VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

MARK RICHARD GALBRAITH *VSB Docket No. 14-052-099782*

Attorney at Law

On September 12, 2014, came Mark Richard Galbraith and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit Declaring Consent to Revocation document are true.

The Board having considered the said Affidavit Declaring Consent to Revocation, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Mark Richard Galbraith be and the same hereby is revoked, and that the name of the said Mark Richard Galbraith be stricken from the Roll of Attorneys of this Commonwealth.

Entered this 12th *day of* September, 2014

For the Virginia State Bar Disciplinary Board

By Barbara S. Lanier

Barbara Sayers Lanier, Clerk of the Disciplinary System

RECEIVED
SEP 12 2014
VSB CLERK'S OFFICE

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MARK RICHARD GALBRAITH

VSB Docket No. 14-052-099782

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Mark Richard Galbraith, after being duly sworn, states as follows:

1. Mark Richard Galbraith was licensed to practice law in the Commonwealth of Virginia on 10/15/1993.

2. Mark Richard Galbraith submits this Affidavit Declaring Consent to Revocation pursuant to the Rules of the Virginia Supreme Court, Part 6, Section IV, Paragraph 13-28.

3. Mark Richard Galbraith's consent to revocation is freely and voluntarily rendered, he is not being subjected to coercion or duress, and he is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia.

4. Mark Richard Galbraith is aware that there is currently pending a complaint, an investigation into, or a proceeding involving allegations of Misconduct, the docket number for which is set forth above, and the specific nature of which is here set forth:

STIPULATED FACTS

a. Mark Richard Galbraith has represented Nectar Projects, L.L.C. ("Nectar") in connection with various foreclosure, interpleader, and other matters, for a number of years.

b. In approximately October 2011, Nectar sent Mr. Galbraith a check for $35,087.85, representing surplus proceeds from a foreclosure sale. These funds were subject to an interpleader action in Loudoun County Circuit Court. Mr. Galbraith

deposited these funds into his trust account in November 2011 pending court resolution of the interpleader action.

c. On or about May 13, 2014, a check drawn on Mr. Galbraith's trust account in the amount of $12,743.00, made payable to Loudoun County Housing Trust, was returned for insufficient funds. On the date the check was submitted for honoring, Mr. Galbraith's trust account contained only $1,593.86. The payment at issue was mandated by Court Order dated as of November 13, 2013 from the Loudoun County Circuit Court in the pending interpleader action.

d. An additional $6,745.42 was also mandated to be paid to Andrea M. Fonseca-Kearns by the Court Order in the pending interpleader action. Mr. Galbraith's trust account also contains insufficient funds to make this payment.

e. As of June 30, 2014, only $1,525.86 remained in Mr. Galbraith's trust account.

f. Nectar maintains that Mr. Galbraith also should have had additional funds held in trust in connection with at least one other foreclosure sale / interpleader action.

g. Mr. Galbraith further asserts that he may have claims against Nectar for unpaid fees, and this Affidavit is without prejudice to any such claims.

h. Mr. Galbraith did not maintain records compliant with the Rules of Professional Conduct for his trust and operating accounts.

i. At a minimum, Respondent's actions and failures to act violate the following Rules of Professional Conduct:

NATURE OF MISCONDUCT

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

...

(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

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction: the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

...

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

...

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

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….

5. Mark Richard Galbraith acknowledges that the material facts upon which the allegations of Misconduct are predicated are true.

6. Mark Richard Galbraith submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if the disciplinary proceedings based on the said alleged Misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

7. Mark Richard Galbraith expressly agrees that any Petition for Reinstatement shall be conditioned on proof of satisfaction of all claims that may be paid by the Virginia State Bar Client Protection Fund in matters involving him, as well as all funds that may be owing to clients and/or third parties that should have been held in trust by him.

Executed and dated on August 27, 2014.

Mark Richard Galbraith
Respondent

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Fairfax, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Mark Richard Galbraith on August 27th, 2014.

Angella F. Icochea
Notary Public

My Commission expires: May 31, 2016

ANGELLA F. ICOCHEA
NOTARY PUBLIC 7163355
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2016