

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ROCCO JOSEPH DeLEONARDIS, JR.

VSB DOCKET NOS.: 13-000-093170
13-052-093159

ORDER OF SUSPENSION

THIS MATTER came on to be heard on February 19, 2016, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Whitney G. Saunders, Chair, Richard J. Colten, Jeffrey L. Marks, Melissa W. Robinson, and Stephen A. Wannall, Lay Member. The Virginia State Bar (“Bar” or “VSB”) was represented by Elizabeth K. Shoenfeld, Assistant Bar Counsel. The Respondent, Rocco Joseph DeLeonardis, Jr., appeared in person and represented himself at the hearing. Jennifer L. Hairfield, court reporter, of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone 804/730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

The matter came before the Board on the Bar’s Request for RESA Hearing (“RESA Hearing Request”) and Order directing Respondent to appear entered December 22, 2015, by the Virginia State Bar Disciplinary Board pursuant to Virginia Administrative Code Regulation 15 VAC 5-80-50(D)(3); and on the Amended Subcommittee Determination (Certification) by the Fifth District - Section II Subcommittee of the Virginia State Bar (“Certification”), filed in the Clerk’s Office on November 5, 2015.

All required legal notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-18 of the Rules of Court.

I. FINDINGS OF FACT

VSB Exhibits 1-39 were admitted into evidence without objection. The Respondent offered no exhibits and called only himself as a witness. The Bar called Steve Shipman, previously an investigator with the State Corporation Commission, Bureau of Insurance, and Ronald H. McCall, investigator with the VSB.

The Board makes the following findings of fact pertinent to both RESA violations and professional misconduct on the basis of clear and convincing evidence:

1. Respondent, Rocco Joseph DeLeonardis, Jr. ("DeLeonardis"), was licensed to practice law in the Commonwealth of Virginia on or about 05/09/1996.

2. DeLeonardis was a principal in, and the designated licensed agent for, Land Title, LLC ("Land Title"), Land Title Group, LLC ("LTG"), Land Title Settlements, LLC ("LTS"), Land Title America, LLC ("LTA"), and Land Title Maryland, LLC ("LTM") (collectively, the "Land Title Entities").

3. DeLeonardis and the Land Title Entities were licensed by the Virginia State Corporation Commission ("SCC") to transact the business of insurance in the Commonwealth of Virginia. They were in the business of selling title insurance and conducting escrow, closing, or settlements on transactions involving the purchase of or lending on the security of real estate located in Virginia, Maryland, and the District of Columbia.

4. As the designated licensed agent for the Land Title Entities, DeLeonardis was responsible for their compliance with all the rules, regulations and laws governing insurance in Virginia, including, but not limited to, acting as a fiduciary over all funds held in escrow and maintaining all files associated with transactions involving the purchase of or lending on real property security located in Virginia.

5. In 2007, all of the Land Title Entities ceased operating. At the time they closed, literally hundreds of thousands of dollars remained in the escrow accounts of the Land Title Entities. For some time after the closures, DeLeonardis paid a bookkeeper to work on disbursing funds to the appropriate parties. Ultimately, however, in 2009, DeLeonardis stopped paying the bookkeeper, and she stopped working on this process.

6. On or about January 5, 2010, DeLeonardis entered into an Assignment of Interest, Indemnity Agreement and Declaration of Trust (the "Transfer Agreement") with International Legal Consulting, LLC ("ILC"), pursuant to which ILC was to take

over the handling of all of the funds remaining in the escrow accounts for the various Land Title Entities at that time. Further pursuant to the Transfer Agreement, DeLeonardis essentially transferred any right, title and interest he had in the Land Title Entities and the funds held in escrow by them, and disclaimed further responsibility therefor. Robert Hirsch, a.k.a. Reuven Hesse, a.k.a. Reuven Ben-Zvi (“Hirsch”), stating that he was a “principal” of ILC, executed the Transfer Agreement on behalf of ILC.

7. Pursuant to the Transfer Agreement, on or about February 16, 2010, DeLeonardis transferred a total of \$394,835.32 in escrowed funds held by the Land Title Entities to a bank account in the name of ILC. Thereafter, DeLeonardis remained the registered agent for ILC, but denies that he had any involvement in its ongoing operations.

8. From March 19, 2010 through April 16, 2010, ILC transferred a total of \$234,000 to a bank account in Puerto Rico in the name of RBZ International Legal & Security Consulting Corporation (“RBZ”). These funds were then spent, including by paying substantial sums to Hirsch’s wife, making checks out to “Cash,” and paying Hirsch.

9. The remaining funds held in the ILC account were also dissipated. Thousands of dollars were paid to Hirsch’s wife. Funds were spent on what appear to be personal expenses, with payees such as “Rite Aid” and “Wal-Mart” and an “Ikea” in Brooklyn, New York. There were also extensive travel costs paid out of the account, including travel through New York and Puerto Rico. Ultimately, ILC’s bank account was closed on April 27, 2010, with a zero balance.

10. After transferring the escrow funds to ILC, DeLeonardis made no effort to remain informed regarding the status of the funds, made no effort to ensure proper handling of the funds, and claims to have had no involvement with the operations of ILC or RBZ.

11. In or about February 2012, the SCC initiated a Rule to Show Cause against DeLeonardis and the Land Title Entities based upon allegations of failure to comply with the Consumer Real Estate Settlement Protection Act (CRESPA), Va. Code Section 6.1-2.30 *et seq.*, and/or Real Estate Settlement Agents (RESA), Va. Code Section 55-525.16 *et seq.*, and the Virginia regulations promulgated thereunder, 14 VAC 5-395-10, *et seq.*, and 15 VAC 5-80-10, *et seq.*

12. DeLeonardis and the Land Title Entities ultimately settled the SCC matter in approximately September 2012. In connection with that settlement, they made certain factual and legal stipulations, including the facts set forth in paragraphs 2 through 4, above, and as follows:

- a. DeLeonardis and the Land Title Entities, on more than one occasion, violated Virginia Code Section 55-525.24 by failing to distribute funds deposited in connection with an escrow, settlement or closing in a fiduciary capacity.
- b. DeLeonardis and the Land Title Entities also violated Virginia Code Section 55-525.27, as well as 14 VAC 5-395-70, by failing to retain records pertaining to each settlement handled for a minimum of five (5) years after the settlement was completed and by failing to make all escrow, closing or settlement records available promptly upon request for examination by the SCC's Bureau of Insurance (the "Bureau").
- c. DeLeonardis delegated his responsibility for compliance to others but failed to properly supervise these individuals in the distribution of client funds and the production of books and records to the Bureau that resulted in the stated violations.
- d. Despite repeated demands therefor by the SCC, DeLeonardis and the Land Title Entities ultimately failed to produce any books and records associated with the files having outstanding escrowed funds, and therefore, the SCC was not able to determine whether the funds held in escrow were properly disbursed. Nearly One Hundred Eighteen Thousand Dollars (\$118,000) in escrowed funds for Virginia individuals remained unaccounted for by DeLeonardis and the Land Title Entities.

II. RESA VIOLATIONS

The RESA Hearing Request alleged potential violations of the following sections of the Code of Virginia (1950), as amended, Real Estate Settlement Agents (RESA), formerly the Virginia Consumer Real Estate Settlement Protection Act (CRESPA), and applicable regulations of the Virginia Administrative Code (VAC) promulgated thereunder:

Va. Code Ann. § 55-525.24. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts [formerly Va. Code Ann § 6.1-2.23 (CRESPA)]

A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in the Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § 55-525.11, except:

1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813; and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing. An attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. All settlement statements for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter or supersede other sections of this chapter, or the laws of the Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

Va. Code Ann. § 55-525.27. Record retention requirements [formerly Va. Code Ann. § 6.1-2.24 (CRESPA)]

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

14 VAC 5-395-70 Access to Records.

Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent in the Commonwealth of Virginia shall make all escrow, closing, or settlement records available promptly upon request for examination by the bureau without notice during normal business hours.

15 VAC 5-80-50 Attorney Settlement Agent Compliance.

B. Separate Fiduciary Trust Account.

Each attorney settlement agent shall maintain one or more separate and distinct fiduciary trust account(s) used only for the purpose of handling funds received in connection with escrow, closing or settlement services. Funds received in connection with real estate transactions not covered by CRESPA [all references to CRESPA are now RESA throughout] may also be deposited in and disbursed from such account(s). All funds received by an attorney settlement agent in connection with escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and CRESPA. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer trust accounts, as well as in conformity with CRESPA. One separate fiduciary trust account may be maintained and used by all attorney settlement agents practicing in the same firm or legal entity.

III. PROFESSIONAL MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

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.

RULE 1.3 Diligence

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

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.15 Safekeeping Property

(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.

(2) In the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

(ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;

(iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

(5) Reconciliations.

(i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

(ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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 ... deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law....

IV. DISPOSITION

Upon review of the foregoing findings of fact, review of exhibits presented by Bar Counsel on behalf of the Bar, the Stipulations entered into between the Bar and the Respondent and filed in the Clerk's Office on February 3, 2016, and at the conclusion of the evidence

regarding violations and misconduct, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its findings as follows:

1. The Board determined by clear and convincing evidence that the Respondent was, in fact, a fiduciary as to the escrowed funds held by the Land Title Companies in which he was a principal, licensed agent, and supervising/managing individual. In that capacity, and as an attorney licensed to practice law in the Commonwealth, the Virginia Rules of Professional Conduct are applicable and controlling, regardless whether the Respondent was or was not engaged in an attorney-client relationship relative to the escrowed funds. (*See* Virginia Legal Ethics Opinion 1335 (04/20/90); American Bar Association Formal Opinion 336 (06/03/74).) The Land Title Entities ceased operations in 2007, and, for approximately two years thereafter, the Respondent assumed direct control over the escrowed funds, paying a bookkeeper under his supervision to work on disbursing the funds to appropriate parties. Further, in 2008, while the escrowed funds were still under the Respondent's control and supervision, he registered and qualified as an "attorney settlement agent" pursuant to 15 VAC 5-80-10, *et seq.* 15 VAC 5-80-50(B) provides in pertinent part:

... All funds received by an attorney settlement agent in connection with escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and CRESPA. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer trust accounts, as well as in conformity with CRESPA....

2. RESA Statutes and Applicable Regulations.

The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of the following RESA statutes and applicable Virginia Administrative Code regulations: Va. Code Ann. §§ 55-525.24 and 55-525.27; 14 VAC 5-395-70; 15 VAC 5-80-50(B).

4. Virginia Rules of Professional Misconduct.

A. The Board determined that the Bar failed to prove by clear and convincing evidence that the Respondent was in violation of the following Virginia Rules of Professional Misconduct: Rules 1.1; 1.3(a)-(b); 1.15(c)(3); 5.3(a); and 5.3(c)(2).

B. The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of the following Virginia Rules of Professional Misconduct: Rules 1:15(c)(4); 1:15(e)(1)-(2); 1:15(f)(5)-(6); 5.3(b); 5.3(c)(1); 8.4(a)-(b).

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and the Respondent, including Respondent's absence of a prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of violations and misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction as suspension of the Respondent's license to practice law in the Commonwealth of Virginia for a period of four years.

Accordingly, it is ORDERED that the license of Respondent, Rocco Joseph DeLeonardis, Jr., to practice law in the Commonwealth of Virginia shall be, and hereby is, SUSPENDED for a period of four years, effective February 19, 2016.

It is further ORDERED that the Respondent must comply with the requirements of Part 6, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective

date of February 19, 2016, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of February 19, 2016, 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 ¶ 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part 6, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to Respondent, Rocco Joseph DeLeonardis, Jr., at his address of record with the Virginia State Bar, being Virginia Law, PLC, 11480 Sunset Hills Road, Suite 120E, Reston, Virginia 20190, and by hand delivery to Elizabeth K. Shoenfeld, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219.

ENTERED this 7th day of March, 2016.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Whitney G. Saunders, Chair