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VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA 2 2010

VIRGINIA STATE BAR, *ex rel.*
FOURTH DISTRICT--SECTION II COMMITTEE,

Complainant,

v.

DALE EUGENE DUNCAN, ESQUIRE,

Respondent.

VS B CLERK'S OFFICE

Case No.: CL09003613

VS B Docket Nos.: 07-042-2301

07-042-070782

09-042-075845

MEMORANDUM ORDER

ON THE 14th, 15th, and 16th days of December, 2009, and on the 17th of February, 2010, this matter came before the Three-Judge Court empaneled on the 5th day of October, 2009, by designation 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 William H. Shaw, III, retired Judge of the Ninth Judicial Circuit, the Honorable Arthur B. Viereggs, Jr., retired Judge of the Nineteenth Judicial Circuit, and the Honorable Joanne F. Alper, Judge of the Seventeenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Kathleen Maureen Uston, Assistant Bar Counsel, and Seth M. Guggenheim, Senior Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, Dale Eugene Duncan, Esquire, appeared with his counsel, Richard W. Driscoll, Esquire, and Cara L. Griffith, Esquire. The Court Reporter for all proceedings was Rudiger, Green & Kerns Reporting Service, 4116 Leonard Drive, Fairfax, Virginia

22030, Telephone: (703) 591-3136.

WHEREUPON, a hearing was conducted on the 14th, 15th, and 16th days of December, 2009, 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 Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia;

FOLLOWING opening statements and the presentation of the Bar's evidence, the Respondent, by counsel, made an oral motion to strike, which the Court considered and denied. Thereafter, the Respondent presented his evidence, at the conclusion of which the Virginia State Bar withdrew its charge that the Respondent had violated provisions of Rule 5.4 of the Virginia Rules of Professional Conduct;

THEREUPON, the Court heard closing arguments for the misconduct phase of the hearing, retired to deliberate, and returned to issue its findings in open court that the Virginia State Bar had proven by clear and convincing evidence that the Respondent violated Rules 8.1(c)¹, 8.4(a), 8.4(b), and 8.4(c)² of the Virginia Rules of Professional

¹ RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with 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:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

² RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

Conduct. The Court found that the Bar failed to prove by clear and convincing evidence that the Respondent violated the remaining charges set forth in the Certification, to-wit: Rules 1.2(c), 1.7(a), and 8.1(d) of the Virginia Rules of Professional Conduct;

AND WHEREUPON, this matter was reconvened on February 17, 2010, upon the Motion of the Virginia State Bar for Appropriate Relief and to Correct the Record, and upon the Respondent's Motion for a New Trial and Response to the Virginia State Bar's Motion for Appropriate Relief and to Correct the Record, and a hearing was held at that time at which Kathleen Maureen Uston, Assistant Bar Counsel, and Seth M. Guggenheim, Senior Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, Dale Eugene Duncan, Esquire, appeared with his counsel, Richard W. Driscoll, Esquire;

AND FOLLOWING argument by counsel upon the Respondent's Motion for a New Trial and Response to the VSB's Motion for Appropriate Relief and to Correct the Record, and upon the Motion of the Virginia State Bar for Appropriate Relief and to Correct the Record, the Court retired to deliberate, and returned to issue its finding in open court that, in light of the discovery of certain new evidence, the Virginia State Bar had failed to prove by clear and convincing evidence that the Respondent violated Rule of Professional Conduct 8.1(c);

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- (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 criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law; [and]
 - (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

THEREUPON, the Court vacated its earlier finding that the Respondent had violated Rule of Professional Conduct 8.1(c), and that charge was dismissed.

The Court's determination that the Respondent had violated Rules 8.4(a), 8.4(b), and 8.4(c) was based on the Virginia State Bar's proof by clear and convincing evidence, of the following facts:

1. At all times relevant, the Respondent was a member of the Virginia State Bar, well trained, and licensed to practice law in the Commonwealth of Virginia. He prepared all of the documents in connection with the creation of ProDev XVI, LLC, and ProDev XXII, LLC, the limited liability companies referred to hereafter.

2. On or around September 21, 2006, a Virginia limited liability company known as "ProDev XXII, LLC" borrowed the sum of \$275,000.00 from First Mount Vernon Industrial Loan Association, and the closing on this loan was held on that date (hereinafter this will be referred to as the "Dillahunt Closing"). ProDev XXII was a manager-managed LLC with two (2) members, Norris G. Dillahunt, Sr., who was appointed Manager, and Virginia attorney John F. Gonzales, who was the sole Member. The Articles of Organization for ProDev XXII were executed at the Dillahunt Closing, together with an Operating Agreement and an Organization Agreement for ProDev XXII.³

3. The Articles of Organization (hereinafter the "Articles") recited that the business purposes for which ProDev XXII "is formed are to purchase and development [*sic*] real property." The Articles further recited that the principal office of the company

³ Unless otherwise noted herein, all subsequent references to these LLC documents will refer to those documents executed on September 21, 2006 at the Dillahunt Closing, incident to the creation of ProDev XXII, all of which were prepared by the Respondent.

was 6019 Tower Court, Alexandria, Virginia, which is the law office of the Respondent herein, and designated the Respondent as the Resident Agent of the LLC. The Articles were signed only by Mr. Gonzales as agent for the Dillahunts and/or ProDev XXII.

4. The Operating Agreement for ProDev XXII named Norris G. Dillahunt, Sr. as the Managing Member of the LLC, required capital contributions by each Member, *to wit* \$400.00 by the Dillahunts and \$600.00 by Mr. Gonzales, and contained other provisions relevant to the administration of the LLC. The Operating Agreement also identified the principal place of business of the LLC as the law office of the Respondent, 6019 Tower Court, Alexandria, Virginia.

5. The Operating Agreement defined the respective ownership interests of Messrs. Dillahunt and Gonzales in the LLC, assigning Mr. Dillahunt 40% interest and Mr. Gonzales 60% majority ownership interest.

6. The Organization Agreement for ProDev XXII (hereinafter the "Organization Agreement") recites that it was executed due to Mr. Dillahunt's "desir[e] to develop investment property in North Carolina," and states that Mr. Dillahunt sought the participation of Mr. Gonzales "to facilitate such development." Attached to the Organization Agreement is a legal description of certain real property located in New Bern, North Carolina, which was owned prior to, and at the time the LLC documents were signed, by Norris G. Dillahunt, Jr., Mr. Dillahunt's son (hereinafter identified as "169 Jasper Drive"). This is the real property referenced in the Organization Agreement.

7. The Organization Agreement went on to recite that, "Member [Gonzales] has the experience and ability to locate/obtain the required financing and will guarantee such financing, if required, to provide the capital necessary to acquire and develop the

Property.” The Organization Agreement provided specifically that Mr. Gonzales had already obtained a “loan commitment from First Mount Vernon Industrial Loan Association (‘FMV’),” which it was understood by the parties would be a lien on 169 Jasper Drive. At this time, 169 Jasper Drive had an appraised value of approximately \$450,000.00.

8. The Organization Agreement provided further that; “ProDev XXII, LLC will obtain title to the Property to facilitate the required financing. This financing will be used to pay for the LLC’s acquisition cost of the Property as well as the development costs.” The Organization Agreement required that Mr. Dillahunt, as Manager of the LLC, “make principal and interest payments on said loan as required by the FMV loan documents.”

9. The Organization Agreement specified further that:

a. The “LLC will purchase the Property and obtain a loan to facilitate the purchase and development of the Property”

b. The “LLC will be 40% owned by Manager (Mr. Dillahunt, Sr.) and 60% owned by Member (Mr. Gonzales). Once all loans from FMV are paid in full, Member agrees to sell to Manager his 60% interest for one percent of the total loan amounts from FMV. **If the loan is ever in default, Manager forfeits this right.**” (Emphasis supplied)

c. “In consideration of Member’s willingness to transfer his interest in LLC to Manager, Manager agrees to personally guarantee the loan and to provide/obtain any money in addition to the loan needed to

operate/maintain/develop Property and to make required interest payments on said loan and to repay the principal when due.”

d. “During the life of this Agreement, the Manager will be permitted to make use of the Property in any legal manner and shall be solely responsible for all costs associated therewith . . .”

e. “If the loan from FMV is ever in default or property is subjected to possible liens for failure to pay taxes or other such liabilities, Manager agrees that by a simple majority vote of all members he will be removed as Manager and a new Manager will be elected by a simple majority vote of the members.”

10. The Organization Agreement was signed by Mr. Gonzales, whose signature was notarized by the Respondent. Despite the fact that the notary clause and seal represented that the Respondent was a duly authorized Virginia Notary, the Respondent was, in fact, not a duly authorized Notary Public in the Commonwealth of Virginia and never had been.

11. Prior to, and at the time that the Organization Agreement was executed, Mr. Norris Dillahunt, Jr., Mr. Dillahunt’s son, already owned 169 Jasper Drive, and his intention in obtaining financing from FMV was to use the funds to complete construction on his home there, which was already 75% complete, not to “acquire” the property nor to “develop” it. Further, upon information and belief, Norris Dillahunt, Jr. and his wife, Josietta, had independently qualified for the residential loan amount they sought with a different lender, without the participation of Mr. Gonzales, prior to being steered to FMV by agent(s) of Labrador Financial.

12. Also executed at the Dillahunt Closing was a Personal Guaranty Agreement. The Personal Guarantee recites that, "Whereas ProDev XXII, LLC desires to transact business with and to obtain credit or a continuation of credit from First Mount Vernon Industrial Loan Association," and, "Whereas [First Mount Vernon] is unwilling to extend or continue credit to [ProDev XXII] unless it receives a personal guarantee from the undersigned Norris G. Dillahunt [Sr.] and Helen M. Dillahunt," the parties thereto agreed that the Dillahunts would personally guarantee the loan extended by FMV to ProDev XXII.

13. The Dillahunt's personal guarantee was secured by an Indemnity Balloon Deed of Trust (hereinafter the "Indemnity Deed of Trust") also executed at the Dillahunt Closing. This Indemnity Deed of Trust conveyed to the Respondent and Kathleen Neary, in trust, two (2) pieces of real property owned by Norris G. Dillahunt, Sr. and his wife, Helen, the parents of Norris G. Dillahunt, Jr., one of which was a 59 acre parcel in Craven County, North Carolina.

14. Also executed at the Dillahunt Closing was a Balloon Deed of Trust First Trust (hereinafter the "First Trust") whereby ProDev XXII conveyed to the Respondent and Kathleen Neary, in trust with power of sale, fee simple title to 169 Jasper Drive.

15. Also executed at the Dillahunt Closing was a Balloon Deed of Trust Note (the "Note") that provided for interest only monthly payments of approximately \$4,125.00 commencing on October 1, 2006 and continuing thereafter until August 1, 2007. The Note then required that, on September 1, 2007, the entire remaining unpaid balance of principal and interest would be due and owing immediately from the

Dillahunts. The parties to this Note were ProDev XXII, the Respondent and Kathleen Neary, identified as Trustees.

16. The Note also contained a Confession of Judgment provision, and required payment by the Dillahunts of an annual interest rate of 18% on the principal amount loaned, which interest rate automatically increased to 24% per annum in the event of a default in payment. The Note also provided for a penalty, due at the discretion of the Holder in the event that a default was cured, extended or modified, of 2.5% of the principal amount owed. The Note imposed a \$700.00 late fee if a monthly payment was more than five (5) days late, in addition to a 10% late fee payable on the principal balloon payment.

17. Also executed at the Dillahunt Closing was a Financing Agreement reciting additional terms of the loan and transaction.

18. As noted above, all of these legal documents were prepared for the Dillahunts' signatures by the Respondent who specifically required in his letter of instruction to the closing attorney that each of these documents be executed in order for FMV to make the \$275,000.00 loan.

19. In addition, the HUD-1 executed at the Dillahunt Closing reflects the fact that FMV retained \$50,000.00 of the funds they were supposed to be loaning to the Dillahunts, which sum was never disbursed by FMV to the Dillahunts. The HUD-1 recites that the funds were being retained in "escrow" was retained "for future draws."

20. On or around May 11, 2007, some eight (8) months after the Dillahunt Closing, the Respondent and/or someone acting on his behalf and/or on behalf of FMV, caused a Late Notice to be sent to the Dillahunts informing them that payments on the

FMV loan of \$8,263.86 were due, in addition to Late Charges of \$2,800.00 and unspecified Fees of \$6,886.55 for a total amount due upon receipt of the Late Notice of \$17,950.41.

21. On or around May 17, 2007, Kathleen Neary sent a letter to Mr. Dillahunt informing him that the FMV loan “is now accelerated and payment in full is required.”

22. Mr. Arthur Bennett of FMV contacted the Dillahunts and advised that he would not permit them to refinance at the end of June, 2007, and would immediately foreclose unless they withdrew complaints they had filed, including their complaint against the Respondent made to the Virginia State Bar. An affidavit stating that such complaints were improper and apologizing for them was executed by the Dillahunts. The Virginia State Bar did not prove by clear and convincing evidence that prior to FMV’s receipt of the affidavit the Respondent knew of, or played any part in, the threat made to the Dillahunts.

23. On or around January 9, 2006, a Virginia limited liability company known as “ProDev XVI, LLC” borrowed the sum of \$230,000.00 from First Mount Vernon Industrial Loan Association, and the closing on this loan was held on that date (hereinafter this will be referred to as the “Brissett Closing”). ProDev XVI was a manager-managed LLC with two (2) members, Courtney T. Brissett, who was appointed Manager, and Virginia attorney John F. Gonzales, who was the sole Member. The Articles of Organization for ProDev XVI were executed at the Brissett Closing, together with an Operating Agreement and an Organization Agreement for ProDev XVI.⁴

⁴ Unless otherwise noted herein, all subsequent references to these LLC documents will refer to those documents executed at the Brissett closing incident to the creation of ProDev XVI, all of which were prepared by the Respondent. It is noted that some of

24. The Articles of Organization (hereinafter the "Articles") recited that the business purposes for which ProDev XVI "is formed are to purchase and development [sic] real property." The Articles further recited that the principal office of the company was 6019 Tower Court, Alexandria, Virginia, which is the law office of the Respondent herein, and designated the Respondent as the Resident Agent of the LLC. The Articles were signed only by Mr. Gonzales as agent for Ms. Brissett and/or ProDev XVI.

25. The Operating Agreement for ProDev XVI named Courtney T. Brissett as the Managing Member of the LLC, required capital contributions by each Member, *to wit* \$400.00 by Ms. Brissett and \$600.00 by Mr. Gonzales, and contained other provisions relevant to the administration of the LLC. The Operating Agreement also identified the principal place of business of the LLC as the law office of the Respondent, 6019 Tower Court, Alexandria, Virginia.

26. The Operating Agreement defined the respective ownership interests of Ms. Brissett and Mr. Gonzales in the LLC, assigning Ms. Brissett 40% interest and Mr. Gonzales 60% majority ownership interest.

27. The Organization Agreement for ProDev XVI (hereinafter the "Organization Agreement") recites that it was executed, ostensibly, due to Ms. Brissett's "desir[e] to develop investment property in North Carolina," and states that Ms. Brissett allegedly sought the participation of Mr. Gonzales "to facilitate such development." Attached to the Organization Agreement are legal descriptions of five (5) pieces of real property located in New Bern, North Carolina, which were owned prior to, and at the

these documents are dated January 9, 2005. It is averred that this is a typographical error and that the documents were actually executed on January 9, 2006, the date of the Brissett Closing.

time the LLC documents were signed, by Brissett Rental Properties, LLC and Courtney and Ladwin Brissett (hereinafter identified as “Kinston Street, Neuse Avenue, and 2nd Street properties”). This is the real property referenced in the Organization Agreement.

28. The Organization Agreement went on to recite that, “Member [Gonzales] has the experience and ability to locate/obtain the required financing and will guarantee such financing, if required, to provide the capital necessary to acquire and develop the Property.” The Organization Agreement provided specifically that Mr. Gonzales had already obtained a “loan commitment from First Mount Vernon Industrial Loan Association (‘FMV’),” which it was understood by the parties would be a lien on the Kinston Street, Neuse Avenue, and 2nd Street properties.

29. The Organization Agreement provided further that, “ProDev XVI, LLC will obtain title to the Property to facilitate the required financing. This financing will be used to pay for the LLC’s acquisition cost of the Property as well as the development costs.” The Organization Agreement required that Ms. Brissett, as Manager of the LLC, “make principal and interest payments on said loan as required by the FMV loan documents.”

30. The Organization Agreement specified further that:

a. The “LLC will purchase the Property and obtain a loan to facilitate the purchase and development of the Property”

b. The “LLC will be 40% owned by Manager (Ms. Brissett.) and 60% owned by Member (Mr. Gonzales). Once all loans from FMV are paid in full, Member agrees to sell to Manager his 60% interest for one percent of the total

loan amounts from FMV. **If the loan is ever in default, Manager forfeits this right.**" (Emphasis supplied)

c. "In consideration of Member's willingness to transfer his interest in LLC to Manager, Manager agrees to personally guarantee the loan and to provide/obtain any money in addition to the loan needed to operate/maintain/develop Property and to make required interest payments on said loan and to repay the principal when due."

d. "During the life of this Agreement, the Manager will be permitted to make use of the Property in any legal manner and shall be solely responsible for all costs associated therewith . . . "

e. "If the loan from FMV is ever in default or property is subjected to possible liens for failure to pay taxes or other such liabilities, Manager agrees that by a simple majority vote of all members she will be removed as Manager and a new Manager will be elected by a simple majority vote of the members."

31. The Organization Agreement was signed by Mr. Gonzales, whose signature was notarized by the Respondent. Despite the fact that the notary clause and seal represented that the Respondent was a duly authorized Virginia Notary for the County of Fairfax, the Respondent was, in fact, not a duly authorized Notary Public in the Commonwealth of Virginia and never had been.

32. Prior to and at the time the Organization Agreement was executed, the Brissetts, or entities controlled by them, already owned the Kinston Street, Neuse Avenue, and 2nd Street properties, and their intention in obtaining financing from FMV

was to use the funds to renovate the buildings for sale, not to “acquire” those properties since they already owned them.

33. Also executed at the Brissett Closing was a Personal Guaranty Agreement. The Personal Guarantee recites that, “Whereas ProDev XVI, LLC desires to transact business with and to obtain credit or a continuation of credit from First Mount Vernon Industrial Loan Association,” and, “Whereas [First Mount Vernon] is unwilling to extend or continue credit to [ProDev XVI] unless it receives a personal guarantee from the undersigned Courtney and Ladwin Brissett,” the parties thereto agreed that the Brissetts would personally guarantee the loan extended by FMV to ProDev XVI..

34. Also executed at the Brissett Closing was a Balloon Deed of Trust First Trust (hereinafter the “First Trust”) securing the \$230,000.00 loan, whereby ProDev XVI conveyed to the Respondent and Kathleen Neary, in trust with power of sale, fee simple title to the Kinston Street, Neuse Avenue, and 2nd Street properties.

35. Also executed at the Brissett Closing was a Balloon Deed of Trust Note (the “Note”) that provided for interest only monthly payments commencing on March 1, 2006 and continuing thereafter until January 1, 2007.⁵ The Note then required that, on February 1, 2007, the entire remaining unpaid balance of principal and interest would be due and owing immediately from the Brissetts. The parties to this Note were ProDev XVI, the Respondent and Kathleen Neary, identified as Trustees.

36. The Note also contained a Confession of Judgment provision, and required payment by the Brissetts of an annual interest rate of 18% on the principal amount loaned, which interest rate automatically increased to 24% per annum in the event of a

⁵ The Note secured only \$115,000.00, not the full \$230,000.00.

default in payment. The Note provided for a penalty, due at the discretion of the Holder in the event that a default was cured, extended or modified, of 2.5% of the principal amount owed. The Note imposed a \$287.50 late fee if a monthly payment was more than five (5) days late, in addition to a 10% late fee payable on the principal balloon payment.

37. Also executed at the Brissett Closing was a Financing Agreement reciting additional terms of the loan and transaction.

38. As noted above, all of these legal documents were prepared for the Brissetts' signatures by the Respondent who specifically required in his letter of instruction to the closing attorney that each of these documents be executed in order for FMV to make the \$230,000.00 loan.

39. On or around January 4, 2007, at the instruction of the Respondent and/or FMV, Mr. Gonzales wrote to Ms. Brissett and inquired "as the status of our business, ProDev XVI, LLC." Mr. Gonzales goes on to state, "I have been reminded by First Mount Vernon, I.L.A. that our loan is due on February 1, 2007 and will not be extended." Mr. Gonzales then informed Ms. Brissett that, "If I do not hear from you by January 24, 2007, confirming your intentions and if the loan is not paid in full on or before February 1, 2007, I must take steps to protect myself in accordance with our agreement."

40. Mr. Gonzales further informed Ms. Brissett that, as the majority owner of ProDev XVI, he was calling a meeting of the Members of ProDev XVI to be held on February 2, 2007 at his office located at 5306 Martinique Lane, Alexandria, Virginia. Mr. Gonzales informed Ms. Brissett of his intention to remove her as Manager of ProDev XVI and,

“... vot[e] to sell all assets of ProDev XVI to raise the capital necessary to pay off First Mount Vernon, I.L.A. or to transfer title of our property to First Mount Vernon, I.L.A.”

41. Respondent’s office, located at 6019 Tower Court, Alexandria, Virginia, is also the office address of FMV. Respondent pays no rent for his office space to FMV.

42. FMV is essentially Respondent’s only client. He does not receive a salary, but is rather paid a “varying amount” as loans are made depending upon the size of the loan, and he also receives a \$500.00 “lender’s counsel fee” in advance of the closing to ensure the borrower is serious about moving forward with the loan.

43. Respondent has set up more than forty (40) ProDev LLCs, each with a different number designation, all of which were structured in a manner or identical to both the Dillahunt and Brissett transactions as detailed herein. The Respondent was aware of forty-one loans made to ProDev LLCs.

44. Respondent and FMV required that the closing attorney prepare a deed of conveyance transferring title to the borrower’s real property into a ProDev LLC.

45. Mr. Gonzales, a member of the Virginia State Bar, although ostensibly an independent member of ProDev XVI and XXII, was in fact a straw man whose sole responsibility was to protect FMV. Mr. Gonzales

1) did not have the experience or ability to locate or obtain financing for the entity despite the fact that he signed a document averring that he did and despite the fact that the Respondent prepared that document;

2) would not guarantee such funding despite the fact that the documents he signed and which the Respondent prepared state differently;

3) did not obtain the loan commitment from FMV for the transactions referred to herein despite the language of the documents prepared by the Respondent and signed by Mr. Gonzales;

4) did not intend to participate in the LLCs, except as directed by FMV to protect its interests despite the language of the documents;

5) did not contribute any capital to the LLCs despite the language of the documents signed by him and prepared by the Respondent;

6) was not aware of the identity of the borrowers with whom he became business partners by formation of the LLCs, and in fact had no contact with them despite the language of the documents; and

7) did not consider that he had a fiduciary duty to his co-member of the LLCs.

All of the foregoing was known to the Respondent when he drafted the documents in these transactions.

46. The Respondent prepared letters to the Complainants in the Dillahunt and Brissett matters for Mr. Gonzales's signature, addressing substantive matters pertaining to the real property, ProDev XVI and ProDev XXII, stating that Mr. Gonzales had to protect his interests when, in fact, Mr. Gonzales had no personal interest in these matters, a fact concealed in the letters prepared by the Respondent for Mr. Gonzales's use.

48. On or around July 14, 2008, in accordance with his obligation under the Rules of Professional Conduct to do so, Virginia attorney J.P. Szymkowicz notified the Virginia State Bar of the fact that, on August 31, 2005, the Respondent had notarized the signature of Mr. Szymkowicz's client on multiple documents incident to a closing,

similar to the transactions described above, at a time when the Respondent was not a duly authorized Notary Public for the Commonwealth of Virginia.

49. The Respondent admitted in Court that he notarized the documents at issue herein, that at the time he was not a duly authorized Virginia notary public, and at no time has he ever applied to become a notary public in the Commonwealth of Virginia.

50. The Respondent further admitted to this Court that he was improperly in possession of a notary seal declaring him to be a duly authorized Virginia notary, and that he personally used that seal when notarizing the signature of Mr. Szymkiewicz's client.

51. The Respondent's testimony explaining why he acted as a notary during this period of time despite the fact that he never applied for and qualified as such was found by the Court to be not credible.

FOLLOWING the misconduct phase of the hearing which took place on December 16, 2009, the Virginia State Bar and the Respondent, by counsel, presented evidence and 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 retired to deliberate, and upon their return announced the Court's decision that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of two (2) years, effective December 23, 2009.

AT THE CONCLUSION of the proceedings on the 16th day of December, 2009, the Three-Judge Court entered a Summary Order suspending the Respondent's license to practice law in the Commonwealth of Virginia, effective December 23, 2009, and directing him to comply with the notice requirements contained in Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia;

AND FOLLOWING argument on February 17, 2010, at the conclusion of those proceedings, as to what adjustment should be made to the sanction imposed by the Court, if any, following the Court's vacation of its earlier finding of a violation of Rule 8.1(c), the Three-Judge Court also reconsidered the sanction imposed on the 16th of December 2009, and determined that no adjustment to the sanction was necessary;

AT THE CONCLUSION of the proceedings on the 17th day of February, 2010, therefore, upon its vacation of the finding of a violation by Respondent of Rule 8.1(c), the Three-Judge Court determined that the Court's findings regarding the Respondent's violation of Rules 8.4(a), 8.4(b) and 8.4(c) would remain and stand, and that no reduction or other change in the sanction of a two (2) year suspension of the Respondent's license was necessary in light of those findings;

AND THEREFORE AT THE CONCLUSION of the proceedings on the 17th day of February, 2010, the Three-Judge Court entered a Supplemental Summary Order correcting the record in this matter to include the after-discovered evidence and its due consideration of said evidence; vacating the previous finding of a violation by Respondent of Rule 8.1(c); dismissing allegations concerning Respondent's violation of Rule 8.1(c); determining that the remaining findings of misconduct and the sanction imposed shall remain as previously ordered, *to wit* that the Respondent's license to practice law in the Commonwealth of Virginia shall be and remain suspended for a period of two (2) years effective December 23, 2009; and directing him to comply with the notice requirements contained in Part Six, Section IV, Paragraph 13-29 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, SUSPENDED for a period of two (2) years, effective December 23, 2009; and it is further

ORDERED, that the terms and provisions of the Summary Order entered on the 16th day of December, 2009, directing Respondent's compliance with Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, be, and the same hereby are, reaffirmed and incorporated in this Memorandum Order by reference; and it is further

ORDERED, that pursuant to Part Six, Section IV, Paragraph 13-9 E. 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

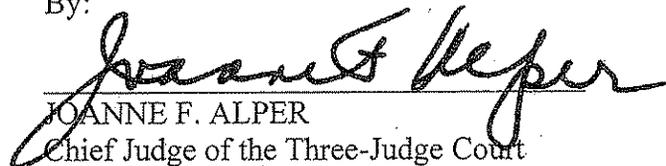
ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the City of Alexandria, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Virginia State Bar Disciplinary System at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

THIS ORDER IS EFFECTIVE *NUNC PRO TUNC* December 16, 2009.

Entered this 15th day of March, 2010..

FOR THE THREE-JUDGE COURT:

By:


JOANNE F. ALPER
Chief Judge of the Three-Judge Court

(Signature of Counsel on Page 21) *A COPY TESTE*
Edward Semonian, Clerk

BY: [Handwritten Signature]
Deputy Clerk

WE ASK FOR THIS:

Kathleen M. Uston / signed by RWD w/permission

KATHLEEN MAUREEN USTON

Assistant Bar Counsel

VSF No.: 33255

SETH M. GUGGENHEIM

Senior Assistant Bar Counsel

VSF No.: 16636

VIRGINIA STATE BAR

707 East Main Street, Suite 1500

Richmond, Virginia 23219-2800

Virginia State Bar

Telephone: (703) 801-1887

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SEEN AND OBJECTED TO ON THE FOLLOW BASIS:

The sanction imposed is excessive in relation to the findings of misconduct, mitigating circumstances, and the lack of aggravating circumstances; the factual findings and conclusions of law in paragraphs 2-4, 6, 7, 11, 18, 19, 20, 23-25, 27, 28, 32, 35, 36, 38, 39, 41-43, 45, 46, 49, as well as the finding that Respondent violated Rule of Professional Conduct 8.4(a), (b) and (c), are not supported by clear and convincing evidence; the Court abused its discretion in refusing to admit Respondent's Exhibit No. 35 (Affidavit of Jason Gold); the Court abused its discretion in limiting the testimony of the Respondent's expert witness James K. Pendergrass, Jr., Esq.; the Court abused its discretion in relying extensively on terms of the loan that were not the subject of the alleged misconduct; the Court abused its discretion in refusing to permit the Respondent to call a subpoenaed corporate representative witness from the Virginia State Bar regarding the discovery of a date-stamped document, which the Virginia State Bar previously claimed was never received because it was manufactured by the Respondent; the Court abused its discretion in denying the Respondent's Motion for a New Trial; the Memorandum Opinion omits any substantive discussion regarding the Virginia State Bar's discovery of evidence it previously claimed did not exist and the Court's handling of such evidence; and the Court abused its discretion by failing to reduce the sanction imposed on December 16, 2009 after finding that the Respondent did not violate Rule of Professional Conduct 8.1(c) during the February 17, 2010, hearing.



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