

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF WILLIAM MCMILLAN POWERS
VSB DOCKET NO. 05-000-3014

ORDER OF RECOMENDATION

This matter came on to be heard on October 28, 2005 before a panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of James L. Banks, Jr., 2nd Vice-Chair, (the "Chair") William C. Boyce, Jr., Glenn M. Hodge, H. Taylor Williams, IV, and Stephen A. Wannell, lay member. The Virginia State Bar ("VSB" or the "Bar") was represented by Edward L. Davis and Richard E. Slaney. The Respondent, William McMillan Powers appeared *pro se*.

The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative. Tracy J. Stroh, RPR, with Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804-730-1222) after being duly sworn, reported the hearing and transcribed the proceedings.

All notices required by the Rules of the Virginia Supreme Court were sent by the Clerk of the Disciplinary System.

The Petitioner, William McMillan Powers ("Powers") has filed a petition for reinstatement of his Bar license from the revocation by the Virginia Supreme Court in 1992 based on Powers' guilty plea to a federal felony of bank fraud. Powers presented five witnesses, including himself. While the VSB opposed the petition for reinstatement, the Bar presented no witnesses but relied on the written record (the admission of which was stipulated) consisting of the criminal information to which Powers pled guilty, the

plea agreement, the sentencing (including a subsequent hearing which the sentence was reduced), Powers' pre-sentence report, his letter surrendering his license, the Supreme Court's order of revocation, Powers' petition for reinstatement in 1999 (including documents submitted in support thereof and a transcript of the proceeding), the partial transcript of Powers' testimony in the trial of his law and business partner, Danny Smith, on charges similar to the one Powers pled guilty to, over sixty letters in support of Powers' petition and seven letters in opposition to the petition.

Powers has met all of the objective criteria for reinstatement found in Part 6, Section IV, Paragraph 13.I.8.b., but is also required to "prove by clear and convincing evidence" that he "is a person of honest demeanor and good morale character and possesses the requisite fitness to practice law." Part 6, Section V., Paragraph 13.h., provides that the Board, in making its recommendation to the Virginia Supreme Court, may consider, but is not bound, by the factors spelled out *In the matter of Alfred Lee Hiss*, VSB Docket No. 83-26 (Sup. Ct. July 2, 1984).

The Board, after consideration of all of the documentary evidence, the testimony of the witnesses and the ten *Hiss* factors, decided unanimously to recommend that Powers' petition for reinstatement be granted. The Board's reasons for this recommendation are found in the following discussion of the ten *Hiss* factors.

1. The Severity of the Petitioner's Misconduct Including, but not Limited to, the Nature and Circumstances of the Misconduct.

In 1992 Powers pled guilty to a federal criminal information charging one felony count of bank fraud in violation of 18 U.S.C. § 1344. Powers was sentenced to twelve months confinement in prison which was subsequently reduced to five months time served with seven months suspended and a two-year probationary period. As a result of this guilty plea, Powers surrendered his license on May 28, 1992 and his license was

thereinafter revoked by Order entered June 26, 1992. This felony conviction arose out of the real estate development business of Powers and his law and business partner, Danny K. Smith. While practicing law, Powers and Smith engaged in the real estate development business through a corporation called Hampton Roads Development Corporation (HRDC). The principals of HRDC were Smith and Powers with Smith being the President and Powers being the Secretary and Vice President.

HRDC would acquire real estate and develop it for commercial or residential use by subdividing the property and building on it. HRDC appears to have been highly leveraged. The venture that led to Powers' felony conviction was the development and construction of 28 townhouses. These townhouses had been built with construction loans without a commitment for a permanent take-out upon the completion of the construction phase. When HRDC was unable to sell the units when the construction loan came due, Powers and Smith engaged in a plan by which each one of them purchased 14 townhouse units with the financing from Mutual Federal Savings & Loan.

In order to obtain the loans for the townhouse sales, the purchase price was inflated and fraudulent leases were presented to Mutual Federal showing an inflated rental payment sufficient to service the loans. Mutual Federal also agreed that each of the townhouse loans was assumable so that upon their subsequent sale there would be no additional financing required, assuming the buyer had the necessary down payment.

Based upon the contracts presented, Mutual Federal thought that Smith and Powers would make a down payment for the purchase of each of the townhouses. As a part of the scheme, Smith and Powers submitted sales contracts to Mutual Federal which falsely overstated the contract price of the townhouses. To support the inflated prices and

the Mutual Federal financing, fraudulent leases were also submitted that stated rental payments substantially higher than the actual rental payment being received. The effect of this fraudulent activity was to obtain 100% financing contrary to banking regulations.

Smith's purchase of 14 units closed in July 1985 with Powers acting as the closing attorney and settlement agent for Mutual Federal. As settlement agent, he signed settlement statements documenting the fraudulent sales price and false cash down payments. Powers purchased the remaining 14 units in January 1986 with Smith acting as the closing attorney and settlement agent for Mutual Federal. Smith signed similar inflated settlement statements with false cash down payments. Powers signed fraudulent documents in this transaction as purchaser and borrower.

In 1988, Powers left the law partnership of Smith and Powers and began practicing on his own. He also ceased participating in the real estate development business. However, in the real estate downturn in the late-1980s, Powers suffered significant financial setbacks. The 14 townhouses either did not sell or purchasers were unable to make the mortgage payments to Mutual Federal, resulting in foreclosure action. From the pre-sentencing report it appears that the losses on the foreclosures exceeded \$500,000; however, with guaranty payments from the federal government, Mutual Federal's reported loss was \$55,000. In addition, other losses from other real estate projects resulted in judgments against Power of over one million dollars.

On February 25, 1992, Powers signed a plea agreement to plead guilty to one felony count of bank fraud. As a result of this guilty plea, the federal government agreed not to prosecute Powers for other charges that may have arisen from his real estate development projects. When Powers was sentenced, the federal judge chose not to

require any kind of reimbursement in light of the number of judgments already obtained against Powers and other outstanding claims. Until 1995, Powers attempted to pay some of his creditors but ultimately determined that it would be impossible to pay them so he and his wife filed a Chapter 7 bankruptcy in April 1995. In his bankruptcy petition, Powers listed debts of over \$4 million including the \$55,000 to Mutual Federal. This debt to Mutual Federal was discharged in bankruptcy.

The Board acknowledged the severity of Powers' crime but determined that the crime, in and of itself, should not be an absolute bar to reinstatement. Powers clearly recognizes the magnitude of his wrongdoing and accepts full responsibility for his conduct. The witnesses appearing on behalf of Powers, as well as many people writing in support of his petition, uniformly stated that Powers accepted responsibility for his wrongdoing.

At Powers' reinstatement hearing in 1999, the Board, in focusing on the severity of Powers' wrongdoing, felt that he had not accepted responsibility for his conduct and may, in fact, blame others for it. Therefore, the Board, in 1999, recommended that Powers' Petition for Reinstatement be denied and it was denied by the Virginia Supreme Court. This Board did not consider the 1999 decision as barring its consideration of the present petition.

Powers acknowledged that, while he had not intended to create such an impression in 1999, he may still have been in denial that he could have been guilty of such conduct. After consideration of all the evidence and Powers' testimony, the Board at this hearing considers that Powers has truly and completely accepted responsibility for his wrongdoing.

2. The Petitioner's Character, Maturity and Experience at the Time of his Disbarment.

Powers moved to the Portsmouth area when he was 14 and, except for periods while attending college, has been a resident of the Portsmouth area since that time. He is a 1970 graduate of the College of William & Mary. He then spent two years in Israel with the Missionary's Journeyman Program. From 1973 to 1976, Powers attended the University of Richmond Law School and received his Juris Doctorate degree from the University of Richmond in 1976. Powers then served a clerkship with Chief Justice Lawrence W. I'Anson of the Virginia Supreme Court. From 1977 to 1980 he was an associate with the firm of Moody, McMurrin & Miller (now Moody, Strople, Kloepfel, Basilone & Higginbotham). From 1980 to 1988 he practiced law with Danny Smith in the firm of Smith & Powers and during this period of time engaged in the real estate development projects that led to his criminal conviction and ultimate bankruptcy. In 1988, he left the firm of Smith & Powers and engaged in the law practice as a solo. From 1989 to 1992 he worked as an attorney for the Portsmouth Public Defender's office and resigned his position when he entered his guilty plea.

From the evidence before the Board, it appears that Powers was a successful and well-thought of attorney at the time (1985-1986) he engaged in the conduct that led to his conviction. A recurring comment was that the criminal conduct by Powers was an aberration that shocked people who knew him. Powers' explanation is that as he became more involved in the real estate development business he was blinded by his pursuit of business success. He apparently thought that real estate would ultimately sell and there would be no financial loss, thereby deluding himself as to the true nature of his conduct.

However, he acknowledges that even if there had not been a financial loss that his conduct warranted disbarment.

3. The Time Elapsed Since the Petitioner's Disbarment.

It has been over 13 years since Powers surrendered his license and his license was then revoked. In 1999 Powers applied for reinstatement and the Board recommended denial. In 2000 the Virginia Supreme Court refused Powers' petition for reinstatement.

4. Restitution to Clients and/or the Bar.

Powers has not made restitution to Mutual Federal and that indebtedness was discharged by Powers' bankruptcy. The United States District Court did not order restitution, recognizing the impossibility due to the amount of Powers' indebtedness that had been reduced to judgment (over one million dollars). The evidence was that Powers had attempted to pay various creditors, but in light of the magnitude of his debts, ultimately sought protection of bankruptcy in 1995. Mutual Federal did not challenge the discharge on the grounds that the indebtedness had resulted from Powers' fraudulent criminal activity.

5. The Petitioner's Activities Since Disbarment Including, but not Limited to, his Conduct and Attitude During that Period.

From all evidence, Powers has attempted to lead an exemplary life since his disbarment and he appears to have succeeded in this effort. Powers has been very active in his church and with the Boy Scouts. In addition to seven children born of his marriage, he and his wife have adopted three children. Powers and his wife are home schooling their children so that considerable time and effort have been devoted to his children. By all accounts, Powers has devoted himself to his family, church and community.

6. The Petitioner's Present Reputation and Standing in the Community.

From the numerous letters received, it is clear that Powers enjoys a favorable reputation among those persons who know him. This includes the Portsmouth legal community. Two members, Willard J. Moody, Jr., and E. Stanley Murphy, of the Moody law firm where Powers currently works as a paralegal, testified as to his reputation within the Portsmouth legal community, his legal ability, his ethical moorings and what a valuable employee he was at the law firm.

Thomas E. Osborne, a civil engineer with the Navy Facilities Command and a friend of the Powers family through contacts in the home-schooling community, spoke on Powers' behalf in support of his petition. Osborne, to emphasize his belief in Powers, stated he would trust Powers as trustee of funds for his children if he (Osborne) and his wife were deceased.

David Beach, the former Clerk of the Virginia Supreme Court, and a personal friend of Powers going back to their law school days, gave a strong recommendation on behalf of Powers, noting that having observed numerous petitions for reinstatement while serving as the clerk of the Virginia Supreme Court, that he could think of none with a more compelling record for reinstatement.

Additionally, on July 21, 2003, Governor Mark. R. Warner restored Power's right to vote to vote.

7. The Petitioner's Familiarity with the Virginia Code of Professional Responsibility and his Current Proficiency in the Law.

Powers has fulfilled all of the requirements for Continuing Legal Education since his disbarment in 1982. He has twice passed the Ethics exam required for reinstatement.

Members of the Moody law firm unequivocally testified as to Powers' current proficiency in the law in the area in which he has been focusing as a paralegal. Furthermore, the Moody law firm has indicated that they will hire Powers as an attorney if his license is reinstated.

8. The Sufficiency of the Punishment Undergone by the Petitioner.

Powers was sentenced to one year confinement which was subsequently reduced to five months with seven months suspended. In addition, he served a two-year probationary period. Based on the pre-sentence report it appears that Powers could have been sentenced to as much as five years for his guilty plea. However, the Board did not feel that it should second-guess the sentence imposed by the United States District Judge. Furthermore, the secondary consequences of the criminal conviction, loss of Bar license, the shame and humiliation resulting from the conviction and having to live under this cloud, unquestionably was punishment in and of itself.

9. The Petitioner's Sincerity, Frankness and Truthfulness in Presenting and Discussing Factors Relating to his Disbarment and Reinstatement.

Powers appears to fully accept the responsibility for his criminal conviction and disbarment. While the Board in 1999 had strong reservations on this issue, the present Board hearing this case considers that Powers has fully come to grips with his conduct and criminal conviction. He sincerely desires to make amends for his conduct, how it reflects on the legal profession, and the impact on his family and friends. The Board considers that Powers desire to make amends will assure nothing but exemplary conduct in the practice of law and that he will continue his demonstrated commitment to his church and community. Moreover, he will have the support of the Moody law firm if he

is permitted to resume the practice of law and the Bar and the public will have assurance that Powers will be monitored by that firm.

10. The Impact upon Public Confidence in the Administration of Justice if the Petitioner's License to Practice Law was Restored.

The Board struggled with this issue, in light of its impact on the legal profession and the fact that there were seven attorneys who felt strongly enough to write in opposition to Powers' petition. It did not appear, however, that any of the seven opposing Powers' petition had personal knowledge of Powers. The Board felt that the best measure of the impact on Powers' reinstatement was the community in which he lives. The community response was overwhelmingly in support of Powers.

In total, the Board felt that if Powers' efforts to date were insufficient, then under what condition would anybody's license be restored? Accordingly, it is the unanimous recommendation of this Board that the Virginia Supreme Court grant Powers' petition and reinstate his license to practice law.

As required by Part 6, Section IV, Paragraph 13.8.c.(5), the Board finds that the costs of this proceeding are as follows:

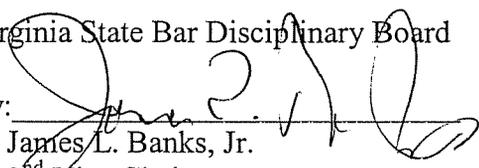
Copying:	\$ 803.29
Transcript/Court Reporter:	\$1,051.50
Publication Cost:	\$ 464.21
Mailing of Notices:	\$ 834.07
Administrative Fee:	\$ 750.00
Total costs:	\$3,903.07

It is Ordered that the Clerk of the Disciplinary System forward this Order of Recommendation and the record to the Virginia Supreme Court for its consideration and disposition. It is further Ordered that the Clerk of the Disciplinary System forward an attested copy of this Order of Recommendation by certified mail return receipt requested,

to the Petitioner at his address of record with the Virginia State Bar, 3209 Granada Road ,
Portsmouth, VA 23703 and shall deliver the same by hand to Edward L Davis, Assistant
Bar Counsel and Richard E. Slaney, Assistant Bar Counsel, Virginia State bar, Eight and
Main Building, 707 East Main Street, Richmond VA 23219-2803.

Entered this 8th day of December, 2005.

Virginia State Bar Disciplinary Board

By: 

James L. Banks, Jr.

2nd Vice Chair

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