VIRGINIA:

JAN 30 2014

BEFORE THE THIRD DISTRICT SUBCOMMITTEE, SECTION II OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Douglass Hayden Fisher **VSB Docket No. 13-032-094098**

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On December 20, 2013 and January 23, 2014 meetings were held in this matter before a duly convened Third District Subcommittee consisting of John J. Mable, lay member, Alexander S. de Witt, chair presiding and Michael R. Shebelskie, member. During the meetings, the Subcommittee unanimously voted to approve an agreed disposition for a Public Reprimand with 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 Renu Mago Brennan, Assistant Bar Counsel, and Douglass Hayden Fisher, Respondent.

WHEREFORE, the Third District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times referenced herein, Respondent Douglass Hayden Fisher (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In August 2011 Preston R. Grobes, Jr., retained Respondent to represent him and Patients Choice Discount Pharmacy, Inc. (Patients Choice Discount Pharmacy) in a lawsuit filed against them in the General District Court for Newport News by Top RX for $8,377.67, together with cost and 6% interest from August 4, 2008.

3. On August 22, 2011, Respondent mailed to the Clerk of the Newport News General District Court a Grounds of Defense on behalf of Mr. Grobes and Patients Choice Discount Pharmacy.

4. By check dated August 24, 2011, Mr. Grobes paid Respondent his legal fee of $1,000.00.

5. Trial was set for September 12, 2011.

6. As a corporation, Patients Choice Discount Pharmacy could only appear through counsel.

7. Respondent did not appear at the trial to represent Mr. Grobes and Patients Choice Discount Pharmacy.

8. Judgment for the amount of $8,377.67, with 6.0% interest from August 4, 2008, and $56.00 in court costs, was entered against Mr. Grobes and Patients Choice Discount Pharmacy.

9. Respondent maintains that a day or two prior to the trial, Respondent realized that he had a conflict with the court date, and he advised Mr. Grobes of his conflict and instructed Mr. Grobes to seek a continuance of the trial.

10. Mr. Grobes adamantly disputes Respondent's assertion and states that Respondent never advised him that Respondent would not attend the trial.

11. Despite the fact that Respondent was counsel of record, Respondent made no arrangements on behalf of his clients when he realized he would not appear at the September 12, 2011 trial.

12. Respondent never contacted the Clerk of the Court or opposing counsel to advise of his alleged conflict, to request a continuance of the trial date, or to make arrangements to prevent entry of default against his clients.

13. Respondent made no arrangements for other counsel to appear at the trial on his behalf.

14. Respondent did not withdraw as counsel so that other counsel could appear on his clients' behalf.

15. Mr. Grobes tried, but was unable, to reach Respondent for one week following the trial.

16. Respondent asserts that he spoke to Mr. Grobes either the day of or the day after he did not attend the trial. Respondent further asserts that he explained to Mr. Grobes the process by which Mr. Grobes and Patients Choice Discount Pharmacy could appeal the default judgment and obtain a new trial in circuit court. Respondent asserts that Mr. Grobes requested that Respondent post the appellate bond because Mr. Grobes could not afford to do so. Respondent asserts that he refused to post the bond for Patients Choice Discount Pharmacy.

17. By letter dated September 21, 2011 to the Clerk of the Newport News General District Court, Respondent filed a Notice to Appeal the default judgment on his clients' behalf.

18. By letter dated September 21, 2011, Respondent served the Notice of Appeal on Plaintiff's counsel. Respondent also requested a settlement offer from Plaintiff's counsel.

19. After noting the appeal, Respondent did nothing further on his clients' behalf, nor did he communicate further with his clients. Respondent asserts that he did not believe he could continue to represent his clients in their appeal because, Respondent asserts, Mr. Grobes expressed dissatisfaction after Respondent refused to post the appellate bond.

20. Respondent did not perfect his clients' appeal.

21. Despite the fact that Respondent asserts that he believed he could no longer represent his clients and perfect their appeal, Respondent did not withdraw as counsel.

22. By e-mail dated December 14, 2011, Mr. Grobes requested a refund of the $1,000.00 legal fee. Respondent never responded to this request, and Respondent never returned any portion of the fee paid.

23. Respondent never provided Mr. Grobes with an accounting of the fee paid or with any invoice or breakdown of services rendered.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.15 Safekeeping Property

(b) Specific Duties. 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 accountings to the client regarding them;

(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 that such person is entitled to receive; and

RULE 1.16 Declining Or Terminating Representation

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(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).

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand with Terms. The terms are:

1. For a period of two years following the date of service of the Public Reprimand with Terms on Respondent, Respondent shall not engage in any conduct that violates Virginia Rules of Professional Conduct 1.3, 1.4, 1.15, or 1.16, and all subparts, including any amendments thereto, and/or which violates any analogous provisions of these Professional Rules of Conduct or Disciplinary Rules, and any amendments thereto, of any other jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated Rules 1.3, 1.4, 1.15, or 1.16 of the Rules of Professional Conduct or any analogous provisions of any other jurisdiction in which Respondent may be admitted to practice law, provided however, that the conduct upon which such finding was based occurred within the two-year period following the date of service of the Public Reprimand with Terms on Respondent, and provided, further, that such ruling has become final.

2. On or before June 1, 2014, the Respondent shall complete six (6) hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance

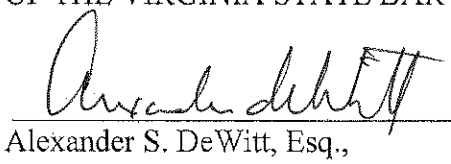
obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form to Assistant Bar Counsel Renu M. Brennan or her designee, promptly following his attendance of each such CLE program(s).

As agreed by Respondent, if Respondent does not meet these terms by the specified deadlines, the matter will proceed as set forth at Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, and the alternative disposition shall be a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.G of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

As agreed by Respondent, this Public Reprimand with Terms is non-appealable.

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.

THIRD DISTRICT SUBCOMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR



Alexander S. DeWitt, Esq.,
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on January 30, 2014, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail, return receipt requested to Douglass Hayden Fisher, Respondent, at Fisher Clarke, PLLC, PO Box 7321, Richmond, VA 23221, Respondent's last address of record with the Virginia State Bar.

Renu Mago Brennan
Assistant Bar Counsel