

VIRGINIA :

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

**VIRGINIA STATE BAR, *EX REL.*
FIFTH DISTRICT COMMITTEE--SECTION II,**

Complainant,

CASE NO.: 2008-4206

v.

CHANDRA MAHINDA BOGOLLAGAMA, ESQUIRE,

Respondent.

[Regarding:

**VS B Docket Nos. 04-052-1880
 04-052-3239
 05-052-2717
 06-052-0044
 07-052-0319
 07-052-1157]**

MEMORANDUM ORDER

ON THE 11th day of June, 2008, this matter came before the Three-Judge Court designated on the 7th day of May, 2008, by Order 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 Paul F. Sheridan, Retired Judge of the Seventeenth Judicial Circuit, the Honorable Alfred D. Swersky, Retired Judge of the Eighteenth Judicial Circuit, and the Honorable Cleo E. Powell, Judge of the Twelfth Judicial Circuit and Chief Judge of the Three-Judge Court.

Seth M. Guggenheim, Senior Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, Chandra Mahinda Bogollagama did not appear, either personally, or by counsel.

WHEREUPON, Bar Counsel brought to the Court's attention a document, styled as a pleading, which had been delivered on behalf of the Respondent to Bar Counsel on June 10, 2008, entitled "Respondent's Emergency Request for Waiver of Appearance on Order to Show Cause on Wednesday, 11th Day of June, 2008 and Clarification of Points in Order to Show Cause." The Court reviewed the said document, a copy of which was subsequently admitted into evidence at the hearing as "VSB Exhibit 28," and granted the Respondent's request contained therein that his appearance at the hearing be waived.

THEREAFTER, the 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 Rules of Court, Part Six, Section IV, Paragraph 13;

FOLLOWING presentation of the Bar's evidence, which included the testimony of five witnesses and twenty-eight documentary exhibits, which were received by the Court on motion of the Bar, without objection, the Three-Judge Court retired to deliberate, and thereafter returned and announced that it had found, by clear and convincing evidence, the following:

1. At all times relevant hereto, Chandra Mahinda Bogollagama, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia, with his law office being maintained in Virginia.

VSB Docket Number 04-052-3239

2. In 2001, the Respondent placed an advertisement in a Sri Lankan newspaper, offering his services to persons interested in obtaining legal residence in the United States. In March of 2001, Roshan Salihue, the sister of the Complainant in the instant case, Fathima Z.

Siddeek, responded to the advertisement. The Respondent sent Ms. Salihue information about obtaining an H1B visa for a teaching position in a Montessori school, obtaining permanent residence in the United States, and a breakdown of his legal fees. Ms. Salihue sent the Respondent \$3,000.00 in advanced fees to initiate the process. She received a document entitled "Invoice" from the Respondent which consisted of a receipt for the \$3,000.00 as partial payment of the total \$10,000.00 in fees that the Respondent was charging Ms. Salihue to obtain permanent residence.

3. In August of 2002, the Respondent traveled to Sri Lanka, met with Ms. Salihue, and had her sign a form entitled "Part B. Statement of Qualifications of Alien," which would be part of her labor authorization petition. Ms. Salihue remained in Sri Lanka. She did not hear again from the Respondent regarding the status of her petition, and she never received proof from him that he had filed any paperwork to initiate any part of the process that would lead to her permanent legal residence in the United States.

4. The Complainant, Ms. Siddeek, attempted to keep in touch with the Respondent on her sister's behalf. The Respondent repeatedly told Ms. Siddeek that the labor authorization process was taking longer than he expected. The Respondent eventually began refusing to answer or return Ms. Siddeek's calls. By letter dated February 20, 2004, Ms. Salihue requested that the Respondent provide proof that he had indeed filed the documents necessary to begin the process of obtaining her legal residence. By letter dated February 25, 2004, Ms. Siddeek requested a refund of her sister's \$3,000.00 in advanced fees. Though the Respondent orally agreed to repay the whole fee, he sent Ms. Salihue a refund of only \$500.00.

5. During an interview with Virginia State Bar Investigator James W. Henderson in

March of 2006 regarding this complaint and others, the Respondent admitted that he had never established an attorney's trust account for his law practice, and that during all of his years of practice in Virginia, beginning 1990, he had only had an operating account.

VSB Docket No. 04-052-1880

6. In June of 2003, the Complainant, Diana Silva, hired the Respondent on behalf of her employer, the Montessori Children's Center ("the Center"), to assist her and the Center in applying for an H1B visa for herself. She signed a fee agreement with the Respondent, agreeing to pay the Respondent \$3,000.00 in advanced fees and an additional \$1,000.00 upon receipt of her H1 visa. The Respondent informed Ms. Silva that he required these fees to file a "fast track" petition on her behalf, or, in other words, to file a petition that would move through the immigration system as rapidly as possible. Their fee agreement stated that the Respondent would file Ms. Silva's petition within one week of receipt of the advanced fees.

7. On June 27, 2003, the Respondent negotiated Ms. Silva's check for advanced fees in the amount \$3,000.00. However, he did not file Ms. Silva's petition with the Bureau of Citizenship and Immigration Services ("BCIS") until October 9, 2003, nearly four months after Ms. Silva paid the Respondent's "fast track" fee. This date also happened to be the date that Ms. Silva's previous visa expired. Ms. Silva learned from BCIS that her petition had not been a "fast track" petition and the fee for filing the application had been only \$130.00.

8. In mid-December of 2003, after learning that her petition had been approved, Ms. Silva asked the Respondent to mail her new visa to her. The Respondent, however, informed her that even though her petition had been approved and her visa extended through September of 2006, he could not send her the new visa until she paid him the additional \$1,000.00 for her "fast

track” petition.

9. The Virginia State Bar received Ms. Silva’s complaint on January 5, 2004. The original complaint letter was actually addressed to the Respondent and dated December 21, 2003. By letter to Ms. Silva dated January 2, 2004, the Respondent “waived” his additional \$1,000.00 fee and informed Ms. Silva that she had paid his fee in full. Also under this cover letter, he sent Ms. Silva’s new visa.

10. The Respondent did not deposit the advanced fees that Ms. Silva paid him in a trust account because he had never established one for his law practice.

VSB Docket Number 05-052-2717

11. In September of 2004, the Complainants, Kanthi and Vilson Ranatunga, hired the Respondent to file “fast track” petitions for H1B and H4 visas for them and Mrs. Ranatunga’s employer sponsor, Mr. Jumbo Fernando, the owner of a Montessori school in Oregon. They paid the Respondent \$4,205.00 in advanced fees.

12. The Respondent informed the Complainants that that he would file their petitions by mid-October, 2004. He failed to do so, thus allowing BCIS’s quota for H1B visas to be filled and missing the opportunity to file petitions on the behalf of the Ranatungas. Because the Respondent would not return their phone calls, the Ranatungas contacted Mrs. Ranatunga’s sponsor, Mr. Fernando, who informed them of the Respondent’s failure to file the petitions on their behalf before the quota cut-off. Mr. Fernando also informed the Ranatungas that the Respondent claimed that he would be filing petitions for short-term H2 visas in December, 2004. The Respondent also failed to file these petitions. He could not file for H1B visas again until April 1, 2005. The Ranatungas’ previous visas expired on January 14, 2005 and because the

Respondent had failed to file their petitions for new visas, the Ranatungas would have to return to their country of origin, Sri Lanka.

13. In early January of 2005, the Ranatungas hired new counsel, Matthew W. McClellan, Esquire. By letter dated January 6, 2005, Mr. McClellan informed the Respondent that he had been hired by the Ranatungas and that the Respondent should perform no more work on their behalf. He also demanded a refund of the Ranatungas' \$4,205.00 in advanced fees. In July of 2005, the Respondent refunded the Ranatungas \$2,155.00.

14. The Respondent did not deposit the advanced fees that Ranatungas paid him in a trust account because he had never established one for his law practice.

VSB Docket Number 06-052-0044

15. In January of 2001, the Complainant, Rohini S. Ganegoda, met with the Respondent in Sri Lanka regarding the possibility of the Respondent helping her apply for a work visa and permanent residence in the United States. Ms. Ganegoda paid the Respondent \$4,000.00 in advanced fees, half of the \$8,000.00 in total fee that the Respondent would charge Ms. Ganegoda to obtain permanent residence for her.

16. The Respondent never filed any documents on Ms. Ganegoda's behalf to initiate the her immigration case. He never responded to Ms. Ganegoda's numerous attempts to communicate with him from Sri Lanka to learn the status of her case. In 2002, Ms. Ganegoda moved to the United States, found a employment sponsor and hired another attorney to represent her in her immigration matters. By letter dated September 29, 2003, she informed the Respondent of these facts and that she no longer needed his services. She also demanded a refund of her advanced fee of \$4,000.00. By electronic mail dated December 2, 2003, Ms.

Ganegoda again asked the Respondent to refund her fee. He responded by electronic mail on February 16, 2004, stating that he would "make a payment by the end of the month" but did not state the amount of the payment. He never made said payment. By letter dated February 24, 2005, Ms. Ganegoda again demanded a refund of her advanced fee of \$4,000.00. The Respondent called Ms. Ganegoda on March 9, 2005. Since Ms. Ganegoda was not in at the time, he left a message stating that he would call her again in two weeks "regarding the money." He did not call again.

17. Ms. Ganegoda filed her complaint with the Bar on June 22, 2005. In early July, she received a check from the Respondent, dated May 30, 2005, in the amount of \$500.00. By letter dated August 5, 2005, the Respondent informed Bar Counsel that he and Ms. Ganegoda had reached "settlement terms and conditions" regarding his reimbursement of Ms. Ganegoda's advanced legal fee. They had, in fact, never reached any such "settlement terms and conditions." By letter dated October 27, 2005, Ms. Ganegoda informed the Bar that the Respondent eventually told Ms. Ganegoda that he would make payments to her on the first of every month in the amount of \$500.00 until he had reimbursed her entire fee of \$4,000.00. As of the date of her letter, he had made only two payments, the initial one which she had received in July and a second one which she had received in September. As of March 9, 2006, the date of Ms. Ganegoda's interview with Virginia State Bar Investigator James W. Henderson, the Respondent had made no more payments.

18. The Respondent did not deposit the advanced fee that Ms. Ganegoda paid him in a trust account because he had never established one for his law practice.

VS B Docket Number 07-052-0319

19. In April of 2002, the Complainant, Chandrasekera Basnayaka, hired the Respondent on behalf of his brother-in-law, Tissa Jayasekera, who was living in Sri Lanka, to assist Mr. Jayasekera in applying for a work visa in the United States. Mr. Basnayaka paid the Respondent an advanced fee of \$3,000.00 on behalf of Mr. Jayasekera.

20. The Respondent never provided any proof to Mr. Basnayaka or Mr. Jayasekera that he had filed a petition for a work visa on Mr. Jayasekera's behalf. Mr. Jayasekera also never received an actual work visa in his name. By letter dated May 11, 2006, Morifa N. Bailey, Esquire, informed the Respondent that she represented Mr. Basnayaka in Mr. Basnayaka's demand for a refund from the Respondent of the advanced fee of \$3,000.00 that Mr. Basnayaka paid the Respondent in April of 2002.

21. By letter dated May 22, 2006, the Respondent replied to Ms. Bailey, demanding "proof of the amount and date of payment," both of which Mr. Basnayaka and Ms. Bailey provided. The Respondent replied by letter dated June 2, 2006, claiming that he had been in touch with Mr. Jayasekera in Sri Lanka, rendered the appropriate services to him for the \$2,000.00 paid by Mr. Basnayaka, and that any unearned portion of the fee would be returned directly to Mr. Jayasekera. The Respondent also claimed that the additional \$1,000.00 paid to him in April of 2002 by Mr. Basnayaka was not paid on behalf of Mr. Jayasekera but for services the Respondent rendered to Mr. Basnayaka in handling Mr. Basnayaka's own immigration case, and that no refund was owed to Mr. Basnayaka.

22. In his rebuttal to the Respondent's response to his complaint, dated September 14, 2006, Mr. Basnayaka confirmed that he had learned from Mr. Jayasekera that the Respondent had

returned \$1,500.00 of the \$3,000.00 fee to Mr. Jayasekera. Mr. Basnayka also explained that his own work visa had been paid for in full by his employer and sponsor. He had originally hired the Respondent but later fired him and hired another attorney who obtained the visa for him.

23. During his interview with Virginia State Bar Investigator James W. Henderson on September 24, 2007, the Respondent admitted that he did not have lawyer's trust account for his law practice when Mr. Basnayka paid him the \$3,000.00 fee on behalf of Mr. Jayasekera.

VSJ Docket Number 07-052-1157

24. In 2004, the Complainant, Shanika Tennakoon, hired the Respondent to file on her behalf a petition for a work visa through employment with a Montessori school in Virginia. The Respondent demanded \$5,000.00 in advanced fees for his services. Ms. Tennakoon paid the Respondent 250,000 Sri Lankan rupees or the equivalent of \$2,500.00, with the understanding that she would pay the remainder of the fee when she had the visa.

25. The Respondent never responded to Ms. Tennakoon's phone calls or electronic mail requests for updates on her case. In 2005, she found another employment sponsor and moved to the United States. She continued to attempt to contact the Respondent to request a refund of her advanced fee of \$2,500.00. In June of 2006, he promised to reimburse her but she never heard from him again.

26. The Respondent did not have a lawyer's trust account for his law practice when Ms. Tennakoon paid him her advanced fee of \$2,500.00.

THE THREE-JUDGE COURT thereupon stated its finding that the Virginia State Bar had proven, by clear and convincing evidence, that the Respondent had violated 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.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.
- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
 - (1) In the case of funds held in an escrow account subject to this Rule, the

required books and records include:

- (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
- (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;
- (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
- (iv) reconciliations and supporting records required under this Rule;
- (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

RULE 8.1 Bar Admission And Disciplinary Matters (as to Virginia State Bar Docket Number 06-052-0044 only)

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, 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[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation[.]

Eff. Mar. 25, 2003

It is professional misconduct for a lawyer to:

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

THEREAFTER, the Bar presented 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 deliberated, and announced the decision that Respondent's license to practice law in the Commonwealth of Virginia should be revoked, effective the 11th day of June, 2008.

AT THE CONCLUSION of the proceedings on the 11th day of June, 2008, the Three-Judge Court entered a Summary Order revoking the Respondent's license to practice law in the Commonwealth of Virginia, effective that date, and, *inter alia*, directing him to comply with all of the requirements contained in Part Six, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia; accordingly, it is, therefore

ORDERED, that Respondent's license to practice law in the Commonwealth of Virginia be, and the same hereby is, REVOKED, effective the 11th day of June, 2008; and it is further

ORDERED, that the terms and provisions of the aforesaid Summary Order directing the

Respondent to comply with the requirements contained in Part Six, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia, be, and the same hereby are, continued in full force and effect; and it is further

ORDERED, that pursuant to Part Six, Section IV, Paragraph 13.B.8.c. 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 four (4) copies of this Order be certified by the Clerk of the Circuit Court of Fairfax County, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Court dispenses with any requirement that this Order be endorsed by or on behalf of the Respondent.

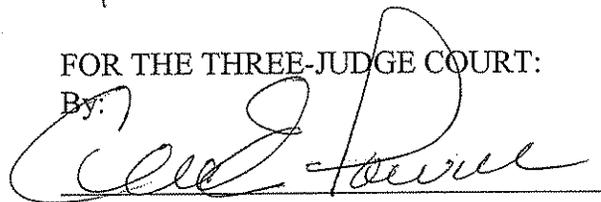
THIS ORDER IS EFFECTIVE *NUNC PRO TUNC* JUNE 11, 2008.

AND THIS ORDER IS FINAL.

Entered this 26th day of June, 2008.

FOR THE THREE-JUDGE COURT:

By:



CLEO E. POWELL

Circuit Judge and

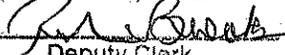
Chief Judge of the Three-Judge Court

I ASK FOR THIS:



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A COPY TESTE:
JOHN T. FREY, CLERK

BY: 
Deputy Clerk

Date: 7-2-07

Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia