

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
DAVID CHARLES DICKEY

VIRGINIA STATE BAR DOCKET NOS. 06-070-3222 and 07-000-1187 (CRESPA Violations)

**ORDER**

This matter came on September 18, 2008, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Seventh District Subcommittee and a Notice of Violations of the Virginia Consumer Real Estate Settlement Protection Act ("CRESPA") and Virginia State Bar Regulations promulgated thereunder. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Stephen A. Wannall, Lay Member, Russell W. Updike, Sandra L. Havrilak, Glenn M. Hodge, and Robert E. Eicher, Chair presiding.

Alfred L. Carr, Assistant Bar Counsel, representing the Virginia State Bar, and the Respondent, David Charles Dickey, *pro se*, presented an endorsed Agreed Disposition dated September 18, 2008, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Donna Chandler, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia, 23227, telephone (804) 730-1222.

Having considered the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Charles David Dickey, Esquire (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia since August 7, 1970.

**VIRGINIA STATE BAR DOCKET NO. 06-070-3222**

2. On March 14, 2006, the Virginia State Bar ("VSB") administratively suspended Respondent's license to practice law in the Commonwealth of Virginia because he did not comply with a subpoena duces tecum issued in VSB Docket No. 05-070-4823.

3. As a result of Respondent's interim administrative suspension, on March 17, 2006, the branch counsel for LandAmerica Lawyers Title Corporation notified Respondent that the Corporation terminated his status as an approved attorney to sell title insurance on its behalf because the VSB had suspended his law license. The letter also informed Respondent that he had to resubmit an application to the Corporation to become an approved attorney.

4. On March 31, 2006, LandAmerica Lawyers Title Corporation informed the VSB that on March 29, 2006, Respondent, while under the administrative suspension, had conducted a residential real estate settlement.

5. Respondent contends that on March 29, 2006, he did not perform the residential real estate settlement on behalf of his clients because he was not physically present. Respondent stated that his paralegal performed the settlement services.

6. VSB investigator A. E. Rhodenizer asked the Respondent whether he knew the VSB had suspended his license between March 14, 2006 and April 3, 2006, specifically, whether he knew it was suspended on March 29, 2006. Respondent acknowledged that he did know that his license was suspended on March 29, 2006.

7. Due to the suspension of Respondent's license to practice his paralegal was, likewise, not authorized to conduct residential real estate settlements as an agent of Respondent between March 14, 2006 and April 3, 2006. Respondent's paralegal is not independently registered under the Virginia Consumer Real Estate Protection Act ("CRESPA"); therefore, his paralegal is not authorized to perform residential real estate settlements without being an agent of Respondent's law firm.

8. On April 3, 2006, the VSB lifted the administrative suspension because Respondent complied with the subpoena duces tecum.

#### **VIRGINIA STATE BAR DOCKET NO. 07-000-1187 (CRESPA VIOLATIONS)**

9. The VSB suspended Respondent's license to practice law in the Commonwealth of Virginia on March 14, 2006 because he did not comply with a subpoena duces tecum issued in VSB Docket No. 05-070-4823.

10. As of the date of Respondent's law license suspension, he had been duly registered as a "Registered Real Estate Settlement Agent" under CRESPA, and had been registered since September 29, 1997.

11. Respondent's registration as a real estate settlement agent had been granted to him under CRESPA, and the Regulations promulgated thereunder, based on his status as an active member of the Virginia State Bar in good standing. Whereupon the suspension of his license on March 14, 2006, as aforesaid, his eligibility to continue in the capacity of a real estate settlement agent terminated.

12. Accordingly, on March 16, 2006, the Director of Membership of the Virginia State Bar sent a certified letter to the Respondent, which stated as follows:

**Your CRESPA certification has been terminated because of your change in status from active-in-good standing to active-not-in-good standing.**

**You are no longer eligible to perform residential real estate closings in the Commonwealth in the capacity of an attorney. Prior to performing escrow, closing, or settlement services again, you must register with the bar to obtain CRESPA certification.**

13. On March 17, 2006, at 11:10 a.m. in Stewartsville, VA 22973 the U.S. Postal Service delivered the March 16, 2006 letter from the VSB Director of Membership notifying Respondent that the VSB revoked his CRESPA certification.

14. On March 29, 2006, Respondent, by and through his paralegal, Grant Colby, did conduct a residential real estate settlement, wherein he represented the sellers, Galen and Pauline Morris, after receipt of the March 16, 2006 letter that revoked his status as an authorized settlement agent under CRESPA and the Regulations promulgated thereunder.

15. Respondent, however, states that due to illness he was not present at his law office on March 29, 2006 to conduct the settlement. Respondent states that his paralegal, Grant Colby performed the settlement for the Morris in his office as an agent of his law firm.

16. Grant Colby, Respondent's paralegal, was not an independently registered CRESPA agent, as otherwise required, at the time of the closing.

17. On April 3, 2006, the VSB lifted the administrative suspension because Respondent complied with the subpoena duces tecum.

The Board finds by clear and convincing evidence that Respondent's aforesaid conduct constitutes a violation of the following provisions of the Rules of Professional Conduct, the Virginia Consumer Real Estate Protection Act, and the Virginia State Bar Regulations adopted pursuant to CRESPA.

**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 1.4 Communication**

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

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**RULE 1.16 Declining Or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client[.]

(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 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 5.5 Unauthorized Practice Of Law**

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Respondent's aforesaid conduct violated the following provisions of CRESPA, and the following Virginia State Bar Regulations adopted pursuant to CRESPA:

Sections §§6.1-2.21A, 6.1-2.21C, 6.1-2.21D1 & D2, and 6.1-2.26A of the 1950 Code of Virginia, as amended.

Virginia State Bar Regulations promulgated under CRESPA, 15 VAC 5-80-30, 15 VAC 5-80-40 and 15 VAC 5-80-50 A & B.

Upon consideration whereof, it is **ORDERED** that:

1. The Respondent shall receive a thirteen (13) month suspension of his license to practice law in the Commonwealth of Virginia and of his CRESPA registration as an attorney real estate settlement agent, with all but thirty (30) days thereof to be suspended upon the condition that the Respondent commits no further violations of the Rules of Professional Conduct or CRESPA or the Regulations promulgated thereunder or any of the aforesaid promulgated *Rules* between September 18, 2008 and December 14, 2008. The effective date of the active thirty (30) day portion of Respondent's law license and CRESPA registration suspensions shall be December 15, 2008.

2. Should any disciplinary tribunal of the Virginia State Bar, including a three-judge circuit court panel, find that Respondent committed a violation of the Rules of Professional Conduct or CRESPA or the Regulations promulgated or any of the aforesaid promulgated *Rules* thereunder between September 18, 2008 and December 14, 2008, then, and in such event, the Virginia State Bar Disciplinary Board shall impose the balance of the suspended portion of the thirteen (13) month law license and CRESPA registration suspension terms.

3. Prior to any imposition of the said suspended term, as provided for herein, the Respondent shall be entitled to show cause by clear and convincing evidence, if any he can, before the Virginia State Bar Disciplinary Board, why the suspended portion of his law license and CRESPA registration suspensions should not be imposed. Unless the term of Respondent's *active* suspension exceeds one year, the provisions of Part Six, § IV, ¶ 13(I)(8)(c) of the Rules of the Supreme Court of Virginia ("Reinstatement Proceeding: After Disciplinary Suspension for More than One Year") shall not apply. In the event that Respondent's active suspension does exceed one year, the provisions of Part Six, § IV, ¶ 13(I)(8)(c) of the Rules of the Supreme Court of Virginia ("Reinstatement Proceeding: After Disciplinary Suspension for More than One Year") shall apply.

4. Neither the Respondent nor any business entity in which he has any interest shall receive any income which is in any way related to real estate settlement transactions conducted on any date falling within the period that Respondent's law license and CRESPA registration are actively suspended pursuant to the terms of Paragraph 1 hereof. "Income" shall be deemed to include any payments or things of value tendered as salary, compensation as an independent contractor, commissions, title insurance premiums, and/or any fee-for-service. The specific intent of this Paragraph 4 is that Respondent receive no compensation of any character whatsoever, either directly or indirectly, on account of real estate settlement transactions conducted during the active term of his

law license and CRESPA registration suspensions as provided for herein. Notwithstanding anything to the contrary set forth in this Paragraph, the Respondent shall be entitled to receive the proceeds of title insurance premiums charged by any title insurance agency that he may lawfully operate during the term of his active suspension.

5. The Respondent shall by checks made payable to the order of the "Virginia State Bar" pay a penalty for the violations of CRESPA and the Regulations promulgated thereunder in the sum of Two Hundred Fifty Dollars (\$250.00), due in full on or before October 30, 2008. The check tendered pursuant to the terms hereof shall be delivered on or before the due date to Alfred L. Carr, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

6. If Respondent engages in the practice of law and/or acts in the capacity of a "settlement agent" as defined in Section 6.1-2.20 of the 1950 Code of Virginia, as amended, during any period when his license to practice law and his CRESPA registration are suspended, or, if Respondent fails to comply with any of the terms set forth in the preceding Paragraphs 2 through 5, inclusive, in the manner and at the time compliance with any such term is required, then, and in such event, the Virginia State Bar Disciplinary Board shall, as an alternative disposition to the license suspension otherwise provided for herein, REVOKE the Respondent's license to practice law in the Commonwealth of Virginia; and it is further

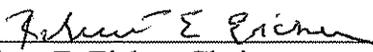
**ORDERED** that pursuant to the provisions of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court, the Respondent shall give notice by certified mail, return receipt requested, of this suspension to all clients for whom he is handling matters and to opposing attorneys and the presiding judges in pending litigation and that he shall also make appropriate arrangements for the disposition of matters that are in his care in conformity with the wishes of his clients. The notice shall be given within fourteen days of the effective date of his suspension and arrangements

shall be made within forty-five days of the effective date of the suspension. Respondent shall also furnish proof to the Bar within sixty days of the effective date of his suspension that such notices have been timely given and that such arrangements for the dispositions of the matters have been made. Issues concerning the adequacy of the notice and the arrangements required herein shall be determined by the Disciplinary Board, or, alternatively, by a three-judge circuit court panel, either of which tribunals may impose a sanction of revocation or an additional suspension for failure to comply with the requirements of Part Six, Section IV, Paragraph 13(M) of the Rules of the Virginia Supreme Court. Respondent shall furnish true copies of all of the notice letters sent to all persons notified of the suspension, with the original return receipts for said notice letters, to the Clerk of Disciplinary System, on or before the sixtieth day following the effective date of his suspension; and it is further

**ORDERED** that pursuant to Part Six, Section IV, Paragraph 13(B)(8)(c) of the Rules of the Virginia Supreme Court, the Clerk of Disciplinary System shall assess costs against the Respondent; and it is further

**ORDERED** that a copy *teste* of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, David Charles Dickey, P.O. Box 218, Stanardsville, VA 22973, at his address of record with the Virginia State Bar, and by regular mail to Alfred L. Carr, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, VA 22314.

ENTERED this 25<sup>th</sup> day of September, 2008.

  
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Robert E. Eicher, Chair  
Virginia State Bar Disciplinary Board