

VIRGINIA:

MAY 20 2015

BEFORE THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

IN THE MATTER OF
GARY MICHAEL BOWMAN

CASE NO. CL-15002307
VSB DOCKET NO. 12-080-092249

AGREED DISPOSITION MEMORANDUM ORDER

This matter came to be heard on May 11, 2015, before a Three-Judge Circuit Court, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia. The panel consisted of the Honorable Colin R. Gibb, Judge of the Twenty-seventh Judicial Circuit, Designated Chief Judge, the Honorable Ann Hunter Simpson, Retired Judge of the Fifteenth Judicial Circuit, and the Honorable Charles J. Strauss, Retired Judge of the Twenty-second Judicial Circuit. Gary Michael Bowman appeared pro-se. The Virginia State Bar appeared through its Assistant Bar Counsel, Paulo E. Franco, Jr. The Chief Judge polled the members of the court as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each judge responded in the negative. Court Reporter, Jennifer L. Hairfield, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, and Respondent's Disciplinary Record,

It is ORDERED that the Circuit Court accepts the Agreed Disposition and the Respondent shall receive a Public Admonition, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further ORDERED that the sanction is effective May 11, 2015.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9 E. of the Rules.

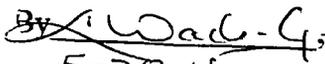
A copy teste of this Order shall be mailed, certified mail, return receipt requested, to the Respondent, Gary Michael Bowman, at his last address of record with the Virginia State Bar, 3580 Wright Road, Roanoke, VA 24015 to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-3565, and to Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219.-3565.

ENTERED THIS 15th DAY OF MAY, 2015

CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

A Copy Teste.
Edward Semonian, Clerk


Colin R. Gibb, Chief Judge
Three-Judge Circuit Court

By 
5-28-15

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
2015 MAY 26 P 2:59
EDWARD SEMONIAN, CLERK
BY DEPUTY CLERK

RECEIVED

JUN 5 2015

VSB CLERK'S OFFICE

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

**EIGHTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
VSB Docket No. 12-080-092249**

Petitioner

v.

Case No.

GARY MICHAEL BOWMAN

Respondent

AGREED DISPOSTION

Pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, by Paulo E. Franco, Jr., Assistant Bar Counsel and Gary Michael Bowman, Respondent, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.
2. On March 9, 2011 Providence Hall Associates filed a voluntary petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code. The petition and supporting schedules were prepared by counsel other than Respondent.
3. Schedule A listed the following property: "Food Lion, free standing building w/5-20 year lease remaining; held by Dickson, LLC; Location: 303 Henslee Drive, Dickson, TN 37055."

4. The Food Lion shopping center was at all times relevant subject to a lien in favor of Wells Fargo Bank.

5. On May 26, 2011 Dickson Properties, LLC ("Dickson"), with its principal office in Leesburg, Virginia, but owning property only in Dickson, Tennessee, executed a Quitclaim Deed, without court approval, purporting to transfer the Food Lion shopping to Providence Hall for no consideration. Respondent was not involved in the transaction; counsel for Providence Hall Associates and Dickson were represented by counsel other than the Respondent at that time.

6. On August 5, 2011 the Bankruptcy Court ordered Providence Hall Associates, which became owner of the Food Lion store pursuant to the purported transfer from Dickson for no consideration, to collect and use the rents from the Dickson Property to make adequate protection payments to Wells Fargo.

7. On October 14, 2011, Respondent filed an application to be employed as counsel for the Debtor in Possession in the Providence Hall Associates bankruptcy case under 11 U.S.C. § 327.

8. On October 31, 2011, the Court entered an order directing the appointment of a Chapter 11 Trustee because insiders of Providence Hall Associates mismanaged the company's property. Respondent was not involved in the mismanagement; Providence Hall Associates and Dickson were represented by counsel other than the Respondent during the time of the mismanagement.

9. On November 23, 2011, the Court entered an order denying Respondent's application for employment as counsel for the Debtor in Possession, to be paid from the bankruptcy estate, on the grounds that a trustee had been appointed and that the Debtor

in Possession was not entitled to employ counsel under 11 U.S.C. § 327 after the appointment of a trustee.

10. Providence Hall Associates and Dickson were both owned by entities that were solely owned by Victor Guerrero. Dickson was a subsidiary of Providence Hall Associates.

11. On December 1, 2011, Respondent filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code on behalf of Dickson Properties as counsel for the debtor.

12. In its schedules, Dickson Properties listed a \$950,000.00 preference claim against Providence Hall arising out of the Quit Claim Deed transferring ownership of the Food Lion Shopping Center from Dickson to Providence Hall Associates. Dickson did not assert the alleged preference claim by an Adversary Proceeding or seek to stop the adequate protection payments made by Food Lion to Wells Fargo.

13. On December 27, 2011, Wells Fargo and the Providence Hall Associates Chapter 11 Trustee filed separate motion to appoint a Chapter 11 Trustee in the Dickson Hall Bankruptcy.

14. On January 10, 2012, Respondent filed a Motion to Dismiss the Dickson Properties Bankruptcy Case.

15. On January 20, 2012, Respondent withdrew the Motion to Dismiss the Dickson bankruptcy case because the Providence Hall Associates Chapter 11 Trustee claimed exclusive control of Dickson. Respondent then filed a Motion to Dismiss on behalf of Susan Ford, who was the manager, and a creditor of, both Dickson and Providence Hall Associates.

16. On January 26, 2012 the Court entered an order denying Ms. Ford's Motion to Dismiss, denied the Chapter 11 Trustee's and Wells Fargo's Motion to Appoint Chapter 11 Trustee and named the Providence Hall Associates Trustee as Dickson's designated representative.

17. On January 31, 2012, Respondent filed a valuation motion to determine the value of real property on behalf of Providence Hall Associates in the Providence Hall Associates Bankruptcy Case.

18. On February 3, 2012, the Court denied the valuation motion that Respondent filed on behalf of Providence Hall Associates and ruled that Providence Hall Associates did not have standing in its own bankruptcy case to bring the valuation motion and that Providence Hall Associates was not entitled to counsel.

19. The Bar contends that the above referenced conduct constitutes a conflict of interest that could not be waived.

20. The Respondent contends that there was no conflict of interest because he was not counsel for Providence Hall Associates when he filed the Dickson bankruptcy petition, and the interests he represented (of Providence Hall Associates as debtor, Victor Guerrero as owner of both companies, and Susan Ford as manager and creditor of both companies) were aligned because they all desired that Providence Hall Associates and Dickson be reorganized and remain in operation as a going concern, as opposed to the Chapter 11 Trustee who intended to liquidate the companies' property. Respondent further contends that if there was a conflict of interest, it was waivable and was waived by Providence Hall Associates, Dickson, Guerrero, and Ford, and that he would present evidence of this if an Agreed Disposition is not entered.

21. The issue in this matter is the unique legal issue of whether the conflict of interest was waivable under these circumstances. Neither counsel for the Bar nor the Respondent is aware of any controlling case law that bears on this question. The Respondent recognizes that, if the court rules that the conflict was not waivable, then the Bar has sufficient evidence to meet its burden of proving the Misconduct alleged as set forth in this Agreed Disposition by clear and convincing evidence if this case were to go to trial.

22. Respondent consents that he will not appeal the ruling and findings of this Court should it accept this proposed Agreed Disposition.

II. NATURE OF MISCONDUCT

RULE 1.7 Conflict of Interest: General Rule

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

the representation of one client will be directly adverse to another client;

or

there is significant risk that the representation of one or more clients will be materially limited by the lawyers' responsibilities to another client, a former client or a third person by a personal interest of the lawyer.

RULE 1.9 Conflict of Interest: Former Client

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation.

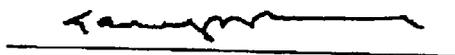
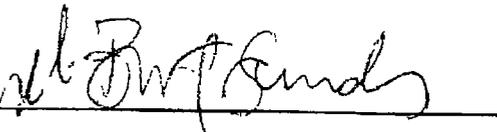
III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Three Judge Panel for its approval the agreed disposition of Public Admonition as representing an appropriate disposition if this matter were to be heard through an evidentiary hearing by a three judge panel after a full and complete hearing on the merits of the case.

VIRGINIA STATE BAR

GARY M. BOWMAN

By



for Paulo E. Franco, Jr.
Assistant Bar Counsel
Virginia State Bar
1111 East Main St., Ste. 700
Richmond, VA 23219-3565
(804) 775-9404
(804) 775-0597 (f)
franco@vsb.org

The Law Office of Gary M. Bowman
Colonial Hills Office Building
2728 Colonial Hills Ave., Ste. 100
Roanoke, VA 24015
(540) 343-1173
(54) 343-1157 (f)
gary@garymbowman.com