Entry and Consent Judgment," Respondent violated Prof. Cond. Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c) & (d).

56. By refusing to withdraw the "Stipulated Entry and Consent Judgment" in light of opposition from and at the request of opposing counsel, Respondent violated Prof. Cond. Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c) & (d).

PRAYER FOR RELIEF

WHEREFORE, Relator requests that the Board discipline Respondent in a manner that is fair and just and in accordance with the Ohio Rules of Professional Conduct and the Rules of the Government of the Bar of Ohio.

Dated: March 19, 2015

Respectfully submitted,

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PROOF OF SERVICE

A true copy of the foregoing has been served upon the following by regular U.S. mail, postage prepaid and via email, pursuant to Civ.R. 5(B)(2)(c) and (f), this 17th day of March, 2015:

George D. Jonson
36 East Seventh Street, Suite 2100
Cincinnati, OH 45202-4452

Attorney for Respondent

Attorney for Relator Cleveland Metropolitan Bar Association