

**VIRGINIA:**

**BEFORE THE FOURTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF  
HOWARD NORMAN BIERMAN**

**VS. B Docket No. 08-041-072548**

**Complainant: Chesterfield County Commissioner of Accounts Brian Seltz**

**VS. B Docket No. 08-041-072921**

**Complainant: Staunton Commissioner of Accounts Henry P. Dickerson, III**

**VS. B Docket No. 08-041-072923**

**Complainant: Virginia Beach Commissioner of Accounts Jo Ann Blair Davis**

**VS. B Docket No. 08-041-074232**

**Complainant : Virginia Beach Commissioner of Accounts Edward Russell Stolle**

**VS. B Docket No. 08-041-074233**

**Complainant: Virginia Beach Commissioner of Accounts Edward Russell Stolle**

**VS. B Docket No. 08-041-073082**

**Complainant: Virginia Beach Commissioner of Accounts Edward Russell Stolle**

**SUBCOMMITTEE DETERMINATION  
(PUBLIC ADMONITION WITHOUT TERMS)**

On the 26<sup>th</sup> day of January, 2009, a meeting in these matters was held before a duly convened Subcommittee of the Fourth District—Section I Committee consisting of Patricia Esposito Bruce, Attorney at Law, member, Ms. Julia A. Connally, lay member, and Lisa Ann Wilson, Attorney at Law, Chair.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.d.1. of the Rules of the Virginia Supreme Court, the Fourth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC Admonition Without Terms entered into as an Agreed Disposition between the Virginia State Bar and the Respondent:

## **I. FINDINGS OF FACT**

1. At all times relevant hereto, Howard Norman Bierman, "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

**VSB Docket No. 08-041-072548 (Chesterfield County Commissioner of Accounts Brian Seltz)**

***Fannie Alice Barnett Foreclosure: October 24, 2006 Foreclosure Sale of 6100 Statute Street, Chesterfield VA 23832***

2. On or about March 30, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid October 24, 2006 foreclosure sale with Chesterfield County Commissioner of Accounts Bryan Seltz that was timely but incomplete. The cover letter accompanying the accountings were signed by a legal assistant in the Respondent's law firm and directed questions to that legal assistant.

3. On April 3, 2007, the Commissioner wrote via facsimile transmission to Respondent requesting a receipt to indicate his payment of taxes to Chesterfield County. Notwithstanding said request, Respondent failed to respond.

4. On June 25, 2007, the Commissioner wrote a further letter to Respondent's legal assistant requesting "cancelled checks or other evidence of payment of the mechanics liens shown on the account." Notwithstanding said request, Respondent failed to respond.

5. On July 11, 2007, and again on August 6, 2007, the Commissioner wrote to Respondent's office stating that he had been waiting for various documents to be furnished so that he could approve the accounting. He asked for Respondent's personal attention to these matters. Notwithstanding said request, Respondent failed to respond.

6. On October 17, 2007, the Commissioner wrote to Respondent that he had been told in writing numerous times what needed to be done to get the accounting approved. Yet nothing was done. Shortly thereafter Respondent called to apologize.

7. On November 12, 2007 Respondent file a response to the requests of the Commissioner.

***Kathryn M. Dobogai Foreclosure: February 7, 2007 Foreclosure Sale of 4020 Peregrine Road, Richmond, VA 23237***

8. On or about June 26, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid February 7, 2007 foreclosure sale with Chesterfield County Commissioner of Accounts Bryan Seltz that was timely but incomplete.

9. On August 2, 2007, the Commissioner wrote Respondent's legal assistant via facsimile transmission that he was "still waiting for documentation of "credit put on Deed of Trust—send credit that we can attach to accounting; paid tax receipt; and receipt from note-holder for proceeds" Notwithstanding said request, there was no response.

10. On August 29, 2007, the Commissioner re-sent his August 2, 2007 facsimile to Respondent's legal assistant with the notation, "follow-up, please." Notwithstanding said request, there was no response.

11. On October 17, 2007, the Commissioner wrote to Respondent that he had been told in writing numerous times what needed to be done to get the accounting approved. Yet nothing was done. Shortly thereafter Respondent called to apologize.

12. On November 1, 2007, Respondent filed a partial response, and thereafter fully complied with the Commissioner's requests.

***Jerry G. Fields Foreclosure: December 9, 2005 Foreclosure Sale of 3018 Brentwood Circle, Richmond, VA 23237***

13. Following the aforesaid December 9, 2005 foreclosure sale, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Chesterfield County Commissioner of Accounts Bryan Seltz that was timely but incomplete.

14. On May 14, 2007, the Commissioner wrote to Respondent requesting numerous documents. Notwithstanding said request, Respondent failed to respond.

15. On June 21, 2007, the Commissioner wrote to Respondent requesting a "prompt reply to my letter of May 14, 2007, a copy of which is enclosed." Notwithstanding said request, Respondent failed to respond.

16. On July 11, 2007, and again on August 6, 2007, the Commissioner wrote to Respondent's office "I feel my office has been more than patient waiting for various documents to be furnished by your office for foreclosure accountings which I have pending before me for approval. I would appreciate your **personal** attention to these matters so these accountings can be recorded and returned to you." Notwithstanding said request, Respondent failed to respond.

17. On October 17, 2007, the Commissioner wrote to Respondent that he had been told in writing numerous times what needed to be done to get the accounting approved. Yet nothing was done. Shortly thereafter Respondent called to apologize. Thereafter, Respondent forwarded the requested documents and information.

***Freddie Henderson October 18, 2006 Foreclosure: Sale of 5524 Heatherhill Drive, Richmond VA 23234***

18. On March 30, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Chesterfield County Commissioner of Accounts Bryan Seltz that was timely but incomplete.

19. On April 3, 2007, the Commissioner sent Respondent via facsimile transmission, a request for a "paid tax receipt, lost note affidavit, and a fee of \$150.00 for filing the affidavit." Respondent's staff assistant telephoned the Commissioner twice thereafter to advise she was working on the requests.

20. Notwithstanding the assurances of Respondent's staff, Respondent had not provided the requested documents and fee by July 11, 2007. At that time, the Commissioner wrote to Respondent that he was "waiting for a response to correspondence." Notwithstanding said request, Respondent failed to respond.

21. On August 6, 2007, and again on October 17, 2007, the Commissioner wrote to Respondent asking for his personal attention to these matters. Shortly thereafter Respondent called to apologize.

22. On November 13, 2007, the Commissioner wrote to Respondent that he still needed Respondent to send him a lost note affidavit and a filing fee of \$150.00.

23. Shortly thereafter, the Commissioner received the requested documents and fees.

***Nancy Mitchell Foreclosure: November 21, 2006 Foreclosure Sale of 13606 Cradle Hill Road, Midlothian VA 23112***

24. On March 30, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Chesterfield County Commissioner of Accounts Bryan Seltz that was timely but incomplete.

25. On April 3, 2007, the Commissioner wrote via facsimile transmission to Respondent's legal assistant requesting a receipt to indicate his payment of taxes to Chesterfield County. Notwithstanding said request, Respondent failed to respond.

26. On June 25, 2007, the Commissioner wrote to Respondent requesting an explanation of "several matters" involving a request for further supporting documentation and a perceived discrepancy between the accounting and the underlying documentation concerning the actual recipient of certain proceeds of the foreclosure. Notwithstanding said request, Respondent failed to respond. There is no allegation or evidence that monies were misappropriated and Respondent states that the discrepancy is explained by the difference between the entity to which monies are owed and the entity acting as the servicing agent to which the monies are delivered.

27. On August 6, 2007, the Commissioner wrote to Respondent asking for his personal attention to these matters. Respondent failed to respond.

28. On October 17, 2007 and then again by facsimile transmission on November 2, 2007, the Commissioner wrote to Respondent, "The above foreclosure has been before this office for many months and remains incomplete. I expect the properly documented accounting in my office in not less than thirty days." Shortly thereafter Respondent called to apologize and provided partial responses to the questions.

29. By letter dated November 5, 2007, the Commissioner raised further questions similar to the questions noted in paragraph 26 above. Notwithstanding the request, Respondent sent only partial documentation on November 20, 2007.

30. On November 26, 2007, the Commissioner again raised further questions by letter to Respondent: "In response to my inquiry...you sent a copy of check of \$7,552.86 payable to [a certain entity] "with no explanation whatsoever. I need to know why you have done these things."

31. Within ten days thereafter, Respondent called the Commissioner with a satisfactory explanation.

***Melwood Leon Whitlock, Jr. Foreclosure: April 11, 2007 Foreclosure Sale of 4507 Cathlow Circle, Richmond, VA 23234***

32. On October 26, 2007, Respondent signed and filed foreclosure accounting of the aforesaid foreclosure sale with Chesterfield County Commissioner of Accounts Bryan Seltz that was not timely and was incomplete.

33. On October 29, 2007, the Commissioner wrote to Respondent "the accounting will not be approved unless you submit a recorded trustee's deed, evidence of receipt of the proceeds, a paid tax receipt, and an explanation of the bankruptcy charges and foreclosure charges set forth on the bank's breakdown of the amount to which it claimed entitlement... Your accounting was received in the office by UPS on October 26<sup>th</sup>, more than six months from the date of sale. The law requires that you collect no commission. You must provide evidence that the commission of \$2,299.55 is paid to the original obligor as the bank's note was paid in full."

34. While Respondent thereafter provided the requested documents, he delayed nine months before providing to the Commissioner proof of his payment of the forfeited trustee's funds to the lender. Said delay also delayed the Commissioner's final approval of the accounting.

**VS B Docket No. 08-041-072921 (Staunton Commissioner of Accounts Henry P. Dickerson, III)**

***Mary C. Marcum Foreclosure: October 26, 2006 Foreclosure Sale of 102 East Avenue, Staunton, VA***

35. On April 24, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Staunton Commissioner of Accounts Henry P. Dickerson, III, that was timely but incomplete.

36. On May 22, 2007, the Commissioner wrote to Respondent's legal assistant noting deficiencies in the accounting and requesting that he provide documents to cure the deficiencies,

including providing an affidavit of publication of notice of sale and a return receipt of the mailing of notice to the debtor. There was no response.

37. On July 26, 2007, the Commissioner wrote to Respondent reminding him of his prior demand for additional documents. Notwithstanding said request, Respondent failed to respond.

38. On August 14, 2007 and August 15, 2007, the Commissioner telephoned Respondent's legal assistant and left voice mail messages for Respondent to call him. Notwithstanding said requests, Respondent failed to respond.

39. In a series of letters dated August 28, 2007, September 24, 2007, and October 10, 2007 the Commissioner again wrote to Respondent that "notwithstanding numerous requests over the last five months, I still have not received the newspaper certificates and return receipts for the 14-day letters."

40. Thereafter on December 10, 2007, the Respondent telephoned the Commissioner and apologized.

41. The Commissioner received the requested documents and information and filed his Report of Approval of Accounting on March 18, 2008.

***Richard Smith and Cynthia Walls Foreclosure: November 27, 2006 Foreclosure Sale of 802 Nelson Street, Staunton, VA***

42. On May 22, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Staunton Commissioner of Accounts Henry P. Dickerson, III that was timely but incomplete.

43. On July 25, 2007, the Commissioner wrote to Respondent's legal assistant noting deficiencies in the accounting and requesting that he provide documents to cure the deficiencies,

including providing an affidavit of publication of notice of sale and a return receipt of the mailing of notice to the debtor. Notwithstanding said request, Respondent failed to respond.

44. On August 14, 2007 and August 15, 2007, the Commissioner telephoned Respondent's legal assistant and left voice mail messages for Respondent to call him. Notwithstanding said requests, Respondent failed to respond in any form or fashion.

45. In a series of letters dated August 28, 2007, September 24, 2007, and October 10, 2007, the Commissioner again wrote to Respondent that "notwithstanding numerous requests over the last five months, I still have not received the newspaper certificates and return receipts for the 14-day letters."

46. On December 10, 2007, the Respondent telephoned the Commissioner to apologize.

47. Notwithstanding his apologies, Respondent failed to follow-up until February 8, 2008 when his assistant called the Commissioner.

48. Thereafter having received the requested documents and information, the Commissioner filed his Report of Approval of Accounting on March 18, 2008.

**VS B Docket No. 08-041-072923 (Virginia Beach Commissioner of Accounts Jo Ann Blair Davis)**

***Christopher and Karen Worst Foreclosure: July 14, 2006 Foreclosure Sale of 1228 Top Gallant Court, Unit 5, Virginia Beach VA***

49. On January 11, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Virginia Beach Commissioner of Accounts, Jo Ann Blair Davis that was timely but incomplete and reflected excessive publication costs that were disallowed.

50. On September 11, 2007, the Commissioner issued a Summons to Equity Trustees, LLC and had his Registered Agent served therewith on September 17, 2007. Notwithstanding service, there was no response.

51. On or about November 6, 2007, the Commissioner filed a Disapproval of Accounting with the Circuit Court noting Respondent's failure to provide (i) the original note secured by the second lien or copy of it, (ii) proof of payment for advertising, and (iii) proof of payment of \$728.50 to the holder of the note secured by the second lien. The Commissioner recommended that the Trustee [Respondent] forfeit his trustee commission.

52. On November 15, 2007, Respondent filed a revised accounting with the Commissioner.

53. On November 30, 2007, the Commissioner filed objections to the revised accounting as being non-responsive to the Commissioner's order to forfeit his Trustee Commission.

Additionally, the Accounting incorrectly listed publication as *Inside Business* when checks, ad and affidavit reflect *Virginian Pilot*.

54. On March 4, 2008 Respondent filed a further Amended Accounting which was approved.

**YSB Docket No. 08-041-074232(Virginia Beach Commissioner of Accounts Edward Russell Stolle)**

***Frank Gauntt Foreclosure: April 26, 2007 Foreclosure Sale of 1042 Lands End Way, Virginia Beach VA***

55. On October 31, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Virginia Beach Commissioner of Accounts Edward Russell Stolle that was untimely and incomplete.

56. On November 11, 2007, the Commissioner wrote to Respondent regarding deficiencies in the sale and the accounting. Notwithstanding said request, Respondent failed to respond.

57. On December 20, 2007, Commissioner staff, Mandigo sent an e-mail to Respondent and his assistant stating, "We know you are working diligently on trying to resolve issues with Equity Trustees, LLC, but would appreciate if you provided us with a status update on these matters. I'm attaching the e-mail copies of the letters that were both faxed and mailed to you. We have not received any response regarding resolution."

58. On December 20, 2007, Respondent replied via e-mail, "We're on it."

59. Notwithstanding Respondent's reply, Respondent failed to provide the requested information and documentation. Accordingly, on January 10, 2008, the Commissioner issued a Summons that was served on January 15, 2008 on Equity Trustees, LLC advising Respondent that he had 30 days from service in which to provide the requested documentation.

60. Notwithstanding the demand of the summons, Respondent failed to respond.

61. On February 27, 2008, the Commissioner moved the Circuit Court to issue a Show Cause as Respondent "has failed to make the required filing of a complete and proper accounting with necessary supporting documentation".

62. On March 7, 2008, Respondent forwarded the requested information to the Commissioner.

**VSB Docket No. 08-041-074233 (Virginia Beach Commissioner of Accounts Edward Russell Stolle)**

***Alvin R. Corbett Foreclosure: November 7, 2006 Foreclosure Sale of 157 Happy Street, Virginia Beach, VA***

63. On May 3, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Virginia Beach Commissioner of Accounts Edward Russell Stolle that was untimely and incomplete.

64. On November 8, 2007, Commissioner staff wrote to Respondent requesting "additional documentation" and a corrected accounting by November 30, 2007. Notwithstanding said request, Respondent failed to respond.

65. On December 20, 2007, Commissioner staff, Mandigo sent an e-mail to Respondent and his assistant stating, "We know you are working diligently on trying to resolve issues with Equity Trustees, LLC, but would appreciate if you provided us with a status update on these matters. I'm attaching the e-mail copies of the letters that were both faxed and mailed to you. We have not received any response regarding resolution."

66. On December 20, 2007, Respondent replied via e-mail, "We're on it."

67. Notwithstanding Respondent's reply, Respondent failed to provide the requested information and documentation. Accordingly, on January 10, 2008, the Commissioner issued a Summons that was served on January 15, 2008 on Equity Trustees, LLC advising Respondent that he had 30 days from service in which to provide the requested documentation.

68. Notwithstanding the demand of the summons, Respondent failed to respond.

69. On February 22, 2008, the Commissioner disapproved the accounting, citing Respondent's "failure to respond and provide required and requested supporting documents and vouchers for the account as listed in my letter to him dated November 8, 2007..."

70. On February 28, 2008, the Commissioner wrote to Respondent at both his Fairfax and Bethesda addresses confirming the disapproval of the accounting.

71. On March 10, 2008, Respondent filed a revised accounting which was subsequently approved.

**VSB Docket No. 08-041-073082 (Virginia Beach Commissioner of Accounts Edward Russell Stolle)**

***Wm. and Amanda L. Deese Foreclosure: June 7, 2006 Foreclosure Sale of 2428 Beronadotte Court, Virginia Beach, VA***

72. On July 11, 2007, Respondent signed and filed a foreclosure accounting of the aforesaid foreclosure sale with Virginia Beach Commissioner of Accounts Edward Russell Stolle that was untimely and incomplete.

73. On July 16, 2007, the Commissioner wrote to Respondent advising that he was disallowing the trustee's fee due to the late filing and requesting that Respondent provide additional documentation and an additional auditing fee on or before August 16, 2007. Notwithstanding said request, Respondent failed to respond.

74. On September 7, 2007, the Commissioner wrote to Respondent at both his Fairfax and Bethesda addresses advising of his disapproval of the accounting and his issuance of a summons, with a return date of 30 days to resolve all issues previously set forth in his July 16, 2007 letter.

75. On October 9, 2007, Respondent filed a Corrected Accounting.

76. On October 12, 2007, Commissioner staff e-mailed Respondent regarding continued deficiencies to be corrected by October 22, 2007: "Following up with the message I left for you earlier this week, I have reviewed the amended accounting you submitted. There are still a few issues that need to be resolved: 1) Buyer's payment of taxes; 2) statement from 2<sup>nd</sup> lien holder of receipt of funds \$40,723.25 [to include trustee fee forfeited and payment taxes by buyer]; and 3) Substitute Trustee's Foreclosure deed (grantor) and proof recording after sale."

Notwithstanding said request, Respondent failed to respond.

77. On October 29, 2007, Commissioner staff e-mailed Respondent's office requesting a status: "We requested additional information and documentation on or before October 22, 2007,

but, to date, we have received no response from you or Mr. Bierman.” Notwithstanding said request, Respondent failed to respond.

78. On December 13, 2007, Respondent filed a final accounting that the Commissioner approved.

## **II. NATURE OF MISCONDUCT**

Such conduct by Howard Norman Bierman constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **RULE 1.3 Diligence**

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

## **III. PUBLIC ADMONITION WITHOUT TERMS**

In reaching this decision, the Subcommittee notes the following in mitigation of the misconduct found: During the time period in question, there was an unprecedented increase in the market activity of foreclosures. Respondent has shown that he has taken the necessary steps to improve his technology and infrastructure to ensure that his office can handle the high volume of cases and operate efficiently and effectively. Furthermore, Respondent has hired supervising attorneys and paralegals in addition to increasing his staff to handle all matters involving Equity Trustees, LLC. Respondent has also made available to all Commissioners his personal contact information, which includes his cell phone and facsimile numbers, to ensure that all communications are streamlined to him.

Accordingly, it is the decision of the subcommittee to impose a PUBLIC Admonition Without Terms and Howard Norman Bierman is hereby so admonished.

Pursuant to Paragraph 13.B.8.c. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

FOURTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By: Lisa Ann Wilson  
Lisa Ann Wilson  
Subcommittee Chair

**CERTIFICATE OF MAILING**

I certify that on the 15<sup>th</sup> day of April, 2009, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and complete copy of the Subcommittee Determination (PUBLIC Admonition Without Terms) to Howard Norman Bierman, Respondent, at 702 North Irving Street, Arlington, VA 22201, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Respondent's counsel, Bernard Joseph DiMuro, Esquire, DiMuro Ginsberg, P.C., Suite 200, 908 King Street, Alexandria, VA., 22314-3018

Paul D. Georgiadis  
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