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VIRGINIA :

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

VIRGINIA STATE BAR EX REL)
SEVENTH DISTRICT COMMITTEE)

Complainant,)

v.)

SPENCER DEAN AULT,)

Respondent.)

VS BAR CLERK'S OFFICE

Case No. 61598

VS B Docket Nos. 06-070-1371,
06-070-3262, 09-070-078760,
07-070-0688, and 08-070-075105

THREE-JUDGE PANEL

MEMORANDUM ORDER

ON THE 25th, 26th, and 27th days of October, 2010 this matter came before the Three-Judge Court empanelled on the 23rd day of June, 2010, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended, consisting of the Honorable William H. Ledbetter, Jr., Retired Judge of the Fifteenth Judicial Circuit, the Honorable Jonathan C. Thacher, Judge of the Nineteenth Judicial Circuit, and the Honorable Margaret Poles Spencer, Judge of the Thirteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Alfred L. Carr, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, Spencer Dean Ault, Esquire, appeared with his counsel, Thomas K. Plofchan, Jr., Esquire. The Court Reporter for the proceedings was Rudiger, Green & Kerns Reporting Service, 4116 Leonard Drive, Fairfax, Virginia 22030, Telephone: (703) 591-3136.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, which directed him to appear and to show cause why his license to practice law in

the Commonwealth of Virginia should not be suspended or revoked, or why he should not be otherwise sanctioned in accordance with Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia.

Virginia State Bar Docket Nos. 06-070-1371, 06-070-3262, and 09-070-078760 (Ahmed Estate and Trust Matters)

FOLLOWING opening statements and the presentation of the Bar's evidence in Virginia State Bar Docket Numbers 06-070-1371, 06-070-3262, and 09-070-078760 (Ahmed Estate and Trust Matters), the Respondent, by counsel, made an oral motion to strike, which the Court considered and denied. Thereafter, the Respondent presented his evidence pursuant to Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia.

THEREUPON, the Court, heard closing arguments for the misconduct phase of the hearing, retired to deliberate, and returned to issue its findings in open court that the Virginia State Bar had proven by clear and convincing evidence that the Respondent violated Rules 1.1¹, 1.3(a)², 1.8.(a)(1)³, 1.8.(a)(2), 1.8.(a)(3), 3.3(a)(1)⁴, 4.1(a)⁵, 8.1(a)⁶, 8.4(a)⁷, 8.4(b), and 8.4(c) of

¹ RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

² RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

³ RULE 1.8 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed

the Virginia Rules of Professional Conduct. The Court found that the Bar failed to prove by clear and convincing evidence that the Respondent violated the remaining charges set forth in the

and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

⁴ **RULE 3.3 Candor Toward The Tribunal**

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

⁵ **RULE 4.1 Truthfulness In Statements To Others**

In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of fact or law;

⁶ **RULE 8.1 Bar Admission And Disciplinary Matters**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

⁷ **RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law; [and]

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

Certification, to-wit: Rules 1.4(a), 1.5(a), 1.5(b), 1.15(a), 1.15(d), 1.15(e), and 8.1(c) of the Virginia Rules of Professional Conduct promulgated by the Virginia Supreme Court.

Virginia State Bar Docket Nos. 07-070-0688 and 08-070-075105 (Vea Estate and Trust Matters)

THEREUPON, the Bar presented evidence in Virginia State Bar Docket Numbers 07-070-0688 and 08-070-075105 (Vea Estate and Trust Matters). Before the Bar concluded its case in chief in the misconduct phase of the Vea Estate and Trust matters, Assistant Bar Counsel and the Respondent, by counsel, informed the Court that stipulations had been reached between the parties. Thereafter, Assistant Bar Counsel and the Respondent presented to the Court the stipulated facts of misconduct and violated Rules of Professional Conduct related to stipulated facts. The Virginia State Bar withdrew charges that the Respondent had violated provisions of Rule 1.1, 1.4, 1.5, 1.15, 4.1, and 8.4 of the Virginia Rules of Professional Conduct.

THEREUPON, the Court retired to deliberate, and returned to issue its findings in open court that the Virginia State Bar had proven by clear and convincing evidence that the Respondent violated Rule 1.3(a) in Virginia State Bar Docket Number 07-070-0688. The Court found that the Bar failed to prove by clear and convincing evidence that the Respondent violated 8.1(c) of the Virginia Rules of Professional Conduct in Virginia State Bar Docket Number 08-070-075105.

The Court's determination that the Respondent had violated the aforesaid provisions of the Virginia Rules of Professional Conduct was based on the Virginia State Bar's proof by clear and convincing evidence, of the following facts:

I. FINDINGS OF FACT

1. At all relevant times Respondent Spencer Dean Ault, Esq., ("Respondent") was a duly licensed attorney in the Commonwealth of Virginia.

VSB Docket Numbers 06-070-1371, 06-070-3262, and 09-070-078760

As To 06-070-3262

2. Respondent prepared the Last Will and Testament (“Will”) for Ms. Zubaida Ahmed in March of 2001, which nominated and appointed him the Executor of her estate without being required to file any bond or enter any security or surety. The Will also nominated Respondent as Trustee of the testamentary trust, but did not waive the requirement to file a bond or enter security or surety.

3. On November 2, 2001, Ms. Ahmed died testate.

4. On December 3, 2001, the Loudoun County Circuit Court probated the Will.

5. On December 3, 2001, Respondent qualified as Executor, and the Court permitted him to serve under a \$200,000.00 bond without surety.

6. Ms. Ahmed’s Will provided that after specific bequests were made from the Estate, three quarters of the rest and residue of her estate was to be held in the Ahmed Testamentary Trust (“Trust”) for the benefit of her three sons.

7. The Will decreed that the Trustee disburse to each son one-tenth (1/10) of the Trust, over ten (10) years, for the three son’s maintenance, support, health, and education.

8. Respondent did not comply with his client’s testamentary wishes in contravention of the provisions of the Will as he disbursed the rest and residue of her estate pursuant to a settlement agreement that only resolved an elective share claim between the decedent’s husband and her three sons.

9. The decedent’s husband and her three sons did not intend for the Settlement Agreement to incorporate Respondent’s activities as Trustee of the Trust as he was only included in the elective share negotiations because he held and controlled the Trust corpus.

10. The First Annual Account for the Estate was due on April 3, 2003, at the Loudoun County Commissioner of Accounts (COA).

11. On December 5, 2003, Respondent filed the First Annual Account for the Estate -- eight (8) months late.

12. The COA refused to approve Respondent's First Annual Account for the Estate because Respondent had made over **\$1,655,765.00** in distributions to himself as the Trustee even though the Loudoun County Circuit court had not appointed or qualified him as Trustee, and he had not posted a bond or entered security or surety of any kind.

13. However, from December 3, 2001, until December 15, 2003, Respondent acted as the Trustee of Trust created under the Will. He accepted distributions from the Estate and made distributions from the Trust without having qualified and/or being bonded.

14. On December 15, 2003, Respondent qualified as Trustee at the insistence of the COA.

15. Upon Respondent's qualification as Trustee, the COA established May 5, 2005, as the filing due date for First Annual Account for the Trust.

16. Respondent did not file the First Account for the Trust on or before May 5, 2005.

17. On August 30, 2005, the Sheriff's Office of Loudoun County personally served Respondent as the Trustee with a summons issued by the COA.

18. The summons demanded that Respondent file the First Account for the Trust with documents that supported the accounting, pay the appropriate COA filing fees, and pay a \$75.00 delinquent fee within thirty (30) days of August 30, 2005.

19. On October 14, 2005, pursuant to Section 26-13 of the Virginia Code, as amended, the COA notified the Virginia State Bar ("VSB") that Respondent did not comply with

the summons that demanded he file the First Annual Account for the Trust.

20. By letter dated November 3, 2005, the VSB notified Respondent of the bar complaint filed by the COA regarding the overdue First Account for the Trust lawfully demanding that he respond, in writing, within twenty-one (21) days of the date on the letter.

21. Respondent did not respond, in writing, to the November 3, 2005, VSB demand letter.

22. On November 30, 2005, Respondent filed the First Account for the Trust (Fiduciary No. 9235) that the COA declined to approve because he did not provide the required supporting documentation of his transactions as Trustee.

23. On March 27, 2006, Respondent filed a revised and updated First Account for the Trust that the COA also declined to approve.

24. The First Account for the Trust remains unapproved by the COA of Loudoun County.

As To 06-070-3262

25. On March 26, 2008, the Sheriff's Office of Loudoun County personally served Respondent as the Executor of the Estate of Zubaida Ahmed with a summons. The summons demanded that he file the Third Account for the Ahmed Estate with the documents that supported the accounting, pay the appropriate COA filing fees, and pay a \$50.00 delinquent fee within thirty (30) days of March 26, 2008.

26. On March 5, 2009, pursuant to Section 26-13 of the Virginia Code, as amended, the COA notified the VSB that Respondent did not comply with the summons that demanded he file the Third Account for the Ahmed Estate.

27. By letter dated March 18, 2009, the VSB sent the Respondent the bar complaint

filed by the COA regarding the overdue Third Account for the Ahmed Estate lawfully demanding that he respond within twenty-one (21) days of the date on the letter.

28. Respondent did not respond, in writing, to the March 18, 2009, VSB demand letter in writing.

29. On May 19, 2009, Respondent filed the Third Account for the Ahmed Estate.

30. On May 20, 2009, Loudoun County Circuit Court held Respondent in contempt of court and fined him \$500.00 for failing to file a proper Third Account by May 20, 2009, because the COA, William B. Hanes, Esq., informed the Court that Respondent's Third Account could not be approved without revisions and supporting documentation.

31. On March 28, 2006, the COA filed a Report of Commissioner of Accounts IN RE: Trust Under the Will of Zubaida Ahmed: Probate File No. 8472 / Fiduciary No. 9235 in the Circuit Court of Loudoun County.

As To 09-070-078760

32. The COA's Report found that Respondent, as the Trustee, had made self-dealing loans to the following entities in which he had a personal or a pecuniary interest or both:

- i. Ault, Harding and Tramer Investments LLC, (AH&T Investments), for \$260,000:
 - a. \$200,000.00 on September 21, 2004, and \$60,000.00 on August 16, 2005,
 - b. unsecured at 7% interest per annum,
 - c. he repaid the loans from proceeds generated by the Crystal Falls, LLC venture in which he had a personal and pecuniary interests,
 - d. Respondent had a direct pecuniary interest as an investor and as a

- partner,
 - e. that has an unpaid balance of \$4,723.42;
- ii. Crystal Falls, LLC, a Maryland LLC, for \$915,000.00
 - a. \$15,000.00 on April 9, 2002, \$60,000.00 on April 20, 2002, and \$840,000.00 on May 2, 2002,
 - b. unsecured at 5% interest per annum,
 - c. Respondent had a direct pecuniary interest as an investor and legal counsel for the LLC,
 - d. he repaid the loans from proceeds generated by the Crystal Falls LLC venture in which he had a personal and pecuniary interest,
 - e. with an unpaid balance of \$3,185.18;
- iii. Anita Ault for \$183,500.00 on March 27, 2003,
 - a. at 6% interest per annum,
 - b. to finance the purchase of a separate home for Respondent's then wife in exchange for signing over her marital share of the marital home to conclude the pending divorce,
 - c. Respondent's wife at time of loan,
 - d. with an unpaid balance of \$1,220.70;
- iv. Stella Barbour for \$16,500.00,
 - a. \$10,000.00 on April 26, 2004, \$2,500.00 on June 21, 2004, \$3,000.00 on July 21, 2004, and \$1,000.00 on August 3, 2005,
 - b. unsecured at 7% interest per annum,
 - c. Respondent's legal assistant,

- d. repaid by Respondent;
- v. Frank Tramer for \$100,000.00,
 - a. \$100,000.00 on May 6, 2004,
 - b. unsecured at 7% interest per annum,
 - c. Respondent's AH&T Investments business partner,
 - d. He repaid the loan from proceeds generated by the Crystal Falls LLC venture in which he had a personal and pecuniary interest,
 - e. with an unpaid balance of \$904.97;
- vi. Frank Tramer and Don Harding of aforementioned AH&T Investments, for \$227,855.55,
 - a. \$70,000.00 on January 6, 2003, \$70,000.00 on January 7, 2003, \$16,133.00 on January 23, 2003, \$20,000.00 on February 11, 2003, and \$51,722.55 on March 27, 2003,
 - b. unsecured at 7% interest per annum,
 - c. Respondent's business partners in AH&T and Crystal Falls LLC
 - d. repaid by AH&T Investments from proceeds generated by the Crystal Falls LLC venture in which he had a personal and pecuniary interest;
- vii. Frank Naugle for \$30,000.00,
 - a. \$30,000.00 on February 8, 2003,
 - b. unsecured at 7% interest,
 - c. Respondent's business partner in the Crystal Falls, LLC,
 - d. repaid by Mr. Naugle from proceeds generated by the Crystal Falls venture in which he had a personal and pecuniary interest; and

- viii. Innovative Research & Development Corporation, a Maryland corporation, for a total of \$18,000.00,
 - a. \$18,000.00 loaned between July 11, 2005, and January 30, 2006,
 - b. unsecured at 0% interest per annum,
 - c. company owned by Respondent's current wife and at time of loans his significant other, Elizabeth Van Houtte, that was forfeited on October 6, 1998;
 - d. repaid by Respondent.

33. The COA's Report found that Respondent's transactions set forth in the First Annual Account of the Trust could not be tracked or verified with the documentation provided by Respondent.

34. The COA's Report found that Respondent's distributions made as Trustee to the beneficiaries were in contravention of the terms of the Will.

35. Respondent had distributed the rest and residue of the Estate through the Trust pursuant to a Settlement Agreement between the beneficiaries that on April 15, 2009. The Loudoun County Circuit Court had ruled that it only encompassed Respondent's distributions made as Trustee to the beneficiaries in order to comply with the resolution of the elective share claim made by the decedent's husband and did not relate to Respondent's undisclosed transactions and loans he made acting as Trustee.

36. The COA's Report asked the Court to:

- i. find Respondent in contempt of court for failing to settle First Account for the Trust;
- ii. remove Respondent as Executor of the Estate Zubaida Ahmed and Trustee

- of the Zubaida Ahmed Testamentary Trust;
- iii. appoint a successor fiduciary as Executor of the Estate Zubaida Ahmed and Trustee of the Zubaida Ahmed Testamentary Trust:
 - a. to account for all the funds administered by Respondent to date and determine if the Accounts he filed correctly reflect said administration;
 - b. to evaluate and determine the reasonableness of the terms of all loans made from the Estate and Trust to determine if all loans have been repaid, in full, in accordance with the terms of said notes;
 - c. to evaluate and determine if the funds paid to the decedent's spouse and her three sons were made in accordance with her Last Will and Testament;
 - iv. require Respondent to obtain a surety on his fiduciary bond at his own personal expense until this Account is fully and completely settled by any successor Executor/Trustee;
 - v. order that Respondent repay \$24,364.25 to the Trust for his services as Trustee;
 - vi. require that Respondent employ a forensic accountant at his own personal expense, chosen by the successor fiduciary to review the Estate and Trust Accounts and the loans made therein in order to track, verify, and account for all Estate and Trust funds and report his or her findings to the successor Executor/Trustee; and
 - vii. order that Respondent pay back all loans that are determined not to have

been paid in full, with interest.

37. On January 28, 2008, at a show cause hearing on the COA's report and the beneficiaries' objections to Respondent's First Account of the Testamentary Trust, the Court ordered:

- i. that Respondent be removed as Executor/Trustee of the Estate and Trust under the Will of Zubaida Ahmed;
- ii. that Respondent execute a \$300,000.00 surety bond;
- iii. that a Special Fiduciary be appointed to take possession of any and all property belonging to the Estate in Respondent's possession, including any profits from self-dealing transactions.

38. On December 11, 2008, the Special Fiduciary filed his first report with the Court.

39. The Special Fiduciary's Report found that Respondent had:

- i. no authority as Trustee under the terms of the Will to modify or allow the beneficiaries to agree to a contrary distribution scheme for the rest and residue of the estate/trust,
- ii. misappropriated Ahmed Trust funds for his personal use and benefit which is an unlawful act, and
- iii. tried to conceal these transactions from the beneficiaries by withholding pertinent information and by the manipulation and use of the unsigned promissory notes.

40. As supporting documentation of Respondent's First Annual Account filed with COA, Respondent provided an unsigned promissory note date March 27, 2003, naming Frank Tramer and Donald Harding as the borrowers of a \$51,722.55 loan.

41. The VSB subpoenaed the BB&T bank records of the Ahmed Trust bank account, which revealed that on March 27, 2003, \$51,708.55 (plus \$14.00 wire fee) had been wired to a residential real estate settlement attorney named Marilyn Watson, Esq.'s, bank account at The Middleburg Bank.

42. The evidence also showed Respondent, on March 27, 2003, wired \$183,000 to the same bank account at The Middleburg Bank from the Ahmed Trust bank account secured by the promissory note described in paragraph 31.iii.

43. Attorney Marilyn Watson informed Investigator Donald Lange that Ms. Anita Ault, Respondent's estranged wife, said the \$51,708.55 wire transfer was from Respondent as her buy out of her marital share, of the Stone Manner residence, which she used to cover the down payment, settlement costs, and \$1,000 earnest money deposit for the purchase of her new home.

44. Respondent did not have authorization to use the assets of the Ahmed Estate and Trust to provide 100% of the cash Anita Ault used to purchase her home.

45. On April 8, 2003, Anita Ault conveyed her marital interest in the home to Respondent using a Quick Claim Deed.

46. On September 21, 2004, Respondent made a \$200,000 loan to AH&T Investments from the Ahmed Estate. Respondent had one-third equal share interests as a managing partner in AH&T Investments and he served as legal counsel AH&T Investments. Respondent, as Trusted for the Ahmed Trust, was the note holder on the \$200,000 unsigned promissory note.

47. Respondent's business partners, Tramer and Harding, testified that they did not sign the \$200,000 promissory note as co-makers and the purpose of the \$200,000 loan was to show the bank that AH&T Investments had sufficient capital to purchase a large tract of land in

Pennsylvania for another real estate venture.⁸

48. On October 13, 2004, Respondent drafted a \$100,000 Credit Line Deed of Trust Note that listed AH&T Investments as the beneficiary and his then girlfriend, now wife Elizabeth Van Houtte as the borrower. The Credit Line Deed of Trust Note listed law partner, David R. Young, Esq., and Donald L. Harding, his business partner, as Trustees.

49. On December 11, 2003, Respondent conveyed his interests in the Stone Manner property to his then girlfriend, now wife, Elizabeth Van Houtte using a Deed of Gift.

50. Elizabeth Van Houtte used the proceeds from the Credit Line Deed of Trust to complete construction on the Stone Manor Vineyard and Orchard Bed and Breakfast that is also Respondent's personal residence and law office.

51. Elizabeth Van Houtte, submitted the Bed and Breakfast/personal residence/law office construction invoices to AH&T Investments for payment. Donald Harding or Respondent paid a total of \$81,833.91 for home improvements made to the Stone Manor Property.

52. After the construction of the Bed and Breakfast owned by Elizabeth Van Houtte was completed, she refinanced the property and netted \$1,330,000.

53. On January 23, 2003, Respondent wrote check #501 from the Ahmed Estate checking account located at BB&T for the sum of \$16,133.00, made payable to BB&T.

54. On January 23, 2003, BB&T issued cashier's check #72990218, made payable to Alco Ventures located in Ontario, Canada, in the amount of \$16,125.00 (plus \$8.00 cashier's check bank fee).

55. On April 14, 2009, in Loudoun County Circuit Respondent testified under oath Court that he used the BB&T cashier's check for the purchase and delivery of a modular home to

⁸ Frank Tramer and Donald Harding testified that AH&T Investments was in bankruptcy and lost the property in Pennsylvania.

Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence, for his personal use.

56. In 2002, Respondent, in an interview informed Virginia State Bar Donald L. Lange the \$16,133.00 was an unsecured loan to Frank Tramer and Donald Harding, his AH&T business partners.

57. Respondent's First Annual Account for the Trust filed with the COA also reported the \$16,133 was an unsecured loan to Frank Tramer and Donald Harding, his AH&T business partners.

58. Donald Harding and Frank Tramer, however, informed VSB Investigator Donald Lange that they was not aware of the \$16,133.00 loan, had not signed a promissory note for \$16,133.00, and had not received any of the \$16,133.00. They testified to the same on April 14, 2009 and on October 25, 2010 at the disciplinary hearing.

59. Donald Harding informed VSB Investigator Donald Lange that he or Frank Tramer had *not* endorsed promissory notes for joint loans made from the Ahmed Trust.

60. The AH&T check register reveals that Respondent and Donald Harding had all signed checks that were made payable to various vendors and construction companies that performed work on Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence.

61. The AH&T check register shows that:

- i. On October 17, 2004, Donald Harding drafted a check made payable to Perez Masonry in the amount of \$5,000.00 for construction performed at Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence;

- ii. On October 30, 2004, Respondent drafted a check made payable to Southern States in the amount of \$635.25 for supplies used in the construction of Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence;
- iii. On November 16, 2004, Donald Harding drafted a check made payable to Ays Construction in the amount of \$30,000.00 for the construction of Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence;
- iv. On November 16, 2004, Donald Harding drafted a check made payable Mantano Applicator in the amount of \$10,000.00 for the construction of Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence;
- v. On November 16, 2004, Donald Harding drafted a check made payable to Ron's Restoration/Excavation in the amount of \$5,000.00 for the construction of Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence;
- vi. On December 12, 2005, Respondent drafted a check made payable to Dependable Movers in the amount of \$2,191.00 for services related to Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence;
- vii. On February 18, 2005, Donald Harding drafted a check made payable to Perez Masonry in the amount of \$6,928.64 for construction performed at Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law

office/personal residence; and

- viii. On February 27, 2005, Respondent drafted a check made payable to Robbie Studehaker in the amount of \$500.00 for construction related expense performed on Respondent's Stone Manor Vineyard and Orchard Bed and Breakfast/law office/personal residence.

62. AH&T also made distributions to Ms. Ahmed's heirs as follows:

- i. On October 22, 2004, Frank Tramer drafted a check made payable to the Vasfi brothers in the amount of \$36,000.00;
- ii. On November 4, 2004, Frank Tramer drafted a check made payable to Dennis Stalter, the decedent's husband, in the amount of \$15,000.00;
- iii. On November 23, 2004, Donald Harding drafted a check made payable to Shahine Vasfi in the amount of \$8,000.00;
- iv. On November 23, 2004, Donald Harding drafted a check made payable to Shiriar Vasfi in the amount of \$8,000.00;
- v. On November 23, 2004, Donald Harding drafted a check made payable to Sam Vasfi in the amount of \$8,000.00;
- vi. On March 23, 2005, Respondent drafted a check made payable to Shahine Vasfi in the amount of \$2,500.00;
- vii. On March 23, 2005, Respondent drafted a check made payable to Shariar Vasfi in the amount of \$2,500.00.

63. On April 14 and 15, 2009, the Court reconvened the show cause hearing on the Vasfis' Objections, the COA's Report concerning the Respondent's First Account of the Testamentary Trust, the Report of the Special Fiduciary, the Supplemental Report of the Special

Fiduciary, and took evidence from the Special Fiduciary, the Vafis brothers, and the COA, and heard testimony from Respondent, his current wife, his ex-wife, and the three Vasfi brothers.

64. On April 15, 2009, the Loudoun County Circuit Court found^{9, 10} that:

- i. upon the sworn testimony of Respondent and the individual beneficiaries that he had committed a series of acts while serving as Executor and Trustee of the Estate and Trust of Zubaida Ahmed which were not proper and cannot be approved or condoned by the Court; and
- ii. the Respondent had breached his fiduciary duty as the Executor and Trustee of the Estate and Trust of Zubaida Ahmed because he did not fully disclose details to the individual beneficiaries regarding the financial transactions made by him, to himself and others, and from which he and others personally benefited monetarily from his misconduct and breach of fiduciary duty.

65. The Court ordered that Respondent not be allowed to advantage himself in dealing with the trust estates and disgorge:

- i. \$274,746.00, representing the profits to Respondent from the Crystal Falls, LLC; and
- ii. \$46,300.00 in fees charged while acting as the fiduciary.

66. On April 14 and 15, 2009, while under oath, Respondent admitted that he did not have the requisite legal knowledge or skill to perform his duties as the Executor and/or Trustee of

⁹ See Ex. 26 – Special Fiduciary Report, pages 19-22, citing legal authority that once its established that a fiduciary has “. . . materially advanced his own personal interests, the law places the burden on the fiduciary to demonstrate that his conduct was appropriate.” Gaymon, 19 Cir. C152472, 63 Va. Cir. 264 (2003) (citing Scott v. Porter, 99 Va. 553, 556, 39 S.E. 220 (1901).

¹⁰ Under Nicholson v. Shockey, 192 Va. 270, 277, 64 S.E.2d 813, 817 (Va. 1951) if the presumption of a breach is established, the Trustee must rebut it by the “clearest and most satisfactory evidence.”

the Estate and Trust of Zubaida Ahmed, his former client.

67. On October 27, 2010, Respondent testified that he had very poor administrative skills are the reason he routinely and untimely filed improper annual accountings with the supporting documentation.

68. On April 15, 2009, the three Vasfi beneficiaries testified under oath that Respondent did not fully disclose the details of the transactions he performed as the Executor and Trustee of the Estate and Trust of Zubaida Ahmed with entities in which he had a personal or pecuniary interest or both.

69. The fourth beneficiary, the decedent's former spouse, also informed the Court that Respondent did not fully disclose the details of the transactions he performed as the Executor and Trustee of the Estate and Trust of Zubaida Ahmed with entities that had a personal or pecuniary interest or both.

70. None of the four beneficiaries consented to any of Respondent's self-dealing, undisclosed transactions.

71. The four beneficiaries voided all of Respondent's self-dealing transactions.

72. Respondent appealed Judge Whisenant's August 12, 2009, Order memorializing his findings that Respondent breached his fiduciary duty and entered judgment.

73. Respondent has not made paid on the judgment. The amounts listed below remain outstanding:

- i. \$274,746.00, representing the profits to Respondent from the Crystal Falls, LLC;
- ii. \$46,300.00 in disgorged fees while acting as the fiduciary;
- iii. \$15,251.71 to Chet Young, CPA;

- iv. \$45,985.95 to Special Fiduciary, O. Leland Mahan, Esq.;
- v. \$5,184.75 to Deputy Commissioner of Accounts, Melinda Hetzel, Esq.;
- vi. \$51,356.37 to Eric F. Schell, Esq.;
- vii. \$27,529.65 to Joseph W. Stuart, Esq.; and
- viii. \$6,000 to Sean W. O'Connell, Esq.

As to VSB Docket No. 07-070-0688 (Vea Estate and Trust)

74. On December 20, 2004, Respondent qualified as the Co-Trustee of the testamentary trust created under the Will of David M. Vea, and the Court permitted him to serve under a \$484,000.00 bond without surety.

75. The due date for the First Account of the testamentary trust was on or before May 1, 2005.

76. In a letter dated August 30, 2006, the COA informed the VSB that it had failed to timely notify the VSB of a summons it had issued in which the Loudoun County Sheriffs Office had personally served on the Respondent on July 27, 2005.

77. On July 27, 2005, the Sheriff's Office had served Respondent as Co-Trustee of the Vea Testamentary Trust ("Vea Trust") with a summons that demanded he file the First Account with the documents that supported the accounting, pay the appropriate COA account filing fees, and pay a \$79.00 delinquency fee within thirty (30) days of July 27, 2005.

78. On September 15, 2005, Respondent filed the First Account -- five (5) months late.

79. The COA disallowed legal fees paid to Respondent as Co-Trustee in the amounts of:

- i. \$3,020.25 for filing a law suit in the Circuit Court that did not benefit the

Trust,

- ii. \$3,080.00 for legal services that did not benefit the Trust, and
- iii. \$2,225.00 in legal fees paid to Respondent's law partner, James Towarnicky, Esq., that did not benefit the Trust,
- iv. totaling \$8,325.25.

80. Respondent did not repay the disallowed legal service fees to the Trust.

81. Co-Trustee Kristen Westrick reimbursed the Trust for the Respondent's disallowed legal fees from her personal assets.

82. Respondent did not respond to her requests for reimbursement.

FOLLOWING the misconduct phase of the hearing, the Virginia State Bar and the Respondent, by counsel, presented evidence and argument regarding the sanction to be imposed upon the Respondent for the ethical misconduct found by the Three-Judge Court. The members of the Three-Judge Court retired to deliberate¹¹, and upon their return announced the Court's decision that Respondent's license to practice law in the Commonwealth of Virginia is revoked, effective October 27, 2010.

AT THE CONCLUSION of the proceedings on the 27th day of October, 2010, the Three-Judge Court entered a Summary Order revoking the Respondent's license to practice law in the Commonwealth of Virginia, effective October 27, 2010, and directing him to comply with the notice requirements contained in Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia; accordingly, it is, therefore

¹¹ Pursuant to Part Six, Section IV, Paragraph 13-18.K Deliberations: As soon as practicable after the conclusion of the evidence and arguments as to the issue of Misconduct, the [Three judge-court] shall, deliberate in private. If the [Three judge-court] finds by clear and convincing evidence that the Respondent has engaged in Misconduct, the [Three judge-court] shall, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has been the subject of any Disciplinary Proceeding in this or any other jurisdiction and shall give the Bar Counsel and the Respondent an opportunity to present material evidence and arguments in aggravation of mitigation. The [Three judge-court] shall deliberate in private on the issue of sanctions.

ORDERED, that Respondent's license to practice law in the Commonwealth of Virginia be, and the same hereby is, **REVOKED**, effective October 27, 2010; and it is further

ORDERED, that the terms and provisions of the Summary Order entered on the 27th day of October, 2010, directing Respondent's compliance with Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, be, and the same hereby are, reaffirmed and incorporated in this Memorandum Order by reference; and it is further

ORDERED, that pursuant to Part Six, Section IV, Paragraph 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent; and it is further

ORDERED that a copy teste of this order shall be served by the Clerk of this Court upon the Respondent, Spencer Dean Ault, by certified mail, return receipt requested, at Stone Manor, 13193 Mountain Road, Lovettsville, VA 20180, his last address of record with the Virginia State Bar, and by regular mail to his counsel, Thomas Kenneth Plofchan, Jr., at Westlake Legal Group, Suite 320, 46175 Westlake Drive, Sterling, VA 20165, and to Alfred L. Carr, Assistant Bar Counsel, and Barbara Sayers Lanier, Clerk of the Disciplinary System, at the Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

THIS ORDER IS EFFECTIVE *NUNC PRO TUNC* October 27, 2010.

Entered this 17 day of November, 2010.

FOR THE THREE-JUDGE COURT:

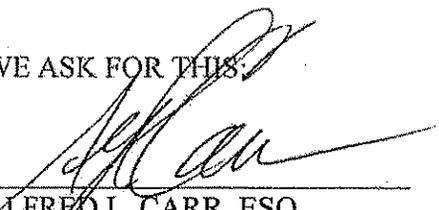
By:



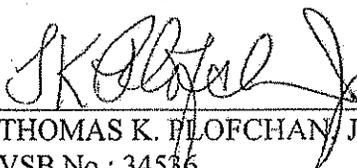
MARGARET POLES SPENCER

Chief Judge of the Three-Judge Court

WE ASK FOR THIS:

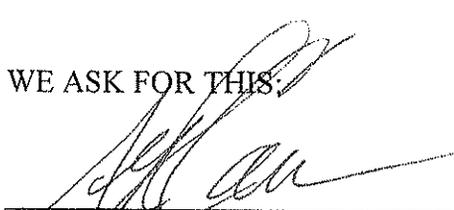

ALFRED L. CARR, ESQ.
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Telephone: (804) 775-0500
Facsimile: (804) 775-0597

SEEN AND OBJECTED TO:


THOMAS K. PLOFCHAN, JR., ESQ.
VSB No.: 34536
WESTLAKE LEGAL GROUP
46175 Westlake Drive STE 320
Sterling, Virginia 20165
Telephone: (703) 405-7616
Facsimile: (703) 444-9498
Counsel for Respondent

as the Court made only those specific findings of fact on the record and the order is inconsistent with the record. Further, the Court made rulings with regard to preliminary matters to include a motion to dismiss based on the statute of limitations which rulings are not reflected in this order. Respondent adopted the arguments in brief and on the record with respect to these motions. Further respondent objects, for the reasons stated in the record, that Aull was not acting as an attorney and was not found to be acting as an attorney w/ respect to the charge

WE ASK FOR THIS:



ALFRED L. CARR, ESQ.

Assistant Bar Counsel

VSF No.: 46723

VIRGINIA STATE BAR

707 East Main Street, Suite 1500

Richmond, Virginia 23219-2800

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SEEN AND OBJECTED TO:

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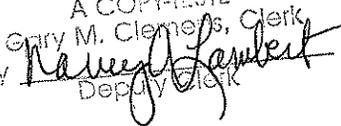
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Counsel for Respondent

A COPY-TESTE
Gary M. Clements, Clerk
BY 
Deputy Clerk