

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
JASON MATTHEW HEAD

VSB Docket No. 10-000-082957

MEMORANDUM ORDER

This matter came on to be heard on December 8, 2010 via 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 Disciplinary Board) consisting of William E. Glover, Chair, Pleasant S. Brodnax, III, Member, Randall G. Johnson, Jr., Member, Tyler E. Williams, III, Member, and Stephen A. Wannall, Lay Member (the Panel).

M. Brent Saunders, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. The Respondent, Jason Matthew Head (Respondent), appeared by his counsel, Michael L. Rigsby, Esquire.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H and 15 VAC 5-80-50.D.5.d, 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 or her 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 reviewed Respondent's prior disciplinary

record with the Bar 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 Disciplinary Board finds the following facts by clear and convincing evidence as stipulated by the parties:

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.

2. In order to provide escrow, closing or settlement services as a settlement agent in transactions involving the purchase of or lending on the security of real estate in Virginia containing not more than four residential dwelling units, Respondent was required under the Virginia Consumer Real Estate Settlement Protection Act ("CRESPA") and the Regulations issued pursuant thereto to have been registered as a settlement agent with the Virginia State Bar.

3. Respondent obtained an initial CRESPA registration from the Virginia State Bar on May 5, 2008.

4. Prior to obtaining CRESPA registration, Respondent provided escrow, closing or settlement services as the settlement agent in multiple transactions involving the purchase of or lending on the security of real estate in Virginia containing not more than four residential dwelling units, including the following transactions:

<u>Parties</u>	<u>Transaction Type</u>	<u>Closing Date</u>
Rodney S. and Sandra Blount to QLT 1, LLC	Sale	8/23/07
Curtis J. and Jennifer C. Lycke to Shanta L. Greene	Sale	9/28/07
Michael T. Jankosky and Patricia L. Flax-Jankosky	Refinance	10/1/07
Richard Allen Kampenga	Refinance	10/15/07

Gregory W. Lee to QLT1, LLC	Sale	10/17/07
James A. Mitchell to Rodger W. Jackson	Sale	10/19/07
Adrian Young to Michael Veraldi	Sale	12/7/07

The above closing dates are reflected in the respective settlement statements as the settlement dates for each of the transactions. Each of the settlement statements for the transactions also shows the Respondent and/or Respondent's firm as the settlement agent.

5. Respondent acted as settlement agent in the sale of a real estate parcel containing a single residential dwelling unit located at 1745 Macedonia Road, Suffolk, Virginia from Amanda and Joseph Walker to Branmall, LLC. The transaction closed on or about November 17, 2008, as reflected in the settlement statement as the settlement date for the transaction. The settlement statement for the transaction also identifies Respondent and/or Respondent's law firm as the settlement agent.

Respondent scheduled on the HUD-1 Settlement Statement for the transaction settlement charges to be paid by the buyer totaling \$1,325.33, which included \$300.33 for government recording and transfer fees. On the date of closing, the buyer delivered to Respondent funds totaling \$19,325.00, which represented the \$18,000.00 purchase price plus the settlement charges to be paid by the buyer as scheduled by Respondent (less \$0.33). Respondent made multiple disbursements of settlement proceeds totaling \$19,025.00 prior to recordation of the deed which did not occur until June 17, 2009(1).

6. Respondent acted as settlement agent in the sale of a real estate parcel containing a single residential dwelling unit located at 7021 Doummar Drive, Norfolk, Virginia, from Household Realty Corporation of Virginia to Charles Leonard Gray, who financed the purchase with a mortgage loan to be secured by a first deed of trust on the real estate. The transaction closed on or about February 24, 2009, as reflected in the settlement statement as the settlement date for the transaction. The settlement statement for the transaction also identifies Respondent and/or Respondent's law firm as the settlement agent. Respondent made multiple disbursements of settlement proceeds prior to recordation of the deed and/or deed of trust which did not occur until August 28, 2009.

7. Respondent provided escrow, closing or settlement services as the settlement

---

<sup>1</sup> Respondent issued a check to the Suffolk Circuit Court Clerk's Office dated November 17, 2008 in the amount of \$300.33 as and for government recording and transfer fees. That check was returned to Respondent along with the deed in November 2008 since the actual amount owed for recordation and transfer fees was only \$111.00. On June 17, 2009, Respondent delivered to the Suffolk Circuit Court Clerk's Office a check in that amount along with a deed that was recorded on that date.

agent in multiple transactions involving the purchase of or lending on the security of real estate in Virginia containing not more than four residential dwelling units in connection with he did not utilize a separate and distinct fiduciary trust account for the depositing and disbursing of the proceeds for the transactions, including the following:

<u>Parties</u>	<u>Transaction Type</u>	<u>Closing Date</u>
Leon and Michelle Peoples to 1344 River Birch Land Trust	Sale	5/14/08
Kenneth L. Mendelson and Joelle A. Moreno to Cline and Jennifer Reasor	Sale	5/30/08
Tony L. Watson to QLTI, LLC	Sale	6/26/08
Louis M. Cherwa	Refinance	6/26/08
William M. Denning	Refinance	7/31/08

The above closing dates are reflected in the respective settlement statements as the settlement dates for each of the transactions. Each of the settlement statements for the transactions also shows the Respondent as the settlement agent.

## II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Jason Matthew Head constitutes misconduct in violation of the following provisions of CRESPA and the Regulations issued pursuant thereto:

### **§ 6.1-2.21. Licensing requirements, standards and financial responsibility.**

C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses and record retention.

**§ 6.1-2.23. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.**

A. All funds deposited with the settlement agent in connection with an escrow, settlement or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in this Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § 6.1-2.13, except:

1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813; and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

**15 VAC 5-80-30. Registration; Reregistration; Required Fee.**

Every licensed attorney, title insurance company, title insurance agent or real estate

broker, as well as every financial institution authorized to do business in Virginia under any of the provisions of Title 6.1, Code of Virginia, or under federal law, and every subsidiary or affiliate of any such financial institution, now providing or offering, or intending to provide or offer, escrow, closing or settlement services as a settlement agent with respect to real estate transactions in Virginia shall register with the Bar on or before September 29, 1997, using the registration form available from the Bar for that purpose.

Settlement agents beginning to provide or offer such services after July 1, 1997, shall register with the Bar prior to doing so. The registration requirement in this paragraph shall not apply to attorney settlement agents unless they provide or offer to provide escrow, settlement and closing services for real estate subject to CRESPA, i.e., real estate containing not more than four residential dwelling units. Thus, for example, attorneys who handle only commercial real estate transactions are not subject to these Regulations.

Every settlement agent shall thereafter reregister after notice on a schedule established by the Bar, providing updated registration information. Every settlement agent shall have a continuing duty to advise the Bar of any change in name, address or other pertinent registration data that occurs between registrations.

...

Registration is subject to revocation or suspension if the Bar or other appropriate licensing authority finds the settlement agent out of compliance with CRESPA or Regulations issued thereunder.

#### **15 VAC 5-80-50. Attorney Settlement Agent Compliance.**

##### **B. Separate Fiduciary Trust Account.**

Each attorney settlement agent shall maintain one or more separate and distinct fiduciary trust account(s) used only for the purpose of handling funds received in connection with escrow, closing or settlement services. Funds received in connection with real estate transactions not covered by CRESPA may also be deposited in and disbursed from such account(s). All funds received by an attorney settlement agent in connection with escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and CRESPA. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer trust accounts, as well as in conformity with CRESPA. One separate fiduciary trust account may be maintained and used by all attorney settlement agents practicing in the same firm or legal entity.

### III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board hereby **ORDERS** that Respondent receive the following sanctions:

1. Respondent's CRESPA registration shall be and hereby is revoked immediately upon the entry of this Memorandum Order;
2. Respondent shall pay to the Virginia State Bar a penalty of Three Thousand Dollars (\$3,000.00) in installments of \$125.00 per month commencing June 1, 2011. Said payments shall be paid by mail or hand delivery to the Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219; and
3. Respondent's license to practice law in the Commonwealth of Virginia shall be and hereby is suspended for a period of twenty (20) days effective January 1, 2011.

It is further **ORDERED** that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been

timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

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. and 15 VAC 5-80-50.D.6.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order by Certified Mail, Return Receipt Requested, to Jason Matthew Head at his last address of record with the Virginia State Bar, Jason Head & Associates, PLC, Suite 600, One Columbus Center, Virginia Beach, VA 23462; by regular mail to Michael L. Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, VA 23226, Respondent's Counsel; and by hand delivery to M. Brent Saunders, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Valarie May of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone (804) 730-2222, was the court reporter for the hearing and transcribed the proceedings.

December <sup>BSK</sup>  
ENTERED: ~~September~~ 10, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
\_\_\_\_\_  
William E. Glover, Chair