

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

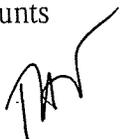
IN THE MATTERS OF TROY AURELIUS TITUS

VSB Docket Nos.: 03-022-1772, 03-022-3476, 03-022-3706, 03-022-3852, 04-022-0381, 05-022-0189, 05-022-0235, 05-022-0371, 05-022-0537, 05-022-2907, 05-022-2966, 05-022-3081, 05-022-3879, 05-022-3984, and 05-022-4402

**Affidavit Consenting to Revocation and
Waiver of the Right to Seek Reinstatement**

Troy Aurelius Titus, after being duly sworn, states as follows:

1. That he was licensed to practice law in the Commonwealth of Virginia on October 12, 1989, and he is currently active and in good standing to practice law in Virginia;
2. That he was a registered settlement agent, as required by the Virginia Consumer Real Estate and Settlement Protection Act ("CRESPA"), between April 2001 and May 2005;
3. That during the period relevant to the matters described below, he was affiliated with various entities, including, but not limited to, Troy A. Titus, P.C., the Titus Law Group, and the Premier Law Group, all principally located in Tidewater Virginia;
4. That during the period relevant to the matters described below, he maintained escrow account number 25070715 pursuant to Virginia Rule of Professional Conduct 1.15 and CRESPA account number 25070690 at SouthTrust Bank;
5. That during the period relevant to the matters described below, he maintained escrow account number 100225085 pursuant to Virginia Rule of Professional Conduct 1.15 and CRESPA account numbers 100155266 and 100155274 at Monarch Bank;
6. That between November 2002 and May 2005, SouthTrust Bank and Monarch Bank sent him and the Virginia State Bar no less than 15 overdraft notices on the five accounts



he maintained and for which he was responsible;

7. That the following summaries accurately describe the ethical misconduct he engaged in with respect to escrow account number 25070715 and CRESPA account number 25070690:

VSB Docket Number 03-022-1722

Escrow Account No. 25070715 and CRESPA Account No. 25070690

On or about November 26, 2002, SouthTrust Bank reported that an item was presented against escrow account number 25070715, which contained insufficient funds to pay the item. A \$30,000 item was presented against a ledger balance of only \$4,429.10; the resulting balance was -\$23,047.77.

On or about February 10, 2003, SouthTrust Bank reported that items were presented against CRESPA account number 25070690, which contained insufficient funds to pay them. Items for \$82,439.20 and \$34,024.08 were presented against a ledger balance of only \$19,335.63; the resulting balance was -\$100,127.65.

On or about February 10, 2003, SouthTrust Bank reported that items were presented against CRESPA account number 25070690, which contained insufficient funds to pay the items. Items for \$73,922.39 and \$72,741.01 were presented against a ledger balance of only \$7,668.20; the resulting balance was -\$138,995.20.

On or about February 10, 2003, SouthTrust Bank reported that an item was presented against CRESPA account number 25070690, which contained insufficient funds to pay the item. A \$106,020.17 item was presented against a ledger balance of only \$46,181.72; the resulting balance was -\$59,838.45.

VSB Docket No. 03-022-3476

CRESPA Account No. 25070690

On or about May 6, 2003, SouthTrust Bank reported that an item was presented against CRESPA account number 25070690, which contained insufficient funds to pay the item. A \$149,876.83 item was presented against a ledger balance of only \$79,981. After a wire transfer was received, the resulting balance was \$230,104.17.

VSB Docket No. 03-022-3706

Escrow Account No. 25070715 and CRESPA Account No. 25070690

On or about June 2, 2003, SouthTrust Bank reported that an item was presented against escrow

account number 25070715, which contained insufficient funds to pay it. A \$2,535 item was presented against a ledger balance of \$0 and the resulting balance was \$0. This item was not paid; instead the funds were debited from account number 25070690, Mr. Titus's CRESPA trust account.

VS B Docket No. 03-022-3852
Escrow Account No. 25070715

On or about June 9, 2003, SouthTrust Bank reported that an item was presented against escrow account number 25070715, which contained insufficient funds to pay it. A \$153.36 item was presented against a ledger balance of \$0; the resulting balance was -\$153.36.

VS B Docket No. 04-022-0381
CRESPA Account No. 25070690

On or about August 8, 2003, SouthTrust Bank reported that items were presented against CRESPA account number 25070690, which contained insufficient funds to pay them. Items for \$154.25, \$120.80, \$109.75, \$95.50, and \$79.75 were presented against a ledger balance of only \$35.31; the resulting balance was -\$524.74.

8. That in response to the bar's investigation of the overdraft notices received from SouthTrust Bank, he represented to the bar that checks had not been deposited or filed, there was no effective control over the deposit of funds, and his Virginia Beach office had deposited money into the wrong accounts;

9. That he further represented to the bar that as of February 3, 2003, he had retained Patrick L. Shuler, a certified public account with the full-service accounting firm of Strickland & Shuler, P.C., to reorganize the accounting and administrative processes within his law firm and thereafter to monitor and review the bookkeeping and accounting systems on a frequent and regular basis;

10. That he further represented to the bar that he had been reorganizing the financial structure of his law firm since February 2003; that he had put his long-time employee, Tina Keilman, in the position as comptroller of the firm; and that Ms. Keilman would devote two



days per month to pull old client files and balance subsidiary ledgers against client records to assist Mr. Shuler in completely reconciling the SouthTrust accounts;

11. That he further represented to the bar that he had reorganized the way his law firm handled real estate transactions whereby all closing funds would be provided to a processor who could print out a report of the exact amount of money each account should have in it every Friday;

12. That he further represented to the bar that every month Ms. Keilman would reconcile his escrow and CRESPA account records and that Mr. Shuler would prepare monthly “quarterly” reports in order to bring the account balances to zero so the accounts could be closed;

13. That Mr. Shuler informed him that a complete reconciliation of the SouthTrust accounts could not practically be completed because of the enormity and complexity of the problem;

14. That he continued to engage in ethical misconduct with respect to his escrow and CRESPA accounts which the following summaries accurately describe:

VSB Docket No. 05-022-0189

CRESPA Account No. 100155266 and Escrow Account No. 100225085

On or about July 21, 2004, Monarch Bank reported that there were insufficient funds in CRESPA account number 100155266 to pay items presented. Two checks totaling \$201,392.43 were presented against an available balance of \$11,847.26.

On or about July 22, 2004, Monarch Bank reported that there were insufficient funds in CRESPA account number 100155266 to pay items presented. The account balance was \$64,749.61, and the available balance was \$62,230.61. Three checks totaling \$234,510.57 were presented. An item for \$62,141.89 was paid and a charge assessed; an item for \$60,738.33 was returned and a charge assessed; and an item for \$111,630.35 was returned and a charge assessed.

On or about July 26, 2004, Monarch Bank reported that there were insufficient funds in escrow account number 100225085 to pay items presented. The account balance was \$541.45, and the available balance was \$541.45. Two checks totaling \$17,135.42 were presented.

VS B Docket No. 05-022-0235

CRES PA Account No. 100155266

On or about July 29, 2004, Monarch Bank reported that there were insufficient funds in CRES PA account number 100155266 to pay items presented. The account balance was \$210,849.11, and the available balance was \$80,767.86. A check totaling \$397,772.84 was presented. The item was returned and a charge assessed.

VS B Docket No. 05-022-0371

CRES PA Account No. 100155266

On or about August 12, 2004, Monarch Bank reported that there were insufficient funds in CRES PA account number 100155266 to pay items presented. The account balance was \$68,616.36, and the available balance was \$32,524.27. An item for \$95,401.43 was paid and a charge assessed; two items for \$160,839.68 were returned and a charge assessed; and an item for \$172,962.39 was returned and a charge assessed.

On or about August 13, 2004, Monarch Bank reported that items were presented against CRES PA account number 100155266, which contained insufficient funds to pay them. The account balance was \$104,656.64 and the available balance was \$19,031.68. An item for \$165,964.49 was returned and a charge assessed.

VS B Docket No. 05-022-0537

CRES PA Account No. 100155266

On or about August 19, 2004, Monarch Bank reported that there were insufficient funds in CRES PA account number 100155266 to pay items presented. The account balance was \$236,936.81, and the available balance was \$190,727.45.

15. That in response to the bar's investigation of the overdraft notices received from Monarch Bank, he represented to the bar that the systems instituted by Mr. Shuler had resolved the problems with his SouthTrust accounts;

16. That he further represented to the bar that Mr. Shuler was working with him to review each and every transaction involving the Monarch CRES PA account from its inception



and that during the course of that review, each monthly bank statement was to be checked against every check written on and deposit made into the Monarch account, and once the review was completed, Mr. Shuler would be able to confirm and identify every outstanding check and resolve the accounting problem;

17. That Mr. Shuler attempted to reconcile his Monarch CRESPA account for the period January 2003 to August 2004; that Mr. Shuler determined that as of August 31, 2004, the bank balance was \$2,177,036.36 with outstanding checks totaling \$4,746,492.38, resulting in an adjusted bank balance of -\$2,569,456.02; that Mr. Shuler reported this information to him on or about September 29, 2004; and that Mr. Shuler requested input concerning the outstanding checks and any possible in transit deposits;

18. That, notwithstanding Mr. Shuler's request, he never provided Mr. Shuler any further information, thereby preventing Mr. Shuler from determining the true bank balance as a first step toward reconciling the Monarch CRESPA account and determining the ownership of the funds;

19. That he continued to engage in ethical misconduct which the following summaries accurately describe:

VSF Docket No. 05-022-2907

CRESPA Account Nos. 100155274 and 100155266

On or about January 31, 2005, Monarch Bank reported that CRESPA account number 100155274 contained insufficient funds to pay an item presented. The account balance was \$9.00, and the available balance was \$9.00. A check totaling \$220.00 was presented. This item was paid and a charge assessed.

On or about February 1, 2005, Monarch Bank reported that CRESPA account number 100155266 contained insufficient funds to pay an item presented. The account balance was \$270,789.96, and the available balance was \$135,723.57. A check totaling \$201,780.69 was presented. This item was paid and a charge assessed.

On or about February 3, 2005, Monarch Bank reported that CRESPA account number 100155266 contained insufficient funds to pay items presented. The account balance was \$286,196.69, and the available balance was \$40,561.13. A check totaling \$385,895.14 was presented. This item was returned, and a charge assessed. Another check totaling \$158,131.16 was presented. This item was paid, and a charge assessed. A third check check totaling \$145,766.73 was presented. This item was paid and a charge assessed.

VS B Docket No. 05-022-2966
CRESPA Account No. 100155266

On or about February 11, 2005, Monarch Bank reported that CRESPA account number 100155266 contained insufficient funds to pay an item presented. The account balance was \$120,776.39, and the available balance was \$59,318.35. A check totaling \$314,115.38 was presented. This item was returned and a charge assessed.

VS B Docket No. 05-022-3081
CRESPA Account No. 100155266

On or about February 22, 2005, Monarch Bank reported that CRESPA account number 100155266 contained insufficient funds to pay an item presented. The account balance was \$153,709.74, and the available balance was \$150,819.96. A check totaling \$25,681.16 was presented. This item was paid and a charge assessed.

VS B Docket No. 05-022-3879
CRESPA Account No. 100155266

On or about April 21, 2005, Monarch Bank reported that fourteen items, totaling \$37,306.42, had been presented against CRESPA account number 100155266, which had an available balance of \$198.75. All the items were returned, and charges were assessed.

VS B Docket No. 05-022-3984
CRESPA Account No. 100155266

On or about April 25, 2005, Monarch Bank reported that six items totaling \$59,461.71 items had been presented against CRESPA account number 100155266, which had an available balance of -\$851.25. All the times were returned, and charges were assessed.

On or about April 27, 2005, Monarch Bank reported that four items, totaling \$8,060.38, had been presented against CRESPA account number 100155266, which had an available balance of -\$1,306.25. All the times were returned, and charges were assessed.

On or about April 28, 2005, Monarch Bank reported that 12 items, totaling \$8,889.70, had been against CRESPA account number 100155266, which had an available balance of -



\$1,411.25. All the items were returned, and charges were assessed.

VSB Docket No. 05-022-4402
CRESPA Account No. 25070690

On or about May 31, 2005, SouthTrust Bank reported that an item for \$200,000 had been presented against CRESPA account number 25070690, which had a ledger balance of \$142.66.

20. That by letter dated May 9, 2005, his counsel, David Ross Rosenfeld, represented to the bar that as a result of a “massive bookkeeping problem,” Mr. Shuler would audit the Monarch CRESPA account from its inception, using strict HUD accounting procedures;

21. That his counsel represented to the bar that a new employee, Lindsay Heckler, who had 10 years of experience as comptroller for three different companies, had been hired on May 2, 2005 to assist Mr. Shuler;

22. That his counsel further represented to the bar that Ms. Heckler’s only responsibility was to work with Mr. Shuler and his staff to complete the full audit of the Monarch real estate trust account by working backward from April 2005 for every real estate closing conducted by Mr. Titus’s office in order to compare each item identified on the settlement statement and HUD-1 for that closing with the bank statement to insure that all funds had been fully and properly disbursed;

23. That his counsel further represented to the bar that on a weekly basis, Ms. Heckler would provide Mr. Shuler with the bank statements, settlement documents, and her checklist showing all funds from each closing being disbursed so that Mr. Shuler could review and confirm her findings and conclusions;

24. That his counsel also represented to the bar that Ms. Heckler would photocopy the settlement statement, HUD-1, and all other relevant documents for each closing, so the bar could corroborate the audit findings by reviewing the documents;

25. That, in fact, Mr. Shuler only performed a sample review of 30% of Mr. Titus's real estate transactions during February and March 2005;

26. That in February 2005, five of twelve transactions reviewed were problematic because in three of them, the HUD-1 statement did not reflect transactions noted on the ledger, and two of the three revised HUD-1 statements subsequently provided to Mr. Shuler were not fully executed;

27. That in March 2005, Mr. Shuler determined that five of seventeen transactions were problematic for similar reasons;

28. That Ms. Heckler never completed the tasks she had allegedly been retained to perform;

29. That the conduct set out in paragraphs 1-30 violates the following Rules of Professional Conduct.

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
- (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right

of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

* * *

(c) A lawyer shall:

* * *

- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
- (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

* * *

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
 - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
 - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if

adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

- (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
- (iv) reconciliations and supporting records required under this Rule;
- (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

* * *

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

* * *

- (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (5) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance

derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

(ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

30. That he could not successfully defend charges of misconduct alleging that he violated the Rules of Professional Conduct set out above;

31. That the material facts set forth in this Consent to Revocation and Waiver of the Right to Seek Reinstatement, and upon which charges of misconduct would be predicated, are true;

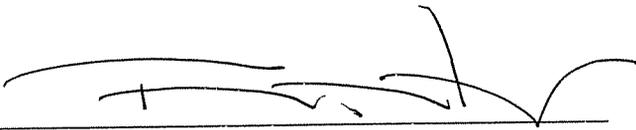
32. That he is freely and voluntarily rendering his consent to the revocation of his license to practice law in the Commonwealth of Virginia, without being subjected to any coercion or duress, and that he understands the implications of consenting to the Revocation of his license to practice law in the Commonwealth of Virginia;

33. That he is freely and voluntarily, without coercion or duress, waiving his right to petition the Supreme Court of Virginia for reinstatement pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.I.8.b., and that he fully understands the implications of waiving his right to petition the Supreme Court of Virginia for reinstatement;

34. That he has consulted with a competent attorney, David Ross Rosenfeld, about the import of his voluntary Consent to Revocation and Waiver of the Right to Seek

Reinstatement in light of his admitted misconduct and other pending complaints of ethical misconduct; and

35. That he acknowledges that his Consent to Revocation and Waiver of the Right to Seek Reinstatement shall permanently terminate his privilege to practice law in the Commonwealth of Virginia.



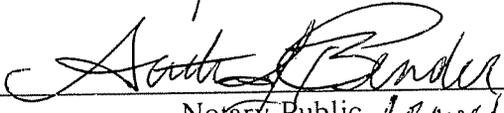
Troy Aurelius Titus
Dated: 9/20/05

COMMONWEALTH OF VIRGINIA

City/County of Chesapeake

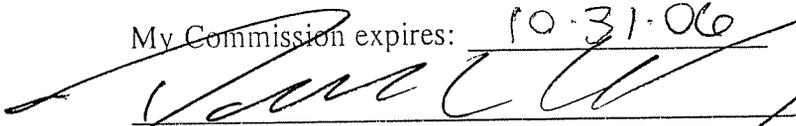
I, Autumn Bender, a Notary Public in the state aforesaid, certify that Troy Aurelius Titus appeared in person before me in the City/County aforesaid this 20 day of September, 2005, was duly sworn, acknowledged to me the truth of the contents of the foregoing Affidavit and that it was voluntarily executed.

Given under my hand this 20 day of September, 2005.



Notary Public *formerly known as Autumn Bethune*

My Commission expires: 10-31-06



David Ross Rosenfeld, Esquire VSB #02982
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VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

Troy Aurelius Titus

Attorney at Law

On September 27, 2005, came Troy Aurelius Titus and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his resignation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit Consenting to Revocation and Waiver of the Right to Seek Reinstatement are true.

The Board having considered the said Affidavit Consenting to Revocation and Waiver of the Right to Seek Reinstatement accepts his resignation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Troy Aurelius Titus be and the same hereby is revoked, and that the name of the said Troy Aurelius Titus be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this 28th day of September, 2005

For the Virginia State Bar Disciplinary Board

By *Barbara S. Lanier*
Barbara Sayers Lanier
Clerk of the Disciplinary System