

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF ROBERT JOSEPH ABALOS

VSB DOCKET NO. 06-022-1744 and
04-032-2633

ORDER OF REVOCATION

These matters came on to be heard on March 28, 2008, before a panel of the Virginia State Bar Disciplinary Board convening at the Lewis F. Powell U.S. Courthouse, Red Courtroom, Fourth Floor, corner of Tenth and Main Streets, Richmond, Virginia 23219. The Board was comprised of William E. Glover, Acting Chair, Sandra L. Havrilak, Carl A. Eason, David R. Schultz, and Stephen A. Wannall, Lay member. The Respondent, Robert Joseph Abalos (hereinafter "Respondent"), was not present when the panel convened. The Clerk called the name of the Respondent in the hallway three (3) times and he failed to appear, nor did any counsel appear on his behalf.

The Virginia State Bar was represented by Paul D. Georgiadis Assistant Bar Counsel. The proceedings were recorded by Thersa S. Griffith, a registered court reporter with Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, (703) 730-1222, she having been duly sworn by the Chair.

The Chair polled the members of the Board as to whether any of them were 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 responded in the negative.

These matters came before the Board on a Subcommittee determination from the Second District Committee, Section II (Docket No. 06-022-1744) alleging misconduct in violation of the following provisions of the Virginia State Bar RULES OF PROFESSIONAL CONDUCT: Rule 3.4 – Fairness To Opposing Party and Counsel and Rule 4.2 – Communication With Persons Represented By Counsel.

Also a Subcommittee Determination from the Third District Committee, Section II (Docket No. 04-032-2633) alleging misconduct in violation of the following provisions of the Virginia State Bar RULES OF PROFESSIONAL CONDUCT: Rule 3:4 – Fairness To Opposing Party and Counsel; and Rule 8:4(b) – To commit a criminal or deliberately wrongful act that reflects adversely on a lawyer’s honesty, trustworthiness or fitness to practice law.

All legal notices of the date, time and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

VSB DOCKET NO: 06-022-1744

On March 20, 2008, the Board entered an Order denying Respondent’s Motion to Continue the hearing date. The Virginia State Bar (hereinafter “VSB”) Exhibits 1 through 16, previously admitted, were admitted, without objection. Bar Counsel presented evidence from Michael Bratter and Saskia de Boer, Attorney at Law, by deposition. Respondent being absent, no evidence was offered on his behalf.

I. FINDINGS OF FACT

The Disciplinary Board panel recessed to consider the evidence presented regarding the alleged misconduct and after giving due consideration to the Bar’s evidence and the argument of Bar Counsel, the Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto Respondent Robert Joseph Abalos (hereinafter “Respondent”) has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been Post Office Box 2841, Seattle Washington, 98111. Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13 (E) and (I)(a) of the RULES OF VIRGINIA SUPREME

COURT. Respondent's Virginia State Bar license is currently suspended¹.

2. At all times relevant, Respondent has held himself out as "a practicing attorney and experienced land investor" who has authored and marketed home study courses and booklets, and made seminar appearances regarding land investing. He has marketed these on the Internet on sites including <http://www.investinginland.com>. (VSB Exhibit 3).

3. In 2004, Michael Bratter ordered materials that Respondent had offered for sale on his Internet site regarding investing in land. He paid ninety-nine dollars (\$99.00) and received the material ordered. Subsequently, Respondent sent Mr. Bratter an email, offering to sell him additional materials, including tickets to a lecture, a CD Rom with more land investing information and another book for seven hundred ninety-five dollars (\$795.00). The email suggested he was soliciting this to give the proceeds to a sick friend. Mr. Bratter paid Respondent seven hundred ninety-five dollars (\$795.00) via his Visa credit card. After failing to receive the information, despite repeated requests and despite payment, Mr. Bratter disputed the charges to his Visa credit card statement. Visa issued a charge-back which ultimately was upheld, despite protests from Respondent.

4. On August 30, 2004, Respondent demanded Mr. Bratter pay him the disputed funds plus an additional charge of four hundred twenty dollars (\$420.00) for Respondent's claimed fees and expenses for responding to the charge-back. If Bratter did not pay the demanded amounts in full, Respondent threatened criminal action:

¹ On March 29, 2005 the VSB Membership Department suspended Respondent's license for failure to comply with MCLE requirements. On October 11, 2006, the VSB Membership Department suspended the Respondent's license for failure to pay Bar dues and non-filing of the mandatory insurance certification.

[A] criminal complaint has been filed against you with the appropriate Federal authorities. Agents from these law enforcement bureaus will be contacting you shortly. In addition, you now owe this office \$420.00 in additional fees and expenses related to this mail fraud attempt. Your chargeback will be contested by this office and denied by your bank. *If the sum of \$420.00 is not received by the close of business on Tuesday, September 7, 2004 in certified funds, an arrest warrant will be issued on you for mail fraud and other criminal acts.* (emphasis added) (VSB Exhibit 4).

5. Later on August 30, 2004, Mr. Bratter advises Respondent that he was represented by counsel in this dispute :

I'm not an attorney, so let this email be notice to you that I'm represented by the law firm –Stoel Rives. I'm forwarding this email to my attorney along with the very detailed documentation that supports this charge back which I already supplied to my credit card company. I will let them educate you as to my rights as a consumer as needed. (VSB Exhibit 4).

6. Notwithstanding Mr. Bratter's notice of being represented, Respondent continued to email to Mr. Bratter and continued to threaten him with criminal prosecution and arrest unless he paid Respondent all claimed fees and expenses. Respondent wrote on August 30, 2004:

"I don't care if you are represented by the Pope . . . Pay up or face imminent arrest." (VSB Exhibit 4).

"YOU ARE A THIEF." (VSB Exhibit 7).

"I'm a practicing lawyer in SIX jurisdictions, Federal and State. Your lawyer is giving you BAD advice. Settle this or you will be arrested. I'm not kidding." (VSB Exhibit 7).

"Understand the seriousness of your position. There is a FEDERAL mail fraud complaint outstanding against you. It will not be withdrawn until I receive all the costs related to your ILLEGAL chargeback. This includes \$795.00 which your bank will likely deny you plus \$420.00 in costs related to the chargeback." (VSB Exhibit 7).

“You have until the close of business on September 7, 2004 to get me \$420.00 in certified funds or I will have an arrest warrant issued against you.” (VSB Exhibit 7).

7. On August 31, 2007, Respondent writes to Mr. Bratter again and states:

“Unless I receive these funds by September 7, 2004 you will be charged with mail fraud and an arrest warrant [will be] issued.” (VSB Exhibit 9).

“I do not want to take any legal action against you so I’m asking you to resolve this matter now. You are in SERIOUS TROUBLE and any lawyer you talk to should be telling you the same thing.” (VSB Exhibit 9).

8. On August 31, 2007 Mr. Bratter informs Respondent again that he does not expect to hear from Respondent once his attorney contacted him and if Respondent does, he will consider it harassment. (VSB Exhibit 10).

9. Respondent nevertheless responds directly to Mr. Bratter and states,

“I haven’t begun to harass you. If I don’t receive my money by September 7, you expect to be arrested late next week. You steal from me and then threaten me? You are truly sick. See you in court. You’ll be in the handcuffs.” (VSB Exhibit 10).

10. On September 1, 2004, Mr. Bratter’s counsel, Saskia de Boer (hereinafter “de Boer”) wrote Respondent a letter which she sent via email and U.S. mail stating, *inter alia*, that she was representing Mr. Bratter in regard to the issues concerning the investing in land materials and charges. She stated in her letter,

“I understand you are also a attorney, and so you will understand my request that you direct your future communications to Mr. Bratter solely through me. I am hopeful, however, that this letter will end your menacing e-mails altogether.” (VSB Exhibit 12).

She went on to state that,

“This letter should end any contact with my client.” (VSB Exhibit 12).

11. Respondent replied via email on September 1, 2004 and stated,

Lady, how stupid are you? . . . Unless he pays me EVERY PENNY he owes me by September 7, 2004, he will be arrested and civil litigation begun against him. There is already a federal mail fraud complaint filed against him and I plan to file many others. Don’t bother me again. I’m

laughing at you. (VSB Exhibit 13).

12. Upon receipt of Respondent's email, de Boer referred the case to another attorney in the office by the name of Scott F. Kocher (hereinafter "Kocher"). (de Boer Dep, at 8)².

13. On September 3, 2004, Kocher sent Respondent a letter advising him again, *inter alia*,

"As previously directed, under no circumstance may you communicate with Mr. Bratter directly."

This letter was sent facsimile, first class mail, certified mail, return receipt requested, and messenger. (VSB Exhibit 14).

14. Despite letters from counsel for Mr. Bratter, Respondent sent Mr. Bratter an email on September 3, 2004 stating,

"I am amending the amount you are required to send me prior to the close of business on September 8, 2004 to \$1,365.00. This \$150.00 increase reflects costs associated with having to read and reply to that truly dumb letter your so-called "lawyer" sent me." (VSB Exhibit 15).

"There is already a federal criminal mail fraud complaint outstanding against you which is active and unresolved." (VSB Exhibit 15)

15. According to de Boer's testimony, at no time was Respondent ever informed that he could continue to communicate with their client. (de Boer Dep. at 9).

16. On September 7, 2004, Respondent wrote Kocher,

"Your letter to me of September 3, 2004 is an embarrassment to you and your firm. You should be ashamed of yourself for writing it. Stop wasting my time with silly threats of frivolous litigation." (VSB Exhibit 16).

²de Boer Dep. refers to the deposition transcript of Saskia de Boer of March 14, 2008

“If Mr. Bratter fails to make full restitution, I will have no choice but to seek a myriad of criminal and civil remedies against him.” (VSB Exhibit 16).

“Whatever else Mr. Bratter is in life, in this case he is a petty thief . . . his reluctance to settle this matter, based in part on your firm’s downright bizarre and patently unethical advice to him, has now caused his own bank to launch an internal fraud investigation against him . . . I intend to cooperate fully with this investigation until I get paid and this matter closed.” (VSB Exhibit 16).

VSB DOCKET NO: 04-032-2633

17. VSB Exhibits 1 through 11, previously admitted, were received without objection. Bar Counsel presented testimony from Complainant Eric Gilmore.

18. The findings made in paragraphs 1 and 2 hereinabove are incorporated herein by reference.

19. On or about November 21, 2003, Mr. Gilmore ordered a book for fifty-nine dollars and 80/100 (\$59.80) from Respondent’s website <http://www.investinginland.com> and charged the purchase to his Visa credit card.

20. When Mr. Gilmore received his Visa credit card statement for the period ending December 16, 2003, the Visa credit card statement reflected only a charge from “Robert J. Abalos” and did not reference <http://www.investinginland.com>. Not recognizing the charge, Mr. Gilmore disputed the charge to his credit card issuer. The credit card issuer imposed a “charge-back”.

21. In the course of subsequent e-mails from Mr. Gilmore to Respondent, Mr. Gilmore recognized his error and offered to Respondent to authorize his credit card company to charge him ninety-seven dollars (\$97.00), being the original purchase price and an administrative charge-back fee that Respondent claimed to have incurred.

22. Respondent rejected the offer, and instead, repeatedly threatened Mr. Gilmore with felony charges, arrest, and jail if Mr. Gilmore did not send him sums that escalated from ninety-seven dollars (\$97.00) to five hundred forty dollars (\$540.00) to five hundred ninety dollars (\$590.00) to eight hundred ninety dollars and 90/100 (\$890.90), and finally to one thousand one hundred eighty dollars (\$1,180.00).

23. On February 23, 2004, Respondent emailed Mr. Gilmore stating, *inter alia*,

“Unless the amount of \$540.90 is received by this office no later than Thursday, February 26, 2004, felony arrest warrants will be issued under a variety of Federal and state laws including credit card fraud and grand larceny and I will seek your immediate arrest on these charges.” (VSB Exhibit 3).

24. On February 24, 2004, Respondent wrote to Mr. Gilmore:

You are going to be arrested unless I receive \$540.90 from you by Thursday, February 26. You have already been reported to Federal law enforcement on a mail fraud charge and they will be contacting you shortly. . . You are a thief and a liar. . . You are being charged with mail and credit card fraud and you will be arrested unless I get my money . . . And go ahead and file bankruptcy. This is a criminal matter and the debts are not dischargeable there. Stop playing games.” (VSB Exhibit 4)

25. On February 24, 2004, Respondent wrote to Mr. Gilmore:

“Pay me or expect to be arrested very soon.” (VSB Exhibit 6).

“Your bank is very curious about how you committed perjury against them and supplying all of your personal information to me and law enforcement authorities. They will likely file additional bank fraud charges against you. Why don't you call them and see? The criminal inquiry on you is case number 840106047301.” (VSB Exhibit 6).

“Do you understand how much trouble you are really in? You committed perjury, mail fraud, credit card fraud, grand larceny and more. ARE YOU REALLY THIS DUMB?” (VSB Exhibit 6).

26. On February 25, 2004, Respondent wrote to Mr. Gilmore:

Pay me or you will be arrested. This is my last email to you. Already you have wasted time so that it is impossible for you to comply with my deadline of 5 PM tomorrow, 2/26. On Friday I will be filing felony charges against you so you better find the money you owe me fast and hope the police act slow. If you send half, I will work with you on the other half, but I will get some from you this week or I will have you arrested.

“You should know your bank has launched a separate criminal investigation against you and they are asking me for evidence against you. Unless you want them to file separate bank fraud charges against you, you better work with me NOW.” (VSB Exhibit 8).

27. On March 8, 2004, Respondent wrote to Mr. Gilmore:

“Subject: Criminal Complaints Filed Against You”

“Multiple criminal complaints have been filed against you. You are subject to arrest at any time.”

“You now owe me \$890.00 and the amount gets larger with each action you force me to take. You could have settled this for \$97 three weeks ago but instead you think you can play games with me and plead poverty.”

“You can send payment NOW or face imminent arrest.” (VSB Exhibit 9).

28. On March 10, 2004, Respondent wrote to Mr. Gilmore:

Until you pay me in full or make payment arrangements with me for the \$890.90 you owe me, you face IMMEDIATE arrest. Criminal complaints for bank, credit card, and mail fraud have been filed against you.

If you do not make payment arrangements with me IMMEDIATELY, I will be seeking civil damages against you for \$2,672.70 plus attorney fees which are treble damages under the appropriate statutes. The total you will ultimately owe will exceed \$5,000.00.

This problem is not going away until you accept responsibility and make compensation arrangements. You cannot ignore this situation and hope it disappears.

You should be scared. You are in SERIOUS trouble and your attitude is making things worse. (VSB Exhibit 10).

29. Mr. Gilmore reported Respondent to the Virginia Department of Consumer Affairs. In response, on March 12, 2004, Respondent wrote to Mr. Gilmore:

If you think filing consumer protection complaints against me will deter me from prosecuting you for fraud, you are wrong. They are laughable. Each time I respond to one of your complaints costs you an additional \$300 to compensate me for my time and gives me greater evidence of your fraud. Plus do you realize filing false complaints is a felony in this state?

You now owe me \$1,180. Pay me or face imminent arrest. You can work out a payment arrangement with me. I only want my money. (VSB Exhibit 11).

30. Respondent's actions terrorized Mr. Gilmore, as Mr. Gilmore relied on Respondent's representations as a lawyer and believed Respondent when he told him he was going to be arrested.

II. MISCONDUCT AND DISPOSITION

The Bar has alleged violations of the following provisions of the VIRGINIA RULES OF PROFESSIONAL CONDUCT and upon review of the foregoing Findings of Fact, upon review of the exhibits received into evidence, the deposition of Ms. de Boer, and the testimony presented *ore tenus*, and at the conclusion of the evidence regarding misconduct, this Board recessed to deliberate. After due deliberation, the Board recommended and stated its findings as follows :

RULE 3.4 Fairness To Opposing Party and Counsel

A lawyer shall not:

- (i) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

The Board finds that in both matters, case numbers 06-022-1744 and 04-032-2633 the Bar has proven by clear and convincing evidence multiple violations of this Rule, owing to Respondent's repeated threats to Mr. Bratter and Mr. Gilmore, threatening to have them arrested on multiple charges and escalating those threats. Respondent did so with the intent to not only recoup money that may have been owed to him but to extort additional funds from them for the alleged non-payment of bills. Respondent's actions in his threats to Mr. Bratter and Mr. Gilmore were blatant violations of this Rule.

RULE 4.2 Communication With Persons Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

The Board finds that in case number 06-022-1744 the Bar has proven by clear and convincing evidence a violation of this Rule owing to Respondent's repeated communications with Mr. Bratter not only after being advised by Mr. Bratter that he retained counsel, but also after being advised by Mr. Bratter's counsel on two (2) separate occasions, to stop all contact with their client; however, he continued to do so.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) Commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law

The Board finds that in case number 04-032-2633 the Bar has proven a violation of Rule 8.4(b) by clear and convincing evidence. Respondent's repeated criminal threats, threats of civil sanctions and improper and deliberately misleading demands and his

deliberate misrepresentations and lies to Mr. Gilmore reflects adversely on his honesty, trustworthiness and fitness to practice law.

III. CONCLUSION

Thereafter, the Board received additional evidence of aggravation and mitigation from the Bar, including Respondent's prior disciplinary record. While the Respondent was administratively suspended from practicing law in the Commonwealth of Virginia, the State of Washington Practice of Law Board asked him to enter into a stipulation agreeing to refrain from engaging in the conduct that constitutes the unauthorized practice of law in the State of Washington. As of the date of the hearing, the Respondent had failed to enter into that agreement. The State of Washington Practice of Law Board held that Respondent was engaging in the unauthorized practice of law in maintaining a website which could reasonably mislead Washington residents to believe he was admitted to practice in Washington. The Chair announced the sanction as revocation.

Accordingly, it is ORDERED that the Respondent's, Robert Joseph Abalos, license to practice law in the Commonwealth of Virginia be and hereby is revoked effective March 28, 2008.

It is further ORDERED that, as directed in the Board's March 28, 2008 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the RULES OF THE SUPREME COURT OF VIRGINIA. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements

for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within fourteen (14) days of the effective date of the revocation, and make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

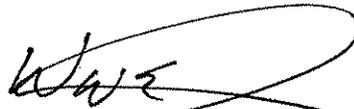
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that 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 all costs against Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being Post Office Box 404, Seattle, Washington, 98111-0404, by certified mail, return receipt requested, and by regular mail to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 15th day of April, 2008.

VIRGINIA STATE BAR DISCIPLINARY BOARD

A handwritten signature in black ink, appearing to read 'WEG', written over a horizontal line.

William E. Glover, Acting Chair