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VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF RICHMOND

SEP 29 2011

VIRGINIA STATE BAR EX REL
THIRD DISTRICT COMMITTEE,

VSB CLERK OFFICE

Complainant,

v.

Case No. CL11-2840
VSB Docket No. 10-033-082112

RAYMOND LEWIS PALMER,

Respondent

MEMORANDUM ORDER

This matter came to be heard on August 25, 2011, before a Three-Judge Circuit Court duly empanelled pursuant to Section 54.1-3935 of the Code of Virginia (1950), as amended, consisting of the Honorable H. Thomas Padrick, Jr., Judge of the Second Judicial Circuit, designated Chief Judge, the Honorable Ann Hunter Simpson, retired Judge, Fifteenth Judicial Circuit, and the Honorable Michael C. Allen, Judge, Twelfth Judicial Circuit.

The Respondent appeared in person with his counsel, Michael L. Rigsby, Esquire.

The Virginia State Bar appeared through its Bar Counsel, Edward L. Davis.

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 Court.

The Court heard argument from counsel and reviewed the 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 Court accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Court finds the following facts by clear and convincing evidence:

1. During all times relevant hereto, the Respondent, Raymond Lewis Palmer, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In July 2007, Tamara Lester purchased a home from Abdul and Parveen Kaisani, the owners and builders of the home (the homeowners).
3. Previously, the homeowners had employed Curtis Smith of Smithworks and Co., LLC, an unlicensed contractor (the contractor), to build the home.
4. Following the purchase, Ms. Lester alleged several defects in the home as a result of poor construction that had not been disclosed to her, and alleged that the defects would cost \$30,000 to repair.
5. In April 2008, Ms. Lester hired Mr. Palmer to bring a breach of contract action against the homeowners and the contractor.
6. On April 22, 2008, Ms. Lester executed a written fee agreement with Mr. Palmer that provided for a fee of \$3,500.
7. On April 23, 2008, Ms. Lester paid Mr. Palmer \$2,000 toward the \$3,500 fee.
8. On August 14, 2008, Mr. Palmer filed suit against the homeowners and contractor in the Circuit Court for the City of Richmond, praying for damages of \$75,000 jointly and severally.
9. On August 29, 2008, the homeowners timely filed an answer and grounds of defense to the suit.
10. The contractor, however, although served with the suit, never filed an answer.
11. Mr. Palmer never moved for default judgment against the contractor; Palmer states further that this was part of his case strategy, in as much as the contractor was judgment proof.
12. On May 27, 2009, the homeowners filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court, Richmond Division, where they listed Ms. Lester as a creditor and obtained an automatic stay.

13. Mr. Palmer agreed to represent Ms. Lester against the homeowners in the bankruptcy matter. Palmer further avers that the representation in the bankruptcy was merely an extension of the representation in the civil matter so that the civil case could proceed.
14. Mr. Palmer concluded that there were no grounds to oppose or prevent the homeowners from obtaining a discharge in bankruptcy. He also determined, however, that there was potential recovery from insurance and a warranty.
15. The 341 creditors meeting, attended by Mr. Palmer and Ms. Lester, was held on July 6, 2009 and the deadline for filing an objection to the discharge expired on September 4, 2009.
16. On September 8, 2009, Mr. Palmer filed his entry of appearance and motion for relief from the automatic stay.
17. The debtor/homeowners noted an objection to the relief from the automatic stay because of the late filing, but agreed to a consent order allowing the Respondent to pursue recovery from the insurance or warranty.
18. Ms. Lester filed a complaint, dated December 11, 2009, against Mr. Palmer with the Virginia State Bar.
19. On December 21, 2009, the bankruptcy court entered the consent order allowing for Ms. Lester to pursue a claim against the debtor/homeowners to the extent of any insurance proceeds or warranty coverage.
20. Mr. Palmer, however, never pursued these remedies for his client and, on December 29, 2009, moved to withdraw from the matter in the Circuit Court for the City of Richmond because of her bar complaint. Palmer avers that he believed that Ms. Lester's complaint created a conflict of interest that prevented him from continuing to represent Ms. Lester; and she was advised of the same and expected no further representation on his behalf.
21. Mr. Palmer, however, did not set his motion down for hearing as he awaited the outcome of the bar complaint. As a result, he remained counsel of record in the Richmond Circuit Court matter through 2009 and the following year, but took no action on his client's case. Palmer avers that he provided Ms. Lester with a copy of the motion to withdraw, that Ms. Lester was fully informed of the motion, that Ms. Lester never contacted him following the motion, and that he never set the matter down for hearing because he did not want to leave her exposed without new counsel and waited for her to retain the same so as to transfer her file to new counsel.

22. The bar complaint, however, according to the documents, was not received until December 2009, 16 months after he filed suit, and he remained counsel of record in the case through 2009 and 2010.
23. During a June 2010 meeting with Mr. Palmer, the bar asked him for records concerning his handling of Ms. Lester's fees. Palmer admits that he prepared a "Civil Case Time Sheet" to respond to the bar's (Ms. Lester's) complaint. Palmer denies, however, that the document reflects payment in 2009. Palmer states that Ms. Lester paid him \$2,000 toward his requested fee in June 2008.
24. Ms. Lester, however, paid Mr. Palmer \$2,000 on April 23, 2008, according to her receipt from Mr. Palmer. This payment was in accordance with the fee agreement executed on April 22, 2008, which called for payment of \$2,000 on April 23, 2008.
25. Ms. Lester also produced receipts for payments of \$100 on May 2, 2008, \$100 on July 2, 2008, and \$25 on August 8, 2008. Mr. Palmer's Civil Case Timesheet, however, does not reflect any of these payments. Palmer admits these allegations, in that he gave receipts to Ms. Lester for payments she made to his office. Palmer states that Ms. Lester asserted in her complaint that she had paid Palmer \$2,500 and he accepted this amount as the true amount she had paid when he prepared the "Civil Case Time Sheet," without looking back at his receipt book.
26. Mr. Palmer said that he did not keep a subsidiary ledger for funds that he received from Ms. Lester.
27. Palmer admits that he prepare a "Civil Case Time Sheet" to respond to the bar's (Ms. Lester's) complaint and that he relied upon Ms. Lester's representation of what she had paid his firm as being accurate. Palmer denies that any fee was paid by Ms. Lester in 2009.
28. Palmer admits that he did not deposit fees paid by Ms. Lester into his attorney trust account. His timesheet, however, reflects 4.75 hours in April and May 2008 at \$225 per hour (for total fees of \$1068.75) against Ms. Lester's initial fee of \$2,000 received previously on April 23, 2008. Palmer states that these records speak for themselves.
29. During the September 21, 2010 meeting, when asked for his attorney trust account records, Mr. Palmer provided his deposit slip books which contained copies of his deposits from 2009 forward for his operating and trust accounts.
30. The deposit slips did not indicate the names of the clients, only the amounts of deposits.
31. Mr. Palmer also produced cash receipt books which contained duplicates of the receipts provided to the clients for payments.

32. In addition, Mr. Palmer provided bank statements and cancelled checks for his escrow account, but explained that prior to his first meeting with the bar's investigator in June 2010 he used his escrow account for personal injury cases only.
33. Mr. Palmer also explained that prior to the June 2010 meeting with the bar's investigator he had no method for tracking disbursements from the escrow account. He explained that since then he maintained the check stubs and noted the dates, client names, and amounts making up the disbursements. The stubs, however, were loose and not maintained in any book.
34. Mr. Palmer explained further during the September 21, 2010 meeting with the bar's investigator that he had not yet begun doing monthly or quarterly reconciliations; but Palmer states that he has subsequently retained an accountant to do the same.
35. He also explained that he had not kept client subsidiary ledgers prior to the June 2010 meeting with the bar's investigator, but subsequently began to keep client ledger cards.

II. NATURE OF MISCONDUCT

The Court finds that such conduct by Raymond Lewis Palmer constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.16 Declining Or Terminating Representation

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

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

- (c) A lawyer shall:
- (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
 - (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

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.

RULE 1.15 Safekeeping Property

- (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.
 - (4) **Periodic trial balance.** A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.

- (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (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;
 - (iii) 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

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Court **ORDERS** that the Respondent receive, with respect to Rules 1.3 and 1.16, a Dismissal for Exceptional Circumstances. The Exceptional Circumstances are that the Respondent properly filed a motion to Withdraw as Ms. Lester's counsel following the complaint she filed with the Virginia State Bar Against him. He further informed Ms. Lester of the motion, and awaited her instruction as to her new counsel to prepare an Order to substitute counsel. Respondent failed to realize that he remained as counsel for his client until relieved by the court,

and acknowledges that with the passage of time with no communication from his client, Respondent should have set the motion to withdraw down for hearing.

As to Rule 1.15, the Court Orders that the Respondent receive a Public Admonition with Terms. The terms with which the Respondent must comply are as follows:

1. The Respondent will schedule an appointment with Virginia State Bar Investigator Cam Moffatt to review the trust account records of the Respondent's existing law practice within ninety (90) days of the date of the entry of this disposition.
2. The scope and purpose of the inspection is to insure that the Respondent's attorney trust account management is in compliance with Rule 1.15 of the Rules of Professional Conduct including, but not limited to, the use of (a) cash receipts/cash disbursements journals, (b) client subsidiary ledgers, (c) proof of periodic trial balances, and (d) proof of periodic reconciliations.
3. Mr. Palmer shall be in full compliance with these requirements when he meets with Investigator Moffatt.
4. If the Virginia State Bar Investigator discovers that the Respondent is not maintaining the required cash receipts/cash disbursements journals, subsidiary ledgers, proof of periodic trial balances, proof of periodic reconciliations, or that he is otherwise noncompliant with Rule 1.15, or if the Respondent fails to schedule and keep the appointment with Investigator Moffatt without lawful justification or excuse, the bar shall serve notice upon the Respondent to appear before the Virginia State Bar Disciplinary Board or three-judge court to show cause why the alternate disposition should not be imposed.

The Respondent, pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O, agrees that the alternate disposition shall be a hearing before the Virginia State Bar Disciplinary

Board or three-judge court to determine whether the Respondent should be further sanctioned, including the suspension or revocation of his law license. If the Disciplinary Board or three-judge court determines that further sanction, suspension, or revocation is appropriate, it shall so order.

The imposition of the alternate disposition will not require a hearing before the Virginia State Bar Disciplinary Board or a three-judge court on the underlying charges of misconduct stipulated to in this Agreed Disposition if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate disposition should not be imposed. The sole factual issue will be whether the Respondent has violated any of the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent timely requests that the matter be heard by a three-judge court.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose the alternate disposition.

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 this Court shall send a copy *teste* of this order to the Respondent, Raymond Lewis Palmer, by certified mail to Suite 300, 116 North Third

Street, Richmond, Virginia 23219, his address of record with the Virginia State Bar; and by regular mail to Edward L. Davis, Bar Counsel, and Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

Tracy J. Stroh, RPR, CCR, CLR, Chandler & Halasz Court Reporters, P.O. Box 9349, Richmond, VA 23227 (804) 730-1222 was the court reporter for the hearing and transcribed the proceedings.

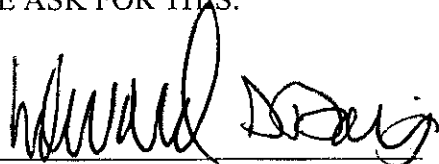
ENTERED this 8th day of Sept., 2011

CIRCUIT COURT, CITY OF RICHMOND




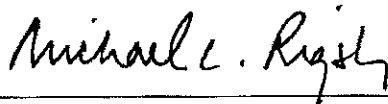
H. Thomas Padrick, Jr.
Chief Judge Designate

WE ASK FOR THIS:



Edward L. Davis, Bar Counsel
Virginia State Bar

A Copy,
Tested: BEVILLI M. DEAN, CLERK
BY:  D.C.



Michael L. Rigsby, Esq.
Counsel for Raymond Lewis Palmer