

**VIRGINIA:**

**BEFORE THE DISCIPLINARY BOARD  
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF  
JOHN E. HAMILTON, JR.**

**VS. Docket Nos. 04-060-2919, 04-060-3430, 05-060-0031, and 05-060-2260**

**MEMORANDUM ORDER**

On July 18, 2006, these matters came to be heard by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Dr. Theodore Smith, lay member, Rhysa Griffith South, Esq., William H. Monroe, and Peter A. Dingman, Chair presiding (the Panel). The Virginia State Bar appeared through its Assistant Bar Counsel, Richard E. Slaney (the Bar), and the Respondent, John E. Hamilton, Jr. (Mr. Hamilton or Hamilton), appeared *pro se*. A fifth member of the panel was unavailable at the time of the conference call; however, the parties and the Panel unanimously elected to proceed with a panel of four.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13(B)(5)(c), the Bar and Mr. Hamilton entered into a written proposed Agreed Disposition and presented same to the Panel.

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 the parties as well as Mr. Hamilton's prior disciplinary

record with the Bar and thereafter retired to deliberate on the Agreed Disposition. The Panel accepted the Agreed Disposition with the caveat, agreed by the Bar and Mr. Hamilton, that Term 2 be modified to require that the attorney performing the random audit of the Respondent's real estate files, Kathleen Uston, file a written report with the Bar indicating either that Respondent continues to timely complete his work on such files and accurately maintain subsidiary ledgers for such files, or that, if deficiencies are found, Ms. Uston shall make recommendations and subsequently perform another random audit to make sure any deficiencies are cured and her recommendations are being implemented. Additionally, a Term 3 was added stating the Respondent consents and agrees that any alleged failure to comply with any Term shall be heard exclusively by the Board, and the sole issue at any such hearing shall be whether the Respondent has complied with the Term(s) at issue. The parties having accepted both caveats on the record at the hearing, the Panel voted to accept the Agreed Disposition.

#### I. FINDINGS OF FACT

1. At all times material to these matters, the Respondent, Hamilton, was an attorney licensed to practice law in the Commonwealth of Virginia.

##### The Clanton Closing 04-010-2919

2. On August 14, 2003, Hamilton served as settlement agent for a real estate closing in which Candyce Clanton (Clanton) was the buyer. Not knowing the exact amount of cash to bring to closing, Clanton estimated and brought a check for \$87,500. At that time, her actual closing costs as calculated by Hamilton were \$86,170.15.

3. At the closing, Clanton expressed a desire for owner's title insurance.

Hamilton advised Clanton the \$975 premium listed on the HUD-1 did not include owner's title

insurance. Clanton agreed to allow Hamilton to retain and use the \$1,329.85 overpayment to obtain owner's title insurance. Hamilton advised Clanton a survey would be required in order to procure owner's title insurance; however, Clanton wanted to locate a surveyor who would do the job for less than the surveyor recommended by Hamilton.

4. On September 3, 2003, Banker's Title, LLC (Banker's Title) issued to Hamilton a title commitment for both owner's and lender's title insurance on the property Clanton purchased. On November 13, 2003, Banker's Title received Hamilton's payment for both policies. Banker's Title did not receive anything satisfying Condition 5 of the title insurance commitment, including completed forms 401 (Homeowner's Policy Supplemental Certification) and 402 (Homeowner's Policy of Title Insurance Affidavit).

5. On December 9, 2003, Clanton wrote Hamilton, making inquiry as to the status of the owner's title insurance policy and her \$1,329.85 overpayment.

6. On February 9, 2004, Banker's Title wrote Hamilton, indicating they could not issue title insurance until documentation satisfying condition 5 was received.

7. On February 17, 2004, Marco Lopez, Esq. (Lopez), on behalf of Clanton, wrote Hamilton and made demand for a title insurance policy, a revised HUD-1 and refund of any remaining overpayment. Hamilton denies receiving the letter from Lopez and Lopez received no response from Hamilton.

8. On April 2, 2004, Clanton sent her complaint against Hamilton to the Bar and sent a copy of the complaint to Hamilton.

9. On or about April 8, 2004, Hamilton sent to Banker's Title completed forms 401 and 402.

10. On or about April 15, 2004, Banker's Title issued both the owner's and lender's title insurance policies. On April 18, 2004, Hamilton sent the owner's policy and a refund check in the amount of \$374.85 to Clanton.

[Rules applicable: 1.3(a) and 1.4(a)]

The Rinehart Closing 04-060-3430

11. On November 4, 2003, Hamilton served as settlement agent in a real estate closing in which Thomas Rinehart (Rinehart) and his wife were the purchasers.

12. Prior to the closing, Rinehart told Hamilton he wanted owner's title insurance. At closing, line 1108 on the HUD-1 stated that Bankers Title, LLC would provide owner's title insurance for \$325, which Hamilton collected from the Rinehart's funds at closing.

13. Also prior to the closing, Hamilton did a title search on the subject property and found a judgment recorded August 15, 1984 against the sellers (the Judgment). Hamilton did not tell Rinehart about the Judgment; however, he was aware of similar judgments by the same creditor and believed the successor company to that creditor would not have the information required to either release the judgment or enforce the lien.

14. After the November 4, 2003 closing, Rinehart attempted to contact Hamilton about receipt of his title and title insurance policy and faxed a letter to Hamilton on April 27, 2004, although Hamilton denies receiving any fax. Rinehart filed his Bar complaint in June of 2004. When interviewed by Bar Investigator Oren M. Powell (Investigator Powell), Hamilton admitted that following the closing he forgot to obtain title insurance for Rinehart.

15. Following receipt of the Bar complaint, Hamilton wrote to one Tracie Dening of 3-D Communications, Inc. (Dening) and requested an owner's title insurance policy for Rinehart.

Dening performed a title search on Rinehart's property and located the Judgment. She sent the information from her title search to Catherine Mundy (Mundy) at Allegiance Title Insurance Agency, Inc. (Allegiance Title).

16. Mundy contacted Hamilton about the Judgment and indicated Allegiance Title could either issue owner's title insurance with an exception for the judgment or wait until August 15, 2004 for the expiration of the Judgment. Hamilton advised her to do the latter, and Allegiance Title sent an owner's title insurance policy to Rinehart by letter dated September 2, 2004.

17. At closing, Hamilton collected \$325 for title insurance. He paid Dening \$100 for the title search and paid Allegiance Title \$182.50, leaving a balance of \$42.50. Hamilton would testify his prior practice was to add together both the cost of title insurance and his own fees and costs for assisting in obtaining title insurance and place that sum in line 1108 on the HUD-1; however, he now understands that is not appropriate and separates out all fees and charges on the HUD-1.

18. In regard to owner's title insurance, the subsidiary ledger maintained by Hamilton for the Rinehart closing does not accurately reflect payments Hamilton made and does not comport with the HUD-1.

[Rules applicable: 1.3(a); 1.4(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

The DiGiandomenico Closing 05-060-0031

19. On August 22, 2003, Hamilton served as settlement agent in a real estate closing in which Carmen DiGiandomenico (DiGiandomenico) and his wife were the purchasers.

20. Prior to the closing, DiGiandomenico told Hamilton he wanted owner's title insurance. At closing, line 1108 on the HUD-1 stated that Bankers Title would provide owner's title insurance for \$250, which Hamilton collected from the DiGiandomenico's funds at closing.

21. Also prior to the closing, Hamilton did a title search on the subject property and found an unreleased deed of trust recorded April 19, 1974 against the property (the Deed of Trust). Hamilton did not tell DiGiandomenico or Robert Booth, the realtor in regard to the property (Booth), about the Deed of Trust. Hamilton would testify he had reason to believe the Deed of Trust had been satisfied.

22. After the August 22, 2003 closing, DiGiandomenico and Booth attempted to contact Hamilton about receipt of his title insurance policy. DiGiandomenico, having been told the problem was with Banker's Title, called their office on at least two occasions and was told Hamilton had not applied for an owner's title insurance policy for DiGiandomenico. When interviewed by Investigator Powell, Hamilton admitted that following the closing he forgot to obtain owner's title insurance for DiGiandomenico.

23. Not having received any title insurance, DiGiandomenico filed his Bar complaint in July of 2004. At about the same time, Hamilton obtained a release of the Deed of Trust and arranged for title insurance through Allegiance Title, which then sent an owner's title insurance policy to DiGiandomenico in July of 2004.

24. At closing, Hamilton collected \$250 for title insurance. He paid Dening \$105.50 for the title search and paid Allegiance Title \$85, leaving a balance of \$59.50. Again, Hamilton would testify about his prior practice as detailed in paragraph 17 above and that he now separates out all fees and costs on the HUD-1.

25. In regard to owner's title insurance, the subsidiary ledger maintained by Hamilton for the DiGiandomenico closing does not accurately reflect payments Hamilton made and does not comport with the HUD-1.

[Rules applicable: 1.3(a); 1.4(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

Three Additional Closings 05-060-2260

The Smith Closing

26. On January 8, 2003, Hamilton served as settlement agent in a real estate closing in which Clifford E. Smith, II (Smith) and his wife were the purchasers.

27. At closing, the HUD-1 read:

1108. Title Insurance to Banker's Title, LLC	1,275.00
1109. Lender's coverage	368000.00
1110. Owner's coverage	460000.00

The Smiths believed, based on the language of the HUD-1, that they were purchasing owner's title insurance, and would testify Hamilton never raised the issue of owner's title insurance.

Hamilton would testify one of the Smiths declined owner's title insurance. The realtor, Kenneth G. Smith (no relation) would testify he attended the closing and nothing was said about waiving owner's title insurance. In any event, Hamilton never obtained from the Smiths a written statement declining owner's title insurance as required by Code of Virginia Section 38.2-4616.

28. Prior to the closing, Hamilton did a title search on the subject property and found an unreleased deed of trust recorded September 30, 1996 against the property (the Other Deed of Trust). Hamilton did not tell the Smiths or Kenneth G. Smith about the Other Deed of Trust, as he had reason to believe the underlying indebtedness had been satisfied.

29. In the Spring of 2004, the Smiths attempted to refinance the loan on the subject property. Fireside Settlement and Title Services (Fireside) did a title search on the property, found the Other Deed of Trust and alerted the Smiths. The Smiths left several messages for Hamilton, eventually spoke to him and learned they had no owner's title insurance. The Smiths

also contacted Banker's Title and learned Hamilton had only ordered lender's title insurance.

30. The Smiths were getting close to the end of their interest rate lock on their new loan, and in order to close they were required to put \$20,000 into escrow until a release of the Other Deed of Trust was obtained by Fireside in April of 2004.

31. The subsidiary ledger maintained by Hamilton for the Smith closing does not comport with the HUD-1.

32. Having received complaints from DiGiandomenico, Smith and one other person who did not give her name, on August 2, 2004, Investors Title Insurance Company (the underwriter for Banker's Title) terminated Hamilton as an approved settlement provider due to his failure to timely deliver owner's title insurance policies that were paid for at settlement.

[Rules Applicable: 1.3(a); 1.4(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

#### The Makrinikolas Closing

33. On November 17, 2003, Hamilton served as settlement agent in a real estate closing in which James Makrinikolas (Makrinikolas) and his wife were the purchasers.

34. Prior to the closing, Makrinikolas told Hamilton he wanted owner's title insurance. At closing, line 1108 on the HUD-1 stated that Bankers Title would provide owner's title insurance for \$275, which Hamilton collected from the Makrinikolas's funds at closing.

35. When interviewed by Bar Investigator Powell, Hamilton admitted that following the closing he forgot to obtain title insurance for Makrinikolas.

36. Sometime in June of 2004, Hamilton asked Dening to perform a title search, which she did. She sent the information from her title search to Mundy at Allegiance Title. Allegiance Title then sent a title insurance policy to Makrinikolas in July of 2004.

37. At closing, Hamilton collected \$275 for title insurance. He paid Dening \$71 for the title search and paid Allegiance Title \$85, leaving a balance of \$119. Again, Hamilton would testify about his prior practice as detailed in paragraph 17 above and that he now separates out all fees and costs on the HUD-1.

38. In regard to owner's title insurance, the subsidiary ledger maintained by Hamilton for the Makrinikolas closing does not accurately reflect payments Hamilton made and does not comport with the HUD-1.

[Rules Applicable: 1.3(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

#### The Bradshaw Closing

39. On May 28, 2004, Hamilton served as settlement agent in a real estate closing in which Kenneth Bradshaw (Bradshaw) and his wife were the purchasers.

40. At closing, line 1108 on the HUD-1 stated that Bankers Title would provide owner's title insurance for \$375, which Hamilton collected from the Bradshaw's funds at closing.

41. On September 2, 2004, Hamilton provided Allegiance Title with the documents necessary for the title insurance policy. Allegiance issued the policy on September 15, 2004.

42. Allegiance Title charged Hamilton \$291.70 for the owner's title insurance policy, leaving an apparent balance of \$83.30. Again, Hamilton would testify about his prior practice as detailed in paragraph 17 above and that he now separates out all fees and costs on the HUD-1.

[Rules applicable: 1.5(b)]

43. In mitigation, Hamilton would present evidence that during mid and late 2003, he had a series of computer malfunctions (in part caused by Hurricane Isabel) and, in addition to his normal workload, was appointed to defend an individual charged with 35 counts of various sexual

offenses, some of which carried the potential for life sentences. Further, as a result of an unrelated complaint, Hamilton hired an attorney suggested by the Bar. Kathleen M. Uston, Esq. (Uston) to conduct a thorough review of his office practices and procedures. Hamilton advises, and the Bar confirmed, that such review included trust account and real estate settlement practices and procedures.

## II. NATURE OF MISCONDUCT

The Board finds that such conduct of Mr. Hamilton constitutes a violation of the following Disciplinary Rules:

### RULE 1.3 Diligence

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

### 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.

### RULE 1.5 Fees

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

### RULE 1.15 Safekeeping Property

(c) 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 accounts to the client regarding them; and

(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.

- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
- (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
- (iv) reconciliations and supporting records required under this Rule;
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
- (5) Reconciliations.
- (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
- (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
- (ii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

### III. IMPOSITION OF SANCTION

The Board, having considered all the evidence before it, determined to accept the Agreed Disposition. Having determined to accept the Agreed Disposition, the Board **ORDERS** that

Pursuant to Part 6, Section IV, Paragraph 13(I)(2)(f)(2)(b) of the Rules of the Supreme Court of Virginia, the Board hereby imposes upon the Respondent, John E. Hamilton, Jr., a **PUBLIC REPRIMAND WITH TERMS**. The Terms shall be:

1. Respondent shall, within thirty days of the date this Agreement is approved and a Memorandum Order is issued, pay to the following persons the following amounts:

- |                           |         |
|---------------------------|---------|
| a. To the Rineharts       | \$42.50 |
| b. To the DiGiandomenicos | \$59.50 |
| c. To the Makrinikolas    | \$119   |
| d. To the Bradshaws       | \$83.30 |

2. Respondent shall, within six months of the date this Agreement is approved and a Memorandum Order is issued, engage Kathleen M. Uston, to revisit his law practice and conduct a random audit of recently closed real estate settlement files, to insure Respondent continues to timely complete his work of such files and accurately maintain subsidiary ledgers on such files. Ms. Uston shall file a written report with the Bar indicating either that Respondent continues to timely complete his work on such files and accurately maintain subsidiary ledgers for such files, or that, if deficiencies are found, Ms. Uston shall make recommendations and subsequently perform another random audit to make sure any deficiencies are cured and her recommendations are being implemented.

3. Respondent consents and agrees that any alleged failure to comply with any Term shall be heard exclusively by the Board, and the sole issue at any such hearing shall be whether the Respondent has complied with the Term(s) at issue.

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(B)(8)(c).

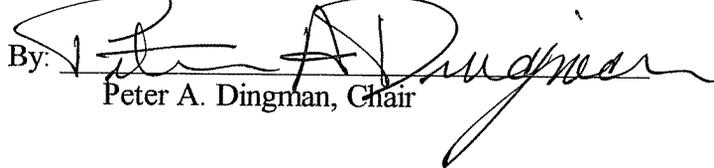
It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified

copy of this order to the Respondent, John E. Hamilton, Jr., Esq., at 198 Crowder Point Drive, Reedville, Virginia 22539, his last address of record with the Virginia State Bar, Richard E. Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Jennifer L. Hairfield, Chandler and Halasz, Inc. Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, was the reporter for the hearing and transcribed the proceedings.

Entered this the 31<sup>st</sup> day of July, 2006.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
Peter A. Dingman, Chair

bc/ls/01

EDITH S. HARRIS