

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
BRUCE HOWARD GOULD

VSB Docket No. 05-021-3010

MEMORANDUM ORDER

THIS MATTER came to be heard on April 13, 2011 by duly noticed teleconference upon a proposed Agreed Disposition entered into between the parties, which was presented to a panel of the Virginia State Bar Disciplinary Board (the Board) consisting of William E. Glover, Chair, Raighne C. Delaney, Member, Samuel R. Walker, Member, Tyler E. Williams, III, Member, and Thaddeus T. Crump, Lay Member.

M. Brent Saunders, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and R. Paul Childress, Jr., Respondent's Counsel, appeared on behalf of Respondent. Respondent did not appear.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel for its consideration.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel and thereafter retired to deliberate on the Agreed

Disposition. Having considered all the evidence before it, the Panel reconvened and announced its unanimous acceptance of the Agreed Disposition.

I. FINDINGS OF FACT

The Board finds the following facts by clear and convincing evidence as stipulated by the parties:

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In March 2004, Maureen A. Blythe ("Ms. Blythe"), who was retired and disabled and desired to relocate from Northern Virginia to the Hampton Roads area with her elderly mother, responded to a listing for a home "to be built" on an undeveloped lot located on Shurney Lane in Virginia Beach, Virginia. Ms. Blythe subsequently met with the purported owner of the lot, Carl M. Lewis, Jr. ("Mr. Lewis") and Hughes Burton ("Mr. Burton"), Mr. Lewis' real estate agent who was employed at the time by Judy Boone Realty.
3. On March 23, 2004, Mr. Burton prepared and executed a "Standard New Construction Residential Purchase Agreement" providing for Ms. Blythe to purchase from Mr. Lewis "Lot 1 C ... Plat of 0.96 Acres Braithwaite Corp ... Shurney Lane ("0.96 Acres")" ("Lot 1C") and a 2,476 square foot home to be built by Preferred Homes for a total purchase price of \$385,000.00, with a scheduled settlement date of August 10, 2004 ("Contract").
4. On March 23, 2004, Ms. Blythe issued a check payable to Judy Boone Realty in the amount of \$1,000.00 and a check payable to Preferred Homes, Inc. of Danville, Virginia in the amount of \$5,000.00 as and for the respective deposits required to be paid under the Contract, which Ms. Blythe executed on April 1, 2004.

5. Mr. Burton, who had been a former client of Respondent, referred the closing of the sale to Respondent for handling.
6. Respondent's office agreed to act as settlement agent for the transaction.
7. On or about May 4, 2004, on Mr. Lewis' instructions, Ms. Blythe sent \$150,000.00 to Respondent to hold in escrow for the purchase of Lot 1C in the form of two checks in the amounts of \$136,700.00 and \$13,300.00 which Respondent deposited into his firm's "Fiduciary Account". Each of the checks had a notation "Purchase lot on Shurney Lane, Virginia Beach, Va." Ms. Blythe intended to pay cash for Lot 1C and finance the construction of the home.
8. On June 3, 2004, Ms. Blythe executed an "Unimproved Lot Purchase Agreement" providing for Ms. Blythe to purchase from Mr. Lewis "Lot 1C of 0.96 Acres Braithwaite Corp. Virginia Beach" aka "Shurney Lane" for \$150,000 with a scheduled settlement date of June 15, 2004.
9. Ms. Blythe says she was unaware that: i) Mr. Lewis did not hold title to Lot 1C as the 0.96 Acres was owned by The Estate of Eola Foreman; ii) Lot 1C did not exist as the 0.96 Acres had not been approved for a subdivision or even zoned residential and thus had not been divided into lots; and iii) Mr. Lewis intended to use Ms. Blythe's purchase monies to purchase the 0.96 Acres for \$150,000.00, subdivide it into several lots, and then deed one of the lots (Lot 1C) to Ms. Blythe for the building of her home. The evidence of Respondent would be that Respondent communicated all of these facts to Ms. Blythe on August 12, 2004, and that Ms. Blythe was already aware of these facts having previously been advised by Mr. Burton and Mr. Lewis.

10. Several heirs of The Estate of Eola Foreman refused to execute a deed conveying title of the 0.96 Acres to Mr. Lewis, thereby precluding Mr. Lewis from acquiring the 0.96 acres and pursuing rezoning and approval of the subdivision of the lots.

11. Ms. Blythe contends that without her knowledge or consent, Mr. Lewis contracted to purchase an adjoining undivided tract of land for \$150,000.00 with Ms. Blythe's monies. Respondent contends he informed her of all these facts which Ms. Blythe claims she was unaware during an August 12, 2004 phone call prior to closing on August 17, 2004.

Respondent acted as settlement agent for the transaction, and in that capacity prepared a HUD-1 Uniform Settlement Statement ("HUD-1") dated 8/17/04 for the sale of "LOT on Diamond Springs Road Virginia Beach, VA 23452 .96 acres (Braithwaite)" from James Belin and Cleven James Rogers to Mr. Lewis' company, Commonwealth Merchant Services Inc., for the sales price of \$150,000.00. The HUD-1 states that the sale was a cash transaction. The HUD-1 indicates the escrow of \$1,000.00 for "ESCROW FOR TRANSFER OF DEED LOT 1C TO MAUREEN G. BLYTHE." Respondent's office later changed the reference to "LOT 1C" to "LOT 1e" by hand, and later to "Lot E" by typed print. The HUD-1 was signed by Mr. Lewis, the sellers and Respondent, who conducted the closing on August 17; 2004 ("Closing"). Ms. Blythe says the closing took place without her knowledge or consent. Respondent and his witnesses say she did consent. However, Respondent acknowledges that there is no writing confirming the consent of Ms. Blythe. Respondent contends that Ms. Blythe was anxious that the deed be recorded as soon as possible so the plat could be put to record and construction on her home could begin.

12. Ms. Blythe contends that Respondent called her on August 18, 2004 and informed her for the first time that her \$150,000.00 was being used by Mr. Lewis to purchase a tract of land adjoining Lot 1C from which a lot would later be created and deeded to her. However, Ms. Blythe, once by counsel and once *pro se*, filed two lawsuits against Respondent and others. The first suit was nonsuited and the second was dismissed for inactivity. Ms. Blythe alleged in both of those suits that Respondent advised her of all the terms of the transaction the day before closing, August 16, 2004, and not the day after closing as alleged in the Bar complaint.

Ms. Blythe further states she instructed Respondent "not to do anything" until he heard further from her. She wrote a letter advising Respondent to "not do anything". The letter was written over a month following closing; September 22, 2004. Respondent recorded the deed from James Belin and Cleven James Rogers to Lewis on August 24, 2004, and disbursed Ms. Blythe's monies as and for the purchase monies a few days later without Ms. Blythe's written authorization.

13. As settlement agent, Respondent occupied a fiduciary relationship with Ms. Blythe and the corresponding duty to disburse her funds only as she directed in writing.

14. Respondent had prepared a Deed of Bargain and Sale dated August 17, 2004, which purported to convey from Mr. Lewis DBA Commonwealth Merchant Services to Ms. Blythe undescribed property (the deed contained no legal description of the property purportedly being conveyed and instead merely referenced a non-existent Schedule "A" due to the fact that the parcel had not been divided into lots). Lewis signed the Deed of Bargain and Sale on August 27, 2004. Without any written authorization from Ms. Blythe, Respondent disbursed Ms. Blythe's entire \$150,000.00, including \$285.00 to himself and \$250.00 to his associate Susan Donner for the fees earned in the closing.

15. The Closing occurred without any approval of the proposed subdivision of the parcel purchased by Mr. Lewis with Ms. Blythe's monies. The subdivision of the parcel was eventually approved resulting in the creation of two lots, to-wit: Lot E and Lot F.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Bruce Howard Gould constitutes misconduct in violation of the following Rules of Professional Conduct as stipulated by the parties:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

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

RULE 1.7 Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Board **ORDERS** that Respondent hereby receive a **PUBLIC REPRIMAND WITHOUT TERMS.**, effective April 13, 2011.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to Bruce Howard Gould at his last address of record with the Virginia State Bar, Bruce H. Gould, Atty., P.C., Suite 206, 4101 Granby Street, Norfolk, VA 23504-1117, and to R. Paul Childress, Jr., McSweeney, Crump, Childress & Temple, P.C., 11th South 12th Street, 5th Floor, P.O. Box 1463, Richmond, VA 23218, Respondent's Counsel, and by hand-delivery to M. Brent Saunders, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Valarie May of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: April 14, 2011

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 

William E. Glover, Chair