

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MICHAEL BRUCE HAMAR

VS B Docket No. 08-021-072364

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On May 27, 2009, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of Donald C. Schultz, Chair, Ellen C. Carlson, Member, and Nancy L. Bloom, Lay Member, which considered and unanimously approved an Agreed Disposition of this matter.

Pursuant to Part 6, Section IV, Paragraph 13-15.B.4 of the Rules of the Supreme Court of Virginia, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Michael Bruce Hamar ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Complainant, Fredrick Ray Taylor ("Taylor"), entered into a transaction to purchase an investment property located in Norfolk, Virginia from Annie R. Terry/aka Annie Randolph and Aretha L. Randolph ("sellers"), who were in default of their first mortgage with Bank of America. The transaction was intended to prevent the displacement of the sellers from the home that would result from an impending foreclosure of their first mortgage held by Bank of America, and to allow the sellers to eventually repurchase the property from Taylor.
3. The terms of the transaction were memorialized by: i) a Sales Contract dated June 8, 2007 pursuant to which Taylor was to pay \$225,000.00 for the property, put down \$22,500.00 and finance the balance of \$202,500.00 via a loan from Option One Mortgage Corporation

(“OOMC”) as arranged by Taylor’s mortgage broker, D and D Home Loans (“D and D”); and ii) a Land Sales Contract signed by the parties on August 3, 2007.

4. The Respondent was hired by Taylor (through D and D) on June 22, 2007 as closing attorney for the transaction.

5. The Respondent promptly made arrangements for the completion of a title examination. A title report was prepared and provided to the Respondent in early July 2007. The title report disclosed the existence of, among other things, a first deed of trust against the property in favor of Bank of America, and a second deed of trust against the property in favor of an individual named Frank Howard (“Howard”)(“Howard Lien”).

6. At the closing of the transaction on Friday, August 3, 2007, an issue arose related to the existence and/or amount of the Howard Lien. Taylor would testify that the Howard Lien was not listed on the HUD-1 Settlement Statement that the Respondent had prepared and presented to the parties at closing. According to the Respondent, the Howard Lien was listed on the HUD-1 Settlement Statement, and the only question raised at closing by the sellers was the amount of the Howard Lien. Two different versions of the HUD-1 Settlement Statement for this transaction have been produced in conjunction with the investigation of this complaint, one of which does not contain the Howard Lien (which the Respondent has identified as a pre-closing, preliminary draft), the other of which contains a payoff of a second mortgage to “Mortgage Star¹” in the amount of \$89,999.98².

¹ Howard and not Mortgage Star should have been listed as the second mortgage payee.

² Under the terms of a disbursement agreement, the net sale proceeds were to be distributed as follows:

- \$23,066.52 to Taylor to hold in escrow to cover the initial 24 payments due under the Land Sales Contract;
 - \$10,000 to Taylor as “Property Management Fee” for improvements to the property;
 - \$5,000 to the sellers;
 - \$4,369.21 to National Foreclosure Assistance for services to the sellers; and
 - \$141 for additional recording costs
- Total: \$42,576.73

If the second mortgage had been paid off in the amount of \$89,999.98, there would have been available only \$37,581.73 in net proceeds, resulting in a deficit of \$4,995 in available funds for the above distributions.

7. According to Taylor, he was unaware of the existence of the Howard Lien prior to the closing on August 3, 2007. Upon his discovery of the Howard Lien during the closing, Taylor told the Respondent that he did not wish to complete the transaction unless the Howard Lien was negotiated to an amount that was satisfactory to Taylor. The Respondent requested that the parties proceed with execution of all of the necessary closing documents, and represented that he would hold them in escrow pending resolution of the issue of the Howard Lien. The Respondent told Taylor that he would not finalize the transaction unless and until he resolved the Howard Lien to Taylor's satisfaction, and that if he was unable to do so, he would shred the closing documents. Based on the Respondent's representations, and Taylor's specific instruction to the Respondent that he not record or finalize the transaction without Taylor's express permission, Taylor signed and allowed the Respondent to retain all of the closing documents, and retain the \$29,707.11 in deposit monies Taylor had wired to the Respondent's firm, with the understanding that the transaction would not be finalized without Taylor's express permission.

8. The next week, the Respondent contacted Howard and negotiated a \$10,000 reduction of the Howard Lien, and communicated such fact to personnel at D and D who had been a go between in communicating with Taylor. The Respondent proceeded to close the transaction by recording a deed to the property conveying ownership from the sellers to Taylor on August 7, 2007, and disbursing monies on August 7, 2007 and August 8, 2007³, all without obtaining Taylor's direct permission or having any further direct discussion with Taylor as to the status of the Howard Lien⁴. The Respondent did not disburse any monies to Howard or the sellers. Following recordation of the deed and disbursement of the OOMC loan proceeds and Taylor's

³ The net amount of the funds received from OOMC was \$201,087.34.

⁴ According to the Respondent, he obtained the verbal authorization of Taylor's mortgage broker prior to closing on behalf of Taylor.

deposit monies, the Respondent continued to negotiate a reduction of the Howard Lien, and to that end, sent Howard a letter on August 9, 2007 which resulted in another \$10,000 reduction of the Howard lien.

9. On August 14, 2007, the Respondent attended a meeting called by D and D and others to discuss the closing of the transaction, as a result of which, the Respondent agreed to rescind the sale and attempt to recover the disbursed monies. According to the Respondent, other parties in attendance at the meeting agreed to assist in and share in the costs of the rescission.

10. The Respondent then attempted to rescind the transaction by requesting several stop payments on checks that he had issued and contacting Bank of America to have the sellers' mortgage reinstated. After the Respondent paid a \$400.00 reinstatement fee, Bank of America reinstated the sellers' mortgage and returned the loan payoff proceeds in the form of a check dated September 12, 2007 in the amount of \$91,325.67 made payable and sent to the Respondent's firm, which was deposited into the firm's trust account on September 13, 2007. The next day, Taylor executed a Quitclaim Deed to the property that was recorded on October 16, 2007⁵.

11. On September 21, 2007, at the request of Taylor, the Respondent wired \$24,707.11 (the amount of Taylor's deposit less \$5,000) to an account designated by Taylor. To date, Taylor has not received a refund of any portion of the \$5,000.00 balance of his deposit.

12. The Respondent also made attempts to rescind/payoff the mortgage loan issued to Taylor by OOMC, the funds for which had been partially disbursed by the Respondent on August 7, 2007 and August 8, 2007. OOMC refused to rescind the transaction, and demanded the payment of an early payoff penalty of \$4,050, plus interest, as allowed pursuant to the Prepayment Charge

⁵ Bank of America ultimately foreclosed and the property was sold on November 30, 2007.

Note Addendum and other documents signed by Taylor on August 3, 2007. In late September 2007, the Respondent wired to OOMC the sum of \$204,270.23 (principal + accrued interest), which OOMC returned since it did not include the prepayment penalty (Total claimed through October 2, 2007: \$208,141.16 – a difference of \$3,870.93). The Respondent then sent out a letter “To all parties involved” dated October 3, 2007 stating that he would cover part of the prepayment penalty charge, asking who would cover the balance, and advising that OOMC would accept the payoff amount minus the prepayment penalty if Taylor agreed in writing to pay the penalty. Taylor responded via email on October 4, 2007 in which he stated that he would not agree to pay the penalty since the transaction was closed without his permission. On October 15, 2007, the Respondent issued another check to OOMC in the amount of \$204,270.23 and requested that it be applied not to pay off the loan but toward the September and October payments and the balance to the remaining principal in order to pay down the loan and minimize the accrual of additional interest. To date, the remaining balance claimed by OOMC has not been paid. As a result of the closing of this transaction, and the resultant imposition of the prepayment penalty by OOMC, Taylor and his wife received many collection calls from or on behalf of OOMC over a several month period following the closing, and Taylor’s credit report contains adverse information relative to the OOMC loan.

II. NATURE OF MISCONDUCT

Such conduct by Michael Bruce Hamar constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client’s decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.**
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.**

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.**
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.**

RULE 1.7 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.****

RULE 1.15 Safekeeping Property

- (b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.**
- (c) A lawyer shall:
 - (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 which such person is entitled to receive.****

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the Rules of Professional Conduct or other law.****

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to accept the Agreed Disposition of a Public Reprimand with Terms. The terms and conditions with which the Respondent must comply are as follows:

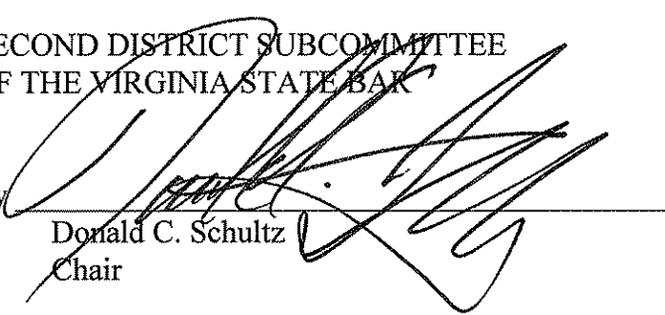
1. The Respondent shall, at his sole cost and expense, obtain a full and independent review and audit of his firm's trust and operating account(s) for the purpose of fully accounting for and reconciling all funds received and disbursed relative to the real estate transaction that is the subject of this complaint. Such review and audit shall be conducted by a certified public accountant. A copy of the report produced as a result of the review and audit shall be furnished to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, by September 1, 2009; and
2. The Respondent shall address and remedy any irregularities related to or arising from the receipt and/or disbursement of funds relative to the real estate transaction that is the subject of this complaint by October 1, 2009, and shall provide proof of the same to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, by October 15, 2009.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the respective completion dates set out above, the Respondent agrees that the alternative disposition shall be a Certification for Sanction Determination pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G.

Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By


Donald C. Schultz
Chair

CERTIFICATE OF SERVICE

I certify that on the 13th day of JULY, 2009, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Michael Bruce Hamar, Esquire, Respondent, *pro se*, at Michael B. Hamar PC, Suite J, 520 West 21st Street, Norfolk, VA 23517, Respondent's last address of record with the Virginia State Bar.

