

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MARK HOWARD BARINHOLTZ,

Attorney-Respondent,

No. 3126803.

Commission No. 2026PR00019

COMPLAINT

Lea S. Gutierrez, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Marci Jacobs, pursuant to Supreme Court Rule 753(b), complains of Respondent Mark Howard Barinholtz , who was licensed to practice law in Illinois on October 29, 1980, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

(Failing to Comply with Court Orders)

1. At all times related to this complaint, Respondent was a sole practitioner in Chicago, primarily practicing in the area of arts and entertainment.
2. On August 28, 2017, Respondent filed his appearance and a lawsuit on behalf of a person with the initials R.B. against a company called HomeAdvisor, Inc. (“HomeAdvisor”), a company called Hawthorne Direct, LLC (“Hawthorne”), and a company called ANGI Homeservices Inc. (“ANGI”) in the United States District Court for the Northern District of Illinois (the “District Court”). The fourteen-count complaint generally alleged that the defendants had used R.B.’s likeness in television commercials without authorization. The case was assigned to the Honorable Harry D. Leinenweber.

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4/7/2026 12:21 PM
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3. Hawthorne and ANGI filed motions to dismiss for lack of personal jurisdiction. All three defendants filed motions to dismiss for plaintiff's failure to state a claim as to eight of the 14 counts.

4. On March 9, 2018, the court granted the motions to dismiss, mostly without prejudice, and allowed Respondent to file an amended complaint and for the parties to engage in discovery as to the allegations and claims that were dismissed without prejudice.

5. On May 4, 2018, Respondent filed his amended complaint re-pleading all three defendants, and pleading 14 counts. Only Hawthorne filed a motion to dismiss for lack of personal jurisdiction, and all three defendants filed motions to dismiss for lack of stating a claim as to 11 of the 14 counts.

6. On May 21, 2018, Respondent brought a motion for sanctions and to compel against all three defendants alleging they were not complying with the court's discovery order. On May 24, 2018, the court granted the motion to compel but held the sanctions issue for the end of the case.

7. On August 14, 2018, Hawthorne brought a motion to compel against plaintiff alleging plaintiff was not complying with the court's discovery order. On August 16, 2018, the court granted Hawthorne's motion to compel.

8. On August 24, 2018, Hawthorne filed a motion for sanctions against plaintiff alleging that plaintiff had no good faith basis to plead that the court had personal jurisdiction over Hawthorne. On August 27, 2018, Respondent filed an objection to Hawthorne's motion for sanctions. On August 28, 2018, Judge Leinenweber ordered that the motion for sanctions would be taken under advisement.

9. On September 27, 2018, the court granted the defendants' motions to dismiss, leaving HomeAdvisor and ANGI as defendants, and three viable counts.

10. On October 10, 2018, HomeAdvisor and ANGI filed their answer to the complaint. On October 16, 2018, the defendants filed a third-party complaint against the plaintiff's agent.

11. Also, on October 16, 2018, the defendants and Hawthorne filed a motion for sanctions and attorney's fees and costs against plaintiff. That motion realleged the plaintiff's lack of good faith in pleading Hawthorne as a defendant, and also alleged that the plaintiff made frivolous arguments in his amended complaint and failed to follow discovery orders. Respondent did not file a response. On November 7, 2018, Judge Leinenweber stayed that motion and Hawthorne's earlier motion for sanctions until the close of the case, at which time he would rule on the motions.

12. On April 9, 2019, Respondent filed a motion to withdraw from the case. In his motion, Respondent alleged that he was unable to gain the cooperation of his client and that his client was insisting on taking actions with which Respondent had a fundamental disagreement.

13. On April 30, 2019, the defendants and Hawthorne filed a supplemental motion for sanctions, attorney's fees, and costs presenting new evidence to support its claim that the plaintiff made frivolous arguments in his amended complaint. Respondent did not file a response to this motion.

14. On July 17, 2019, Judge Leinenweber granted Respondent's motion to withdraw and entered and continued the supplemental sanctions motion to be ruled on at the end of the case. Thereafter, R.B. proceeded *pro se*.

15. At a December 3, 2019 court date, the parties advised Judge Leinenweber that they intended to settle the matter. The parties advised the court that the outstanding sanctions motions

against the plaintiff and defendants had been resolved, but those against Respondent remained outstanding. At a December 17, 2019 court date, the defendants' counsel explained that the sanctions motions they brought against Plaintiff were targeted at Respondent, not plaintiff. Judge Leinenweber ordered Respondent to file a response to the outstanding sanctions motions by February 3, 2020.

16. On January 27, 2020, rather than file a response to the outstanding sanctions motions, Respondent filed a motion for miscellaneous relief. In that motion, Respondent made a series of arguments challenging the processes upon which he was being brought to court to respond to the defendants' sanctions motions.

17. On February 10, 2020, the parties filed a stipulation of dismissal of the underlying matter between the plaintiff and the defendants pursuant to a settlement. The issue of sanctions against Respondent remained outstanding.

18. On February 20, 2020, the court denied Respondent's motion for miscellaneous relief as moot and again ordered Respondent to file a response to the outstanding sanctions motions. Respondent filed his response to the sanctions motions on March 11, 2020.

19. On March 23, 2020, Judge Leinenweber granted the sanctions motions finding that: 1) Respondent violated the court order granting a motion to compel by submitting supplemental responses for requests to admit that were still insufficient (by stating that plaintiff did not have sufficient information or knowledge to admit or deny certain facts, and stating that Hawthorne "would have known" certain facts, rather than pointing to evidence of those facts); 2) Respondent did not investigate the relevant jurisdictional facts prior to filing the complaint and amended complaint (by "repeat[ing] much of the previously dismissed complaint and tack[ing] on 53 paragraphs of new material," and when Hawthorne "then offered clear evidence that jurisdiction

did not exist, including verified discovery responses and a sworn declaration[.] *** Barinholtz continued to assert personal jurisdiction and argued, without presenting any evidence, that Hawthorne was lying”); and 3) Respondent did not make reasonable inquiry to support facts and law supporting some of the allegations in his amended complaint (where the depositions of three key witnesses did not support them).

20. Judge Leinenweber ordered former defendants’ counsel to submit declarations of reasonable fees and costs. On June 18, 2020, former defendants’ counsel made that filing and claimed that they had incurred \$661,425.20 in fees and costs defending the lawsuit. On July 6, 2020, Respondent objected to the request for fees and costs, stating that they are “grossly excessive,” and overreaching.

21. On August 14, 2020, pursuant to Federal Rule of Civil Procedure 37 which “authorizes sanctions when a party ‘fails to obey an order to provide or permit discovery,’” Judge Leinenweber ordered Respondent to pay HomeAdvisor \$16,966.50, which related to the expenses “clearly” incurred to pursue Respondent’s failure to comply with discovery. In regards to the sanctions finding under Federal Rule of Civil Procedure Rule 11, which “requires that an attorney certify to the best of his ‘knowledge, information, and belief, formed after an inquiry reasonable under the circumstances’ that any pleading or motion presented to the court (1) is not being presented for any improper purpose; (2) is warranted by existing law; and (3) has evidentiary support,” Judge Leinenweber considered the expenses incurred in connection with the defendants motion to dismiss the amended complaint, but determined that an award of \$661,425.20 “would not reasonably serve the purpose of Rule 11 sanctions,” because it would “effectively convert the sanction into a compensatory award” which is not Rule 11’s sole or even main purpose.” While Judge Leinenweber agreed that the Respondent’s conduct was “egregious,” it disagreed that “an

award well over a half a million dollars [wa]s appropriate,” stating, “[t]he serious nature of the violations notwithstanding, there is no evidence that Barinholtz acted in bad faith or with improper intentions.” It thus determined that \$16, 966.50 was a “significant amount,” and that “[i]nstead of piling on additional monetary sanctions, it would consider “an appropriate non-monetary sanction.” It thus ordered Respondent to complete forty (40) hours of continuing legal education (“CLE”) within one year as follows: “twenty (20) hours on federal civil procedure including at least once course related to personal jurisdiction,” and “twenty (20) hours on attorney professionalism and professional conduct and/or the Model Code of Professional Conduct such as those offered in Illinois State Bar Association’s Basic Skills for Newly Admitted Attorneys annual program. These forty hours shall be in addition to any compliance hours regularly required by the Illinois State Bar Association [*sic*].”

22. On October 13, 2020, Respondent filed a motion to reconsider the August 14, 2020 order, alleging that Judge Leinenweber misapprehended facts regarding the evidence of personal jurisdiction over Hawthorne, as well as what the three witnesses testified to in their depositions relating to some of the claims of action he alleged. Respondent also alleged that Judge Leinenweber misapprehended the law in terms of allowable answers to requests to admit. Further, Respondent realleged his arguments disputing the processes involved in pursuing the sanctions motions against him after he withdrew from the case, leading to the *pro se* plaintiff to agree to a settlement with the defendants and a dismissal of the case. Finally, Respondent took issue with the amount of the sanctions award and the CLE requirement.

23. On October 19, 2020, Judge Leinenweber denied Respondent’s motion for reconsideration in a one-paragraph docket entry stating that Respondent “largely repeats previously rejected arguments and theories about the substantive claims in the underlying lawsuit

and the Court’s purported misunderstanding of this case. The Court already rejected these arguments and theories, and it declines to revisit them here.”

24. On November 13, 2020, Respondent filed an appeal of the District Court’s August 14, 2020 order with the United States Court of Appeals for the Seventh Circuit. (“Court of Appeals”).

25. During the pendency of the appeal, the parties engaged in mediation which concluded without resolution.

26. On April 8, 2022, the Court of Appeals, reported its a “nonprecedential disposition” in the case. It first determined that on procedural basis, it would only consider Respondent’s motion to reconsider. It then found that Judge Leinenweber reasonably ruled that Respondent “lacked a good reason for vacating the sanctions. He did not cogently explain why his conduct was not sanctionable, he did not demonstrate any mistake of law or fact in the sanctions order, and he provided no excuse or explanation—or apology—for his actions.” The Court of Appeals also denied Respondent’s motion to stay the mandate as well as his petition for rehearing *en banc*.

27. On June 15, 2022, after the mandate issued, Judge Leinenweber ordered Respondent to comply with the District Court’s sanctions order and ordered Respondent to show cause as to why he should not be in contempt of court for refusing to comply with and violating the court’s previous rulings. The court allowed Respondent until July 13, 2022 to make payment of the \$16,966.50 to Home Advisor or, in the alternative, to file a bond ensuring that he would pay the sanctions. Judge Leinenweber also ordered Respondent to demonstrate that he planned to complete the court-ordered CLE.

28. In a July 13, 2022 filing, Respondent responded to the rule to show cause order asserting that he had not refused to comply with the court’s orders but instead “only sought to avail

himself of standard means to seek further appellate review,” and planned to continue to seek avenues of review. He reported that most surety and bonding companies required a bond to be 120% fully collateralized. He sought the discharge of the rule to show cause, the monetary sanction, and the CLE requirement.

29. At the July 19, 2022 status hearing, Judge Leinenweber entered an order directing Respondent to file a certified statement of net worth since Respondent had suggested to the court that he did not have the money to pay the sanctions.

30. Respondent did not file his financial statement with the court, but instead emailed a copy of it to Judge Leinenweber on August 2, 2022.

31. At the August 11, 2022 status hearing, the court ordered Respondent to produce his financial statement to former defendants’ counsel and authorized former defendants’ counsel to take Respondent’s deposition. On August 29, 2022, Respondent emailed the financial statement to former defendants’ counsel.

32. After determining that Respondent’s financial statement was insufficient at the September 22, 2022 status hearing, Judge Leinenweber ordered Respondent to sit for a deposition on October 18, 2022 to address his finances and the status of his progress on the court-ordered CLE courses.

33. On September 30, 2022, HomeAdvisor offered to settle the matter by accepting a 50% reduction in the court ordered sanction amount and agreeing to a reduction in the required CLE hours to thirty (30) if approved by the court, with an apology from Respondent. Respondent rejected the offer.

34. On October 13, 2022, Respondent filed a motion seeking relief from the court's sanctions orders and from a "far ranging" deposition into his personal finances pursuant to Federal Rule of Civil Procedure 60(b). Respondent did not appear for the October 18, 2022 deposition.

35. On October 26, 2022, Respondent filed a petition for a writ of *certiorari* with the United States Supreme Court.

36. As of November 3, 2022, Respondent had not paid the sanctions imposed against him, had not sat for the court-ordered deposition, and had not completed the court-ordered CLEs.

37. On November 3, 2022, Judge Leinenweber denied Respondent's motion seeking to alter the judgment and seeking relief from the sanctions orders. Judge Leinenweber then held Respondent in contempt of court for failing to comply with the September 22, 2022 order to sit for a deposition. Judge Leinenweber set a sentencing hearing for November 8, 2022.

38. At the November 8, 2022 sentencing hearing, Respondent made an oral motion to continue the case so that he could retain counsel. Judge Leinenweber denied the motion and sentenced Respondent to pay \$15,000 for the contempt finding. Judge Leinenweber also referred Respondent to the Executive Committee of the United States District Court for the Northern District of Illinois ("Executive Committee") to consider possible disciplinary action against Respondent for his refusal to comply with the District Court's orders.

39. On November 28, 2022, Respondent appealed the November 3 and 8, 2022 orders entered by Judge Leinenweber to the Court of Appeals.

40. On December 19, 2022, the Executive Committee entered an order barring Respondent from filing any new cases in the District Court until after he has "fully complied with the sanctions ordered by any judge of this court."

41. On January 9, 2023, the United States Supreme Court denied Respondent's petition for writ of *certiorari*.

42. On May 2, 2023, the Court of Appeals summarily affirmed the judgment of the District Court. It further ordered Respondent to file a brief memorandum to show cause as to why he should not be suspended from appearing before the Court of Appeals pending compliance with the District Court's sanctions orders and why he should not be removed from the roll of attorneys admitted to practice before the Court of Appeals.

43. On May 16, 2023, Respondent filed his memorandum claiming that he had not refused or failed to comply with any "valid, lawful Order of the Court." Respondent contended that he had "in furtherance of his professional duties of responsibility, respected – if not made meaningful attempts to comply with – those orders." Respondent accused the Court of Appeals of engaging in procedural maneuvers to avoid reaching a truthful and fair result. Respondent accused his opposing counsel in the case of "mislead[ing] the court," "gaslight[ing] the court," and "spin[ing] a tale contrary to truthful evidence." Respondent alleged that the rulings of the District Court, and the Court of Appeals' "unwarranted deference" to the District Court, "maliciously impugned [Respondent's] character and disparaged his professional reputation."

44. On June 5, 2023, the Court of Appeals entered an order striking Respondent from the roll of attorneys licensed to practice before it. The Court of Appeals found that Respondent's response to the order to show cause "continue[d] his long-running frivolous attacks on the original sanctions order." The Court of Appeals noted that "[Respondent] appears to think that as long as he keeps filing appeals or motions, he need not comply with the district court's orders." The Court of Appeals found that Respondent's "persistent misconduct clearly demonstrates [his] unfitness to discharge his obligations to his clients and the courts." Accordingly, the Court of Appeals ordered

that Respondent may not seek reinstatement “until he has paid the full sanctions imposed by the Northern District of Illinois, as well as any other outstanding sanctions and fees...”. The Appeals Court directed the clerk of the court to send a copy to the Attorney Registration and Disciplinary Commission.

45. On July 21, 2023, Respondent filed an application to extend the time to file a petition for writ of *certiorari* from July 31, 2023 to September 29, 2023, to challenge the Court of Appeals’ most recent rulings. On or about July 25, 2023, the United States Supreme Court docketed Respondent’s appeal. On July 26, 2023, Supreme Court Justice Amy Coney Barrett denied Respondent’s application to extend the time to file a petition for writ of *certiorari*.

46. As of the date of the filing of this complaint, Respondent has not paid any of the sanctions against him nor has he completed the CLEs ordered by the District Court.

47. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. knowingly disobeying an obligation under the rules of a tribunal by conduct including not complying with multiple court orders concerning sanctions against him in *Bovinett v. HomeAdvisor, Inc., et al.*, in violation of Rule 3.4(c) of the Illinois Rules of Professional Conduct (2010); and
- b. engaging in conduct that is prejudicial to the administration of justice by not complying with multiple court orders concerning sanctions against him in *Bovinett v. HomeAdvisor, Inc., et al.*, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

