VIRGINIA:

BEFORE THE FIFTH DISTRICT – SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
SCOTT HOWARD DONOVAN

VSB Docket No. 15-053-101054

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On May 27, 2015, a meeting was held in this matter before a duly convened Fifth District – Section III Subcommittee consisting of Timothy Mark Purnell, Esquire, chair presiding, Teresa Ann Polinske, Esquire, and Daniel H. Aminoff, lay member. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand without Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Anastasia K. Billy, Assistant Bar Counsel; Scott Howard Donovan, Respondent; and Michael L. Rigsby, Esquire, counsel for Respondent.

WHEREFORE, the Fifth District – Section III Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand without Terms:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Scott H. Donovan, was an attorney licensed to practice law in the Commonwealth of Virginia. Mr. Donovan was licensed to practice law in the Commonwealth of Virginia on June 11, 1985.

2. On or about November 15, 2012, the Virginia State Police executed a search warrant at Mr. Donovan's law office. The search produced several items with the Coach, Inc. brand name in an office used by Mrs. Donovan for the sale of items she purchased over the Internet. The several Coach, Inc. brand items were "knock-offs;" i.e., items not manufactured by Coach, Inc. The search led to the issuance of criminal charges against Mrs. Donovan. On May 16, 2013, Mrs. Donovan pled guilty to a misdemeanor charge of Trademark Infringement, paid court costs and restitution, and was released on unsupervised probation for one year.

3. The search warrant produced no evidence of criminal conduct, or knowledge of the knock-offs, by Mr. Donovan.

4. Mr. Donovan was not charged with any criminal wrongdoing or aiding in the commission of wrongdoing.

5. In January, 2014, Coach, Inc. and Coach Services, Inc. ("Coach") filed a Trademark Infringement lawsuit against Mr. and Mrs. Donovan for Two Million Dollars ($2,000,000.00). Coach's contention against Mr. Donovan was that he was complicit and conspired with Mrs. Donovan in the sale of Coach knock-off products. Mr. Donovan denied Coach's contention. Although Mr. and Mrs. Donovan were named defendants, payment of any judgment obtained by Coach would come from Mr. Donovan's assets. Mr. Donovan was served with the lawsuit on or about March 10, 2014.

6. On or about March 13, 2014, Mr. Donovan prepared three Deeds transferring his personal real estate holdings to PAD Investments, LLC, a company he had established several years earlier. Mr. Donovan dated the Deeds January 1, 2014, and included a notary block stating that they were executed on January 1, 2014, although he actually prepared and executed the Deeds on or about March 13, 2014. Mr. Donovan signed the Deeds in the presence of a Notary Public and recorded the Deeds in the Prince William County Circuit Court Clerk's Office on or about March 14, 2014.

7. On or about July 1, 2014, Mr. Donovan was deposed by Coach, by counsel, in connection with the pending litigation. During the deposition, Mr. Donovan was asked whether the Deeds had actually been prepared and executed on January 1, 2014. Mr. Donovan initially answered, under oath, that the Deeds had been prepared and executed either on January 1, 2014, or within a few days thereof. However, later in the deposition, Mr. Donovan indicated that he wanted to correct his testimony, and at that time, he voluntarily provided new testimony that the Deeds had been executed in March 2014. Mr. Donovan further apologized at that time "for misleading."

8. Coach, by counsel, conducted extensive discovery that failed to produce any information that Mr. Donovan was complicit or conspired with Mrs. Donovan to sell Coach knock-off products. Nor was evidence developed that Mrs. Donovan had actually sold Coach knock-off products.

9. Coach, by counsel, represented to the federal court in a Settlement Conference on September 23, 2014 that Coach had spent over $300,000.00 in attorneys' fees and costs since filing its Complaint in January, 2014. Mr. Donovan was the sole financial source for payment of judgment should Coach prevail with its Complaint. Following the Settlement Conference, Mr. Donovan agreed to settle Coach's claim, and the parties entered a Confidentiality Agreement wherein "... all parties denied any wrongdoing or liability whatsoever."

10. On November 20, 2014, Mr. Donovan filed three corrected Deeds in the Prince William County Circuit Court Clerk's Office, which Deeds correctly recited the actual conveyance date

of March 13, 2014. There is no evidence to suggest that the existence of the Deeds was a factor in Coach's decision to settle its Complaint.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes Misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a … deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

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

III. ADDITIONAL CONSIDERATIONS REGARDING SANCTION

The following mitigating factors set forth in the American Bar Association Standards For Imposing Lawyer Sanctions ("Standards") were also taken into consideration in this matter:

1. The absence of any prior disciplinary record during Mr. Donovan's nearly 30 years of practicing law;

2. Personal or emotional problems experienced by Mr. Donovan as a result of Mrs. Donovan's poor physical health and Coach's intensive litigation;

3. The good faith effort of Mr. Donovan to rectify the consequences of his Misconduct;

4. Mr. Donovan's full and free disclosure of the facts and cooperative attitude towards the disciplinary process;

5. Mr. Donovan's good character and reputation; and

6. Mr. Donovan's demonstrable remorse.

The Standards also speak of imposition of other penalties and sanctions. While not exactly on point, Mr. Donovan represented that the cost to defend against Coach's Complaint

and the settlement itself cost him personally some one hundred fifty thousand dollars ($150,000.00).

Also considered in aggravation was the arguable presence of a dishonest or selfish motive. The parties to the agreed disposition represented that were this matter to go to trial, the parties believed that this factor would be tempered by Mr. Donovan's mental state at the time the deeds were prepared and recorded, as well as at the time of his deposition. In addition, the parties to the agreed disposition represented that they believed Mr. Donovan's voluntary and immediate effort to correct his deposition testimony, and his ultimate honesty, would also mitigate the application of this factor.

IV. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand Without Terms, and Scott Howard Donovan is hereby so reprimanded. 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 costs.

FIFTH DISTRICT – SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: _____
Timothy Mark Purnell
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 6/8/15, a true and complete copy of the Subcommittee Determination (Public Reprimand Without Terms) was sent by certified mail to Scott Howard Donovan, Respondent, at Scott H. Donovan, P.C., 9402 Grant Avenue, Manassas, VA 20110, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Michael L. Rigsby, counsel for Respondent, at Michael L. Rigsby, PC, P.O. Box 29328, Henrico, VA 23242.

Anastasia K Billy

Anastasia K. Billy
Assistant Bar Counsel