

VIRGINIA :

**BEFORE THE DISCIPLINARY BOARD OF THE
VIRGINIA STATE BAR**

**IN THE MATTER OF JEFFREY CARL CONSTANTZ
VSB Docket Number 02-041-1804**

ORDER

This matter came on April 12, 2005, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Jeffrey Carl Constantz, Esquire, based upon the Certification of a Fourth District Section I Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of the Rev. Dr. Theodore Smith, lay member, Ann N. Kathan, Esquire, Robert E. Eicher, Esquire, William H. Monroe, Jr., Esquire, and Karen A. Gould, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and Michael L. Rigsby, Esquire, representing the Respondent, Jeffrey Carl Constantz, Esquire, presented an endorsed Agreed Disposition, dated April 6, 2005, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Tracey J. Stroh, Chandler & Halasz, P.O.Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Jeffrey Carl Constantz, Esquire, (hereafter the Respondent or Mr. Constantz), has been an attorney licensed to practice law in the

Commonwealth of Virginia. Although licensed to practice law, Mr. Constantz maintains an Associate membership in the Virginia State Bar. The status of Associate member does not permit Mr. Constantz to practice law.

2. At all times relevant hereto, the Respondent was the President and Chief Executive Officer of First Savings Bank of Virginia, (hereafter "FSB"). He was also a member of FSB's Board of Directors. Mr. Constantz was never employed by FSB to provide it with legal counsel and throughout his employment with FSB, Mr. Constantz never offered FSB legal counsel or acted as its attorney.

3. The Respondent was offered the position of President of FSB in 1993. At that time the Bank was close to failure and was under the control of the Department of the Treasury's Office of Thrift Supervision. Over the next four years FSB's financial stability improved, and the bank achieved a much more favorable position for a prospective merger, which was one of FSB's goals. In 1996, the Board of Directors offered an incentive to the Respondent in the form of a \$75,000 bonus in the event that FSB were sold or merged in a transaction approved by its Board and ratified by its stockholders.

4. On March 31, 2000, FSB signed a merger agreement with Southern Financial Bank, (hereafter "SFB"), with September 1, 2000, as the planned date of the merger. It was understood that if and when the merger were accomplished, the Respondent would no longer hold the position of President of FSB and would, in fact, not be employed. FSB felt it was necessary, however, for him to remain in his position with that bank between the signing of the merger agreement in March and the completion of the merger in September. An agreement was therefore made that in addition to the \$75,000 bonus for the accomplishment of the merger, the Respondent would receive \$100,000 as a

“pay-to-stay” incentive until the merger took place. Mr. Constantz was entitled to another \$50,000 pursuant to his 1993 contract of employment with FSB. On or about April 15, 2000, the sum of \$225,000.00 was set aside for Mr. Constantz’s benefit and was held by a law firm acting as escrow agent.

5. FSB initiated suit in the Fairfax County Circuit Court against the Respondent shortly before the September 1, 2000, merger. After a six-day trial in the Circuit Court, a decree was entered against the Respondent holding that the Complainant had proven “by clear, cogent and convincing evidence” that the Respondent committed actual fraud against FSB, and that his fraud, *inter alia*, induced FSB to enter into an Escrow Agreement and Addendum with the Respondent, pursuant to which \$225,000 of the bank’s funds was paid into escrow on behalf of the Respondent. The Escrow Agreement and Addendum at issue were ordered rescinded due to the Respondent’s actual fraud, and the \$225,000 in question, which had been transferred to the control of the Court, was ordered to be released in full to FSB upon entry of the Final Decree.

6. The Court further found that the Respondent breached his fiduciary duties owed to FSB by, *inter alia*, knowingly and repeatedly concealing material information from FSB’s Board of Directors, permitting loans, overdrafts and other extensions of credit to be made that were without proper authority, contrary to FSB’s written policies, and which were beyond FSB’s legal lending limit and were in violation of federal banking regulations. The Court also found that the Respondent had engaged in a pattern of self-dealing and committed other acts of willful misconduct. The damages resulting from the Respondent’s breach of fiduciary duties were proven to be in the amount of \$398,919.72.

The Respondent was granted an offset in the amount of \$75,000, representing a severance benefit which was in existence prior to the Respondent's misconduct. The Court also assessed punitive damages against the Respondent in the amount of \$30,000.00.

7. Mr. Constantz maintained that he had not committed the civil offenses found by the Court and otherwise set forth in the Court's decree. He noted an appeal of the decree entered by the Court to the Supreme Court of Virginia. Before adjudication of any issues on appeal the parties settled the matter between themselves via a written settlement agreement, pursuant to which the Respondent and his wife paid substantial sums of money and conveyed valuable real property to others.

8. Mitigating factors recognized by the American Bar Association applicable to this matter include absence of a prior disciplinary record; cooperative attitude toward the Bar proceedings; and imposition of other penalties or sanctions.

The Board finds by clear and convincing evidence that Respondent's aforesaid conduct constitutes a violation of the following provisions of the revised Virginia Code of Professional Responsibility and of the Rules of Professional Conduct:

DR 1-102 Misconduct

(A) A lawyer shall not:

(3) Commit a . . . deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

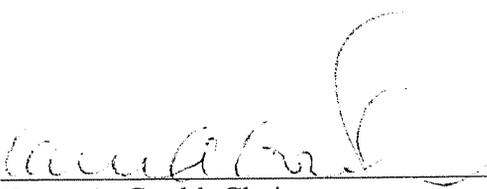
(b) commit a . . . deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer[.]

Upon consideration whereof, it is ORDERED as follows:

1. The Respondent shall receive a sixty (60) day suspension of his license to practice law in the Commonwealth of Virginia, to commence immediately upon entry of this Order, as representing an appropriate sanction if this matter were to be heard.
2. Pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.
3. The provisions of Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia are inapplicable in this matter because the Respondent is not engaged in the practice of law as of the time of entry of this Order.

It is further ORDERED that a copy *teste* of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his address of record with the Virginia State Bar, 2020 N. Roosevelt Street, Arlington, Virginia 22205, and by first class, regular mail, to Michael L. Rigsby, Respondent=s Counsel, Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia 23226, and to Seth M. Guggenheim, Assistant Bar Counsel, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

ENTERED this 15th day of April, 2005.



Karen A. Gould, Chair
Virginia State Bar Disciplinary Board