

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

IN THE MATTER OF ELIZABETH  
MARGARET FISCHER

VSb DOCKET NO. 14-042-096582

**ORDER OF REVOCATION**

**THIS MATTER** came on to be heard on May 15, 2015 on the Subcommittee Determination (Certification) by the Fourth District Committee, Section II, before a panel of the Disciplinary Board consisting of William H. Atwill, Jr., Chair, John A. C. Keith, Tony H. Pham, Samuel R. Walker, and Anderson Wade Douthat, IV, Lay member. The Virginia State Bar (Bar) was represented by Kathleen Maureen Uston, Assistant Bar Counsel. The Respondent, Elizabeth Margaret Fischer, appeared in person and represented herself. 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. Tracy Stroh, court reporter, of Chandler and Halasz Stenographic Court Reporters, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

**I. FINDINGS OF FACT**

Virginia State Bar Exhibits 1 – 7 were admitted without objection. The Bar and Respondent entered into a stipulation of the facts and misconduct as stated in the Certification as set forth, with some modifications. Accordingly, based on Bar’s Exhibits and the parties’ stipulations, the Board makes the following findings of fact by clear and convincing evidence:

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or around August 7, 2013, a representative with the Standing Chapter 13 Trustee's Office in Alexandria, Virginia (hereinafter the "Complainant") filed a complaint against Respondent following dismissal with prejudice of Respondent's personal Chapter 13 bankruptcy case. Respondent's bankruptcy case first came to Complainant's attention after Respondent failed to timely make her Chapter 13 Plan payments. Due to certain actions taken by Respondent in the conduct of her Chapter 13 bankruptcy case, Complainant's office subsequently filed, and successfully pursued, a Motion to Dismiss Respondent's Chapter 13 bankruptcy case, with prejudice.

3. The essential allegations made by Complainant and her office in the Motion to Dismiss were that Respondent falsely represented that certain Chapter 13 Plan payments had been made by her to Complainant's office, and the checks had been negotiated by the Chapter 13 Trustee's bank, but that the Chapter 13 Trustee's Office had failed to credit them towards the payments due under Respondent's Chapter 13 Plan.

4. A hearing was held on the Chapter 13 Trustee's Motion to Dismiss on July 10, 2013, before the Honorable Robert G. Mayer (See Hearing Transcript, Attachment 1 to Bar Ex. 6). During the course of this hearing, Complainant's office presented evidence that Respondent had a history of claiming that she had made payments to creditors, including her mortgage company, which payments Respondent claimed were negotiated by those creditors but never applied to her account, which were proven to be false.

5. Respondent testified at this hearing and claimed that an assistant, whose existence and whereabouts were subject to question and who has never been located, was responsible for Respondent's false assertions that payments had been made to her creditors, including the Chapter 13 Trustee's Office. Respondent testified further that

this assistant (Sylvia Jacques) assured her that the payments had, in fact, been made and it was only later that Respondent learned that this assistant had embezzled the funds.

6. Following the presentation of evidence and testimony, Judge Mayer granted Complainant's office's Motion to Dismiss, noting on the record that Respondent, "acted in bad faith throughout the course of her Chapter 13 case, [and] that her conduct and testimony during the course of this case were reckless and abusive . . ."

7. During the course of the investigation of this case, it was discovered that the pattern of Respondent's claims with regard to how and why she was unable to meet her obligations to the Trustee's office, to her creditors, and to others was strikingly similar. With regard to amounts allegedly paid to her condominium association for dues, Respondent claimed that the dues were in fact paid. The creditor disputed this.

8. Respondent was subsequently sued by her condominium association and she failed to appear in the Alexandria General District Court several times during the course of the case against her. Each time, this resulted in a delay in the proceedings, a delay in the creditor being paid, and increased costs to the association in attempting to collect funds owed by Respondent. The day before the final hearing, Respondent filed for bankruptcy protection.

9. This pattern was then repeated with regard to Respondent's mortgage holder, SunTrust. As with Complainant's office, Respondent claimed that she had paid her mortgage and that SunTrust had negotiated her checks. Respondent produced bank records purporting to show checks written to and cashed by SunTrust. It was ultimately determined that no checks had ever been sent to SunTrust by Respondent.

10. Respondent exhibited this same pattern in the course of her bankruptcy case and her dealings with Complainant's office. Specifically, Respondent claimed that she had sent a check to the Chapter 13 Trustee's Office in order to meet her plan payment obligations, which check Respondent claimed the Chapter 13 Trustee's office negotiated. Again, Respondent produced bank records purporting to show a check sent to the Chapter 13 Trustee, which check had markings on the reverse side indicating that it had been negotiated. However, the endorsement on the back was illegible, and Complainant's office denied ever having received any checks from Respondent. As in the previous situations, Respondent blamed Sylvia Jacques, denying any knowledge of the fabricated records, and claiming it was she who was the victim.

11. During the course of the investigation of this case, Virginia State Bar Investigator, David W. Jackson, interviewed Respondent and sought to ascertain the whereabouts of Sylvia Jacques. Investigator Jackson personally contacted the Alexandria Police Officer, Officer Sharma, who had interviewed Respondent after she made a police report concerning the alleged embezzlement. Investigator Jackson personally inspected the Arlington address provided by Respondent as being the home of Sylvia Jacques and discovered that it did not exist. Investigator Jackson attempted to make email contact with Sylvia Jacques and received no response. Investigator Jackson initiated a search for "Sylvia Jacques" and the email address provided by Respondent as belonging to "Sylvia Jacques" through an Accurint/Lexis Nexus search. No information was forthcoming from this search. Investigator Jackson also searched the telephone number for "Sylvia Jacques" provided by Respondent and learned that there were 106 "Sylvia Jacques" around the country but only one in Virginia, Maryland, or the District of Columbia. This

person was fifty-one (51) years old and thus did not meet Respondent's description of her alleged assistant. (Investigator's Report, Bar Ex. 6)

12. On or around August 9, 2013, a copy of the Bar complaint filed against Respondent was sent to her at her address of record with the Virginia State Bar. Respondent failed to file a response to this complaint. Respondent did send an email to the Bar acknowledging that she had received the complaint, and stating that her computer had crashed and that she would therefore need additional time within which to obtain the documents she intended to submit with her response. Respondent was given the additional time she requested (VSB Bar Ex. 5). Respondent testified at the Board Hearing (May 15, 2015) that she subsequently left a message with the Bar Counsel's office and received an email back that she needed to call between 9:00 A.M. and 5:00 P.M., that the matter had been referred to an investigator, and that the time to file a response was over. Nonetheless, as of the date of the Certification (August 14, 2014), no response from Respondent had been received.

## **II. MISCONDUCT**

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

### **RULE 3.1 Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

### **RULE 3.3 Candor Toward The Tribunal**

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

**RULE 3.4 Fairness To Opposing Party And Counsel**

A lawyer shall not:

(a) Obstruct another party's access to evidence or alter, destroy or conceal a document or other material having potential evidentiary value for the purpose of obstructing a party's access to evidence. A lawyer shall not counsel or assist another person to do any such act.

(c) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law . . .

(g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.

(j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

**RULE 3.5 Impartiality And Decorum Of The Tribunal**

(f) A lawyer shall not engage in conduct intended to disrupt a tribunal.

**RULE 4.1 Truthfulness In Statements To Others**

In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of fact or law[.]

**RULE 8.1 Bar Admission And Disciplinary Matters**

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

(a) knowingly make a false statement of material fact;

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter;

(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; or

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

#### **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 criminal or 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[.]

Respondent further stipulated at the Hearing that the Bar's exhibits, together with the stipulated facts, would be sufficient to prove each violation charged by clear and convincing evidence.

### **III. DISPOSITION**

Following the conclusion of all the evidence, which included the Bar's exhibits 1 through 7, the parties' stipulations of fact, and the evidence presented by Respondent in the form of her own sworn testimony, the Board recessed to deliberate. Following deliberations, the Board finds by clear and convincing evidence the following violations by Respondent of the Rules of Professional Conduct: **RULE 3.1; 3.3(a)(1), (4); 3:4(c),(j); 8.1(a),(c), (d); and 8.4(b),(c).**

The Bar failed to prove by clear and convincing evidence that Respondent violated **Rule 3.4(a), 3.4(g), 3.5(f), 4.1(a), 8.1(b) and 8.4(a).**

### **IV. SANCTION**

The Board then received evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record. The Board recessed to deliberate

what sanction to impose upon its findings of misconduct by Respondent. Following deliberations, the Board reconvened and imposed the sanction of REVOCATION.

Accordingly, it is ORDERED that the license of the Respondent, Elizabeth Margaret Fischer, to practice law in the Commonwealth of Virginia, be and hereby is revoked, effective May 15, 2015; and

It is further ORDERED that, as directed in the Board's May 15, 2015, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § 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 revocation of her license to practice law in the Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of the client. Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters; and

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the revocation, she 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 Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board; and

It is further ORDERED that pursuant to Part Six, § 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; and

It is further ORDERED that the Clerk of the Disciplinary System shall mail by Certified Mail, Return Receipt Requested, an attested copy of this order to respondent at her address of

record with the Virginia State Bar, being 18142 Country Trails Court, Wildwood, Missouri 63038 and by hand-delivery to Kathleen Maureen Uston, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia.

ENTERED this 9<sup>th</sup> day of June, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD

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William H. Atwill, Jr., Chair