

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

VIRGINIA STATE BAR, EX REL  
THIRD DISTRICT COMMITTEE

Complainant

v.

Case No. CL07-1846

STEVEN SCOTT BISS

Respondent.

MEMORANDUM ORDER  
(SUSPENSION—ONE YEAR AND ONE DAY)

This matter came to be heard on October 14-17, 2008 before a three-judge panel duly appointed by the Supreme Court of Virginia pursuant to § 54.1-3935 of the Code of Virginia. The panel consisted of The Honorable Pamela S. Baskervill, Chief Judge Designate, The Honorable Von L. Piersall, Jr., Retired Judge, and The Honorable Joseph E. Spruill, Retired Judge. The Virginia State Bar was represented by Kathryn R. Montgomery, Assistant Bar Counsel. The respondent, Steven Scott Biss ("Respondent") was represented by John B. Russell, Jr. The proceedings were transcribed by Tracy J. Johnson, RPR, CCR of Chandler & Halasz, Certified Professional Reporters, telephone number 804-730-1222.

Judge Baskervill polled the members of the panel as to whether any knew of any personal or financial interest or bias that would preclude the member from fairly hearing the matter, to which inquiry each member of the panel responded in the negative.

The matter came before the Court on a Subcommittee determination from the Third District—Section III (Virginia State Bar docket number 05-033-0055) alleging

misconduct in violation of the following Rules of Professional Conduct: Rule 1.1—Competence, Rule 1.2(c)—Scope of Representation, Rule 1.15(c)(4)—Safekeeping Property, Rule 8.1(a) and (d)—Bar Admission and Disciplinary Matters, and Rule 8.4(b) and (c)—Misconduct.

Following the Court's denial of Respondent's motion to strike the bar's case, the parties stipulated to certain facts and rules violations. Upon the joint motion of the parties, the Court accepted the stipulation of facts and violations of rules. The Court notes that in consideration for the bar's stipulation, Respondent waived any appeal of any findings by this Court, including any sanction imposed upon him.

#### I. FINDINGS OF FACT AND RULE VIOLATIONS

Upon consideration of the testimony, documentary evidence, arguments of counsel, and stipulations of facts and rule violations, the Court found that the bar proved the following facts and rule violations by clear and convincing evidence:

1. In the fall of 2002, Respondent represented Cyberian Enterprises Limited ("Cyberian"), a Hong Kong company, in its efforts to purchase several million shares of stock in BrandAid Marketing Corporation ("BrandAid"), a Delaware corporation, through a Subscription Agreement. In conjunction with this representation, Respondent agreed to hold BrandAid shares in escrow until he received the purchase price from Cyberian.
2. Respondent subsequently made numerous representations to BrandAid that funds from Cyberian were imminently forthcoming.
3. In the spring of 2003, Cyberian disclosed to BrandAid that it did not have the funds to purchase BrandAid's shares and proposed that BrandAid merge with a Cyberian-

related company and accept Chinese real estate for its stock (“the Artz Proposal”).

BrandAid did not act on the offer.

4. Respondent subsequently orchestrated a cashless takeover attempt of BrandAid. In May 2003, Respondent solicited proxies of BrandAid shareholders in violation of federal securities law and subsequently purported to vote those shares to replace BrandAid’s management with Cyberian affiliates and approve Cyberian’s proposal. Pursuant to this purported approval of the proposal, Respondent then transferred the escrowed BrandAid shares to Cyberian.

5. Respondent breached his fiduciary duties in connection with the escrow as follows:

- On May 23, 2003 and again on May 29, 2003, Respondent purported to serve a written consent on behalf of BrandAid shareholders in favor of extraordinary corporate events (replacing the BrandAid management and approving the Artz Proposal). At this time, the Subscription Agreement was in force, Cyberian had not paid for the BrandAid shares, and Respondent was supposed to be holding the shares in escrow until paid for. Respondent purported to have authority to serve the written consent by virtue of holding proxies for a majority of BrandAid shareholders. However, Respondent did not comply with federal securities laws in obtaining or exercising the proxy votes.
- On or about May 30, 2003, Respondent delivered the shares of BrandAid to Cyberian without having first received payment pursuant to the Subscription Agreement and the Addendum to the Subscription Agreement.

In so doing, Respondent committed deliberately wrongful acts that reflect adversely on his fitness to practice law in violation of Rule 8.4(b) of the Rules of Professional Conduct.

6. In both soliciting and exercising the proxies from BrandAid shareholders, Respondent violated federal securities laws as follows:

- Respondent solicited proxies from BrandAid shareholders without concurrently providing them with a proxy statement and without concurrently filing a proxy statement with the SEC.
- Respondent filed the proxy statement with the SEC after he had voted the proxy shares by written consent.
- On May 23, 2003, Respondent voted or attempted to vote the proxy shares by written consent without first disclosing to the SEC or the public his intent to replace BrandAid's directors and officers, merge BrandAid with another company, and accept the Artz Proposal, all of which constitute extraordinary corporate events.
- The proxy statement filed by Respondent failed to disclose that Respondent had reason to believe that his stockbroker clients, who had assisted him with the proxy solicitation, and their clients may have stood to earn a significant finder's fee if the sale of BrandAid stock to Cyberian was consummated.
- Respondent did not file the Schedule 13D with the SEC until June 13, 2003, more than 10 days after May 23, 2003, the day he claimed to hold a beneficial ownership of BrandAid and the day he voted or attempted to vote the proxy shares by written consent. This delay in filing is material because in the interim, Respondent voted or attempted to vote the shares to effect extraordinary corporate changes.

In so doing, Respondent demonstrated a lack of competence to represent his client in the area of corporate and securities law and a lack of competence to represent BrandAid shareholders as a lawyer who solicited and exercised their proxy votes in violation of Rule 1.1 of the Rules of Professional Conduct.

7. Respondent assisted Cyberian in conduct he should have known was criminal or fraudulent as follows:

- Respondent made repeated assurances to BrandAid that he soon would receive funds from Cyberian to pay for the BrandAid stock under the terms of the Subscription Agreement, when in fact he should have known that Cyberian would not be transmitting any funds.
- By breaching his fiduciary duties in connection with the escrowed BrandAid shares and by violating federal securities laws in connection

with soliciting and exercising BrandAid proxy votes, Respondent assisted Cyberian in a cashless takeover of BrandAid.

In so doing, Respondent assisted a client in conduct that he should have known was criminal or fraudulent in violation of Rule 1.2(c) of the Rules of Professional Conduct.

8. Respondent's testimony before the United States District Court for the Southern District of New York contained misrepresentations as follows:

- Respondent testified that he "had no clue" what "assets were going to be tendered" by Cyberian to pay for the shares of BrandAid, and that it was not until May 27, 2003 that he learned Cyberian was paying for the BrandAid shares with Chinese real estate instead of cash.

In so testifying, Respondent committed a deliberately wrongful act that reflects adversely on his fitness to practice law in violation of Rule 8.4(b) of the Rules of Professional Conduct.

## II. SANCTION

The Court received evidence of mitigation and heard arguments of counsel regarding the appropriate sanction. The Court then deliberated and announced the sanction as a suspension of Respondent's license to practice law of one year and one day, the suspension to begin on January 1, 2009.

Accordingly, it is ORDERED that the law license of the respondent, Steven Scott Biss, be SUSPENDED for one year and one day effective January 1, 2009.

It is FURTHER ORDERED that Respondent shall comply with the requirements of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, of the Suspension of 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. Respondent shall also make appropriate arrangements for the disposition of matters in Respondent's care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Suspension. Respondent shall also furnish proof to the bar within 60 days of the effective date of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters. If Respondent is not handling any client matters on the effective date of the Suspension, 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 Respondent makes a timely request for hearing before a three-judge Circuit Court.

It is FURTHER ORDERED that the Clerk of the Disciplinary System shall comply with all requirements of Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court, as amended (the "Rules"), including but not limited to assessing costs pursuant to Paragraph 13(B)(8)(c) of the Rules and complying with the public notice requirements of Paragraph 13(B)(8)(d) of the Rules.

It is FURTHER ORDERED that the Clerk of the Circuit Court shall serve a copy teste of this Memorandum Order on the Respondent, at 36 Bear Alley, Suite 400, Petersburg, Virginia 23803, his last address of record with the Virginia State Bar, and shall mail a copy to counsel of record.

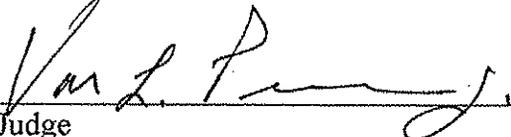
The Court HEREBY DISMISSES all other disciplinary rule violations charged but not found.

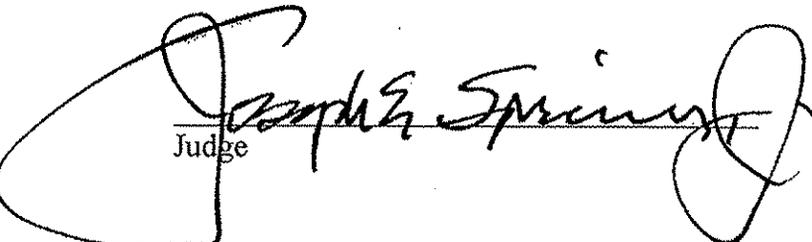
The Court notes that this Memorandum Order relates only to the misconduct charges brought against Respondent by the Virginia State Bar. The Court's decision and findings are not meant to resolve any issues in any other civil, criminal, or other matters.

ENTERED:

This 26<sup>th</sup> day of November 2008.

  
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Chief Judge Designate

  
\_\_\_\_\_  
Judge

  
\_\_\_\_\_  
Judge