

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

RECEIVED

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

DEC 20 2010

v.

Case No. CL10-4043

JASON MATTHEW HEAD

VSB CLERK'S OFFICE

MEMORANDUM ORDER

This cause came to be heard on November 16, 2010 before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of the Honorable Kenneth R. Melvin, Judge of the Third Judicial Circuit, Chief Judge presiding, the Honorable William H. Shaw, III, Retired Judge of the Ninth Judicial Circuit, and the Honorable Ray W. Grubbs, Retired Judge of the Twenty-Seventh Judicial Circuit. The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders, and the Respondent appeared in person and through his counsel, Michael L. Rigsby, Esquire.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Jason Matthew Head, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or why he should not otherwise be sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Second District Committee of the Virginia State Bar.

The panel accepted the Stipulation entered into between the parties and admitted the parties' exhibits.

Following opening statements on behalf of the parties, the Virginia State Bar presented its evidence. The panel then proceeded to hear Respondent's evidence and the

Virginia State Bar's rebuttal evidence. The panel then heard arguments from the parties as to whether the evidence proved violations of the provisions of the Virginia Rules of Professional Conduct set forth in the Certification under the clear and convincing standard. Following deliberation, the panel unanimously found by clear and convincing evidence the following material facts pertinent to the findings of misconduct set forth below:

1. Respondent was licensed to practice law in the Commonwealth of Virginia in 2001, and remained so licensed at all times relevant hereto.

09-021-079570

2. The complainant, Alfonso Jones ("Jones"), hired Respondent to act as closing agent on a cash purchase of a residential property located at 1745 Macedonia Road, Suffolk, VA 23436 from Amanda and Joseph Walker to Jones' company, Branmall, LLC, for a purchase price of \$18,000.00. On November 17, 2008, the parties convened for the closing of the transaction. On that date, Jones delivered the funds needed to close, the sellers executed the deed transferring ownership of the property to Branmall, LLC, and the transaction closed. The deed was filed with the Suffolk Circuit Court Clerk's Office ("Clerk's Office") the next day, but was returned without being recorded due to Respondent's miscalculation of the amount due for taxes and fees for the transaction and recordation of the deed¹.

3. Jones called Respondent's office in late January 2009 to inquire why he had not

¹ Respondent scheduled on the HUD-1 Settlement Statement for the transaction settlement charges to be paid by Jones totaling \$1,325.33, which consisted of \$1,025.00 for Respondent's fees, and \$300.33 for government recording and transfer charges. On the date of closing, Jones delivered to Respondent funds totaling \$19,325.00, which represented the purchase price plus the settlement charges to be paid by Jones (less \$0.33 for unknown reasons). Respondent deposited those funds into his real estate trust account at RBC Bank and issued multiple disbursement checks, including a check to the Clerk's Office dated November 17, 2008 in the amount of \$300.33. 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.

received the recorded deed. He did not reach Respondent, but left a message for Respondent to call him. When his message was not returned, he called and left three to four (3-4) additional messages and finally was able to speak with Respondent in late February 2009. Respondent told Jones he would look into why the deed had not been recorded and get back with him. When Jones did not hear from Respondent, he made approximately six (6) more calls to Respondent's office over the course of several weeks and left messages that were not returned.

Finally, in late March or early April 2009, Jones was able to speak to one of Respondent's employees, Nan Murphy ("Murphy"), who told Jones she would look into the matter and get back with him. On April 22, 2009, having not heard back from Respondent or Murphy, Jones visited Respondent's office and attempted without success to meet with Respondent to discuss the matter. He was told Respondent was unavailable, but he was able to speak with Murphy, who told Jones that the deed must have been misplaced by the court.

Having heard nothing further, on May 6, 2009: 1) Jones again called Respondent's office and left another message; and 2) visited the Clerk's Office and confirmed that the deed had still not been recorded. A few days later, Jones filed this complaint with the bar.

4. On June 17, 2009, fifteen (15) days after a copy of this complaint was mailed to him, Respondent finally submitted a check to the Clerk's Office in the correct amount as and for recordation and transfer fees for the transaction (\$111.00), and the deed was recorded. Respondent did not mail Jones the original deed until July 21, 2009.

09-021-079674 and 09-021-079973

5. Respondent maintained an IOLTA trust account at Bank of America (Account #*****7154) (“IOLTA Trust Account”) which he used a depository for monies he received on behalf of clients who provided Respondent with old debts for collection. Such monies were the gross amounts collected, portions of which belonged to Respondent’s clients.

6. Two overdrafts occurred in the IOLTA Trust Account as a result of the existence of insufficient funds at the time of the presentment of two items for payment. More specifically, an overdraft in the amount of \$270.28 caused by the presentment of a debit in the amount of \$270.88 on May 14, 2009 (09-021-079674); and an overdraft in the amount of \$250.00 caused by the presentment of a debit in the amount of \$250.00 on June 8, 2009 (09-021-079973). The debits were placed on the IOLTA Trust Account by third-party payment processing companies whom Respondent had authorized to debit the IOLTA Trust Account on an on-going basis as they determined to be appropriate or necessary to recover any monies they deemed had been erroneously credited to the IOLTA Trust Account. More specifically:

- The debit on May 14, 2009 in the amount of \$270.88 was placed on the account by a payment processing company named “Global Pay” whom Respondent had authorized to debit the IOLTA Trust Account; and

- The debit on June 8, 2009 in the amount of \$250.00 was placed on the account by a payment processing company named “Moneygram” whom Respondent had authorized to debit the IOLTA Trust Account.

Respondent deposited personal funds into the IOLTA Trust Account in response

to the overdraft notices “to remove the negative balance.”

7. Respondent made periodic transfers of the gross amounts deposited into the IOLTA Trust Account to his operating account, from which he disbursed to his clients their respective shares of the gross amounts collected.

8. Prior to opening the IOLTA Trust Account, Respondent opened a business checking account at The Bank of Castile, a financial institution located in Greece, New York not approved by the bar as a depository for receiving escrow, trust and/or client monies. Respondent subsequently allowed that non-escrow account to be used as the depository for monies collected by his firm, portions of which Respondent received on behalf of his clients.

9. Respondent did not maintain the records or perform the reconciliations of the IOLTA Trust Account as required by Rule 1.15(e)(1) of the Virginia Rules of Professional Conduct.

10-021-081241

10. Mary Chevalier (“Chevalier”), a resident of Colorado, hired the complainant, Richard Wynkoop (“Wynkoop”), an attorney in Colorado, to pursue claims against Respondent and his firm for alleged violations of the Fair Debt Collection Practices Act. On December 19, 2008, Wynkoop filed a lawsuit against Respondent’s firm, Jason Head, PLC, in the United States District Court for the District of Colorado, alleging that in November 2008, in an attempt to collect a debt allegedly owed by Chevalier, Respondent’s employees violated the Fair Debt Collection Practices Act (“Lawsuit”).

11. The parties reached a settlement pursuant to which Respondent agreed to pay Chevalier \$7,500.00, as set out in a written settlement agreement executed in April 2009.

A Joint Stipulation For Dismissal With Prejudice was signed by Wynkoop and Respondent and was filed with the United States District Court for the District of Colorado on April 23, 2009, resulting in the dismissal of all claims with prejudice.

12. On May 13, 2009, when Respondent had failed to pay the settlement as promised, Wynkoop sent Respondent an email asking him to explain why the settlement check had not been received. On that same day, Respondent sent Wynkoop a reply email in which he stated that on May 6, 2009, certain of his employees had stolen office furniture and equipment, and that "I am also missing the cashier [sic] check for this settlement. The police are involved in this matter and working to get that property back to me."

13. Contrary to his statement to Wynkoop, at no time did Respondent obtain a cashier's check to satisfy the settlement nor report the alleged theft of any such cashier's check to the police as he stated to Wynkoop.

10-021-082943

14. In 2002, Respondent formed Jason Head, P.L.C., a Virginia professional limited liability company, in which Respondent was the managing member and under which Respondent practiced law and operated his law firm as a solo practitioner until about May 2009, when Respondent formed Jason Head & Associates, PLC, a Virginia professional limited liability company, in which Respondent has been the managing member and under which Respondent has practiced law and operated his law firm as a solo practitioner from a single office location since May 2009.

15. At all times relevant hereto, Respondent operated his law practice as a solo practitioner and employed no other attorney.

16. At various times since 2002, Respondent engaged in the practice of law under the

trade names of Jason Head, PLC, Attorneys At Law, and/or Jason Head & Associates, PLC, Attorneys At Law and has used the phrase “Attorneys at Law” as part of the name and/or description of his firm in multiple communications, notices and devices, including on his firm’s: i) website Respondent created in about May 2009 (www.headlegal.com) (“Website”); ii) letterhead; and iii) envelopes.

17. Respondent utilized “Jason Head & Associates, PLC” in multiple communications, notices and devices, including on his firm’s: i) Website; ii) letterhead, iii) envelopes; iv) business cards; and v) directory listing(s). Respondent also caused or allowed the name to be used in at least one marketing publication (Hampton Roads LIVE Magazine, Issue 3, March 2010).

18. Respondent caused and allowed other false, fraudulent, misleading and/or deceptive information to be posted on the Website, including: i) a video of a non-attorney, Josh Coe (“Mr. Coe”), in a manner that falsely portrayed Mr. Coe as an attorney within Respondent’s firm, including the posting of the video under a link titled “Associates;” ii) repeated use of the plural terms “our,” “we,” “lawyers,” and “attorneys,” and the identification of non-existent practice groups in the description of his firm; and iii) false statements that his firm had three locations and decades of experience.

The panel unanimously found that the evidence established under the clear and convincing evidentiary standard violations of the following provisions of the Virginia Rules of Professional Conduct on the part of Respondent:

09-021-079570

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.

09-021-079674

RULE 1.15 Safekeeping Property

(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:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(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;

(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

09-021-079973

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 1.15 Safekeeping Property

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(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;

(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

10-021-081241

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

RULE 7.1 Communications Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this Rule if it:

(1) contains false or misleading information

RULE 7.5 Firm Names And Letterheads

(a) A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing, website, or a similar professional notice or device unless it includes a statement or claim that is false, fraudulent, misleading, or deceptive. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1 and 7.2.

The panel unanimously found that the evidence failed to show under the clear and convincing evidentiary standard that the Respondent violated any of the Rules of Professional Conduct charged in the Certification not identified above, and dismissed those charges accordingly.

The panel unanimously found that the evidence failed to show under the clear and convincing evidentiary standard that the Respondent committed any misconduct alleged in VSB Docket Numbers 09-021-076887, 09-021-077448, 09-021-077661, 09-021-077839, 09-021-077860 and 09-021-079565, and dismissed those complaints in their entirety.

THEREAFTER, the Respondent presented evidence and the parties presented argument regarding the sanction to be imposed upon the Respondent, and the panel then retired to deliberate. **AFTER DUE CONSIDERATION** of the evidence, including the nature of the ethical misconduct committed by the Respondent, and arguments of counsel, the panel reached the unanimous decision that the Respondent's license to

practice law in the Commonwealth of Virginia should be suspended for thirty (30) days, effective December 16, 2010, with terms. Therefore, it is hereby **ORDERED** that the license of the Respondent, Jason Matthew Head, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of thirty (30) days, effective December 16, 2010, with terms. The terms with which Respondent must comply are as follows:

1. Respondent is placed on probation for a period of one (1) year effective upon the termination of the thirty (30) day suspension of Respondent's license to practice law in the Commonwealth of Virginia ordered above. During such probationary period, Respondent will not engage in any professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia that Respondent engaged in professional misconduct during such probationary period shall conclusively be deemed to be a violation of this Term.

2. On or before December 15, 2010, Respondent shall, at his sole cost and expense, retain the services of a law office management consultant ("Consultant") approved by the Office of Bar Counsel to review and make written recommendations concerning the Respondent's law practice policies, methods, systems, procedures and escrow account maintenance and record-keeping to ensure compliance with all provisions of the Virginia Rules of Professional Conduct. The Respondent shall grant the Consultant full access to his law practice office, books, records, and files for the purposes of conducting the review and monitoring of Respondent's compliance with the Consultant's recommendations. The Office of Bar counsel shall have access, through telephone and in-person communication and/or written reports and correspondence, to the Consultant's findings and recommendations and assessment of the Respondent's compliance with said recommendations.

Respondent shall ensure that M. Brent Saunders, the Assistant Bar Counsel assigned to this case, receives a copy of the written report of the Consultant's findings and recommendations on or before February 1, 2011. Respondent shall institute and follow any and all recommendations made to him by the Consultant as soon as practicable and in no event beyond thirty (30) days from the issuance of the Consultant's recommendations. Following the passage of that thirty (30) day period, the Consultant shall again review Respondent's law practice office, books, records, and files, and report in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, Respondent's compliance with the consultant's recommendations, no later than sixty (60) days from the issuance of the Consultant's recommendations. Respondent shall provide proof of his compliance with the recommendations of the Consultant to the Office of Bar

Counsel upon request.

If Respondent fails to comply with the terms within the time periods prescribed, the alternative disposition shall be the suspension of the Respondent's license to practice law in the Commonwealth of Virginia for a period of three (3) years.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, that 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. The Respondent shall give such notice within 14 days of the effective date of the license suspension, and make such arrangements as are required herein within 45 days of this effective date of the license suspension. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the license suspension that such notices have been timely given and such arrangements for the disposition of matters made. 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 at the Virginia State Bar. Issues concerning the adequacy of the notice and the arrangements required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

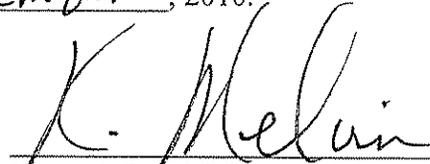
Pursuant to Part Six, Section IV, Paragraph 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall

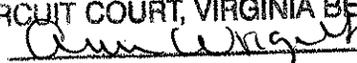
assess costs.

It is further **ORDERED** that the Clerk of this Court shall send a copy *teste* of this order to the Respondent, by certified mail, return receipt requested, at Law Office of Jason Head, PLC, One Columbus Center, Suite 600, Virginia Beach, Virginia 23462, his address of record with the Virginia State Bar; and send copies *teste* by regular mail to counsel of record and Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

These proceedings were recorded by Biggs & Fleet Court Reporters, 125 St. Pauls Blvd., Ste. 309, Norfolk, VA 23510, telephone number (757) 490-1100.

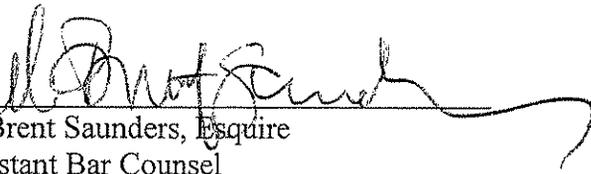
ENTERED this 10th day of December, 2010.


Kenneth R. Melvin
Chief Judge

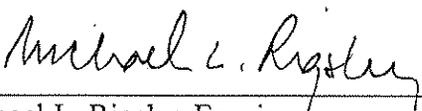
CERTIFIED TO BE A TRUE COPY
OF RECORD IN MY CUSTODY
TINA E. SINNEN, CLERK
CIRCUIT COURT, VIRGINIA BEACH, VA
BY 
DEPUTY CLERK

SEEN:

VIRGINIA STATE BAR

By: 
M. Brent Saunders, Esquire
Assistant Bar Counsel

SEEN AND AGREED _____:

 12.07.2010

Michael L. Rigsby, Esquire
Counsel for Respondent