

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
DARRYL ARTHUR PARKER

VSB Docket Nos. 06-032-4138 and  
11-000-087732

MEMORANDUM ORDER

These matters came on to be heard on November 2, 2012 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 Samuel R. Walker, Peter A. Dingman, David R. Schultz, Anderson Wade Douthat, IV, Lay Member, and Tyler E. Williams, III, Esquire, 2nd Vice Chair presiding (the Panel).

Edward James Dillon, Jr., Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent, Darryl Arthur Parker, appeared in person and with counsel, Michael L. Rigsby.

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 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 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 voted unanimously to accept the Agreed Disposition if an additional term, set forth in paragraph 2 of the "Imposition of Sanction" herein, were accepted by Respondent. Respondent, by counsel, subsequently agreed to accept this additional term.

## I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

At all times relevant hereto, the Respondent Darryl Arthur Parker [Parker] has been licensed to practice law in the Commonwealth of Virginia.

In or about 2003, Howard owned property containing 10.03 acres, plus or minus, in Hampden Magisterial District, Prince Edward County, Virginia, also known as 421 Landing Road, Farmville, VA [property], which later that year was foreclosed upon. As a result, as of March 2003, title to the property belonged to the Federal National Mortgage Association.

Howard then attempted to purchase the property back. Then Complainant Louise Grinnage [Grinnage] verbally agreed with Howard that she would purchase the property and then sell it back to Howard.

On August 22, 2003, Veronica Beagle [Beagle] from Colonial Title & Abstracting Services, Inc. sent Parker a title commitment on the property for an owner's policy in which the insured were the Howards, and a lender's policy in which National City Mortgage was the insured. Included with the mailing was an invoice showing a breakdown of title related charges including, inter alia, an entry for a full search and report, and a notation that the owner's and lender's policies were to be simultaneously issued. The invoice totaled \$923.60.

On October 23, 2003, Beagle sent Parker an endorsement to the title commitment in which, inter alia, Grinnage was substituted for the Howards as the owner's policy insured. Beagle also sent Parker the same invoice, then dated October 23, 2003, in the total amount due of \$923.60.

On or about November 4, 2003, Parker acted as the settlement agent in closing the purchase of the property by Grinnage from the Federal National Mortgage Association [Grinnage purchase]. The settlement statement for the transaction shows Parker as the settlement agent and reflects November 4, 2003 as the settlement date.

The settlement statement for the transaction includes, inter alia, the amount due to Colonial Title & Abstracting Services, Inc. of \$923.60, and reflects the lender as National City Mortgage Company.

Although the lender's closing instructions for the Grinnage purchase included a requirement for a survey no older than 90 days, no such survey was obtained by Parker. The title commitment did contain the usual exception for that which an accurate survey and inspection of the premises would disclose. It also contained specific exceptions for matters appearing of record on a 1986 plat as well as a 1991 plat.

In or about March of 2006, Grinnage agreed to sell the property to Lee. Edwin Baker, Esq. [Baker], who is now deceased, represented Grinnage in the transaction. His office, including paralegal Debra Hunter [Hunter], worked on the title of the property in preparation for closing.

During the 2006 preparation for the Grinnage to Lee closing it was determined by Baker's office, inter alia, that no title policies had been issued as a result of the Grinnage purchase. It was also determined that an individual named Watson had a one-half undivided interest in the property which had not been shown on the title commitment prepared for the Grinnage purchase. There was a 1991 recorded plat which indicated that the drainage field servicing the property was actually located on adjacent property, which was also owned by Howard.

In 2006, Parker became aware there was a problem with the title to the property when he was contacted either by Grinnage or her attorney. At that time, Parker's file for the Grinnage closing was reviewed and, according to Parker, it was found for the first time that the check in the amount of \$923.60 payable to Colonial Title & Abstracting Services, Inc. was still in the file as well as Parker's November 10, 2003 cover letter to the title agency.

In or about March of 2006, Parker contacted Colonial Title & Abstracting Services, Inc. about getting the policies issued and learned that Southern Title Insurance

Corporation would issue the policies for the original premium amount. Parker then hand-delivered a replacement check in the amount of \$923.60, along with his November 10, 2003 cover letter to Colonial Title and Abstracting, Services, Inc. in payment for the title charges and policy premiums resulting from the 2003 Grinnage purchase.

By letter dated March 31, 2006, Beagle sent to Parker a refund check in the amount of \$716.60, representing the premiums collected for the owner's [\$660.00] and lender's [\$50.00] policies, because she had been instructed to do so by counsel for Southern Title Insurance Corporation. She indicated that a title commitment was only good for six months, Parker had failed to apply for the policies timely, and he had failed to meet several of the requirements stated in Schedule B-1 of the title commitment in the Grinnage purchase. The \$207.00 amount not refunded by Beagle included the fees which her title agency had charged for work it had performed for the Grinnage purchase.

By letter dated April 5, 2006, from Southern Title Associate Counsel Manus E. Holmes to Baker, copied to Parker and Beagle, Holmes stated, inter alia, the title commitment had expired long ago and there was no indication that Southern or its agent, Colonial Title & Abstracting Services, Inc. caused the delay in issuance [of the policies]. However, Holmes stated Grinnage was not the cause of the delay of the issuance of the policies and Southern agreed to insure for any prospective purchaser, title without exception to any interest that Watson may have in the property.

Parker wrote Baker by letter dated April 12, 2006, indicating he was attempting to get Howard's agreement to grant Grinnage an easement to the drainage field which was servicing the property.

Parker wrote Baker by letter dated April 19, 2006, enclosing an escrow account check in the amount of \$716.60 payable to Grinnage. In the letter, Parker stated that the title company had deducted the \$207.00 from the amount it had refunded to Parker.

Baker wrote Parker by letter dated April 21, 2006, copied to Grinnage, summarizing the situation and seeking a settlement.

Parker wrote Baker by letter dated May 9, 2006, asking whether Grinnage would purchase an easement from Howard or sell the property back to him.

Baker wrote Parker by letter dated May 20, 2006, indicating Grinnage believed it was Parker's responsibility to pay for and obtain the easement, Grinnage intended to sell the property to the new buyer as soon as Parker obtained an easement, and Grinnage would not cash the \$716.60 check until the matter was concluded to the satisfaction of Grinnage.

According to Grinnage she had a new septic system installed on the property and then sold the property in September of 2006.

During the bar's investigation of the Grinnage complaint, Investigator Cam Moffatt interviewed Parker. During the interview, Parker indicated that usually a disbursement sheet was prepared for a closing, but in the Grinnage purchase it appears that there was no such disbursement sheet. Parker indicated to Moffatt that it was possible a disbursement sheet was not done in this case and that could be the reason his office did not catch that the payment had not been sent to the title agency. He told Moffatt, "Unfortunately, we missed this one. We could tell there was a small overage but we couldn't tell where it came from."

According to Parker, in 2003 he had a contract employee, Ms. Wiggins, who was a real estate paralegal who assisted him in real estate closings. She would have prepared the documents for the closing and Parker would have "supervised the closing." Wiggins would have typed the checks for disbursement, and then Parker would have signed them, placed them in envelopes and mailed them. In the Grinnage purchase, the check was prepared but was not put into an envelope and mailed to the title company.

In the November 4, 2003, Grinnage purchase, Parker failed to disburse the funds due in the amount of \$923.60 to Colonial Title & Abstracting Services, Inc. for the owner's and lender's title insurance premiums and costs within two business days

pursuant to the requirements of the Virginia Wet Settlement Act, Va. Code Section 6.1-2.13, then in effect.

From November 4, 2003, until in or about March of 2006, Parker failed to disburse the amount of \$923.60 due to Colonial Title & Abstracting Services, Inc. for the owner's and lender's title insurance premiums and costs due out of the Grinnage purchase.

In the Grinnage purchase, Parker failed to fulfill the lender's closing instructions by not obtaining an up to date survey of the property. Parker failed to protect the title interests of the lender by not obtaining a lender's title insurance policy. Parker failed to protect the title interests of Grinnage by not obtaining an owner's title insurance policy. Parker failed to disburse timely the \$923.60 in trust funds which he had obtained from Grinnage for the title policies and which sum had been billed to him twice. Parker failed to conduct required periodic trial balances and reconciliations in his trust account over a period of almost two and one half years which would have presumably shown the failure to disburse the \$923.60 in the Grinnage purchase.

## II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Darryl Arthur Parker constitutes misconduct in violation of the following Rules of Professional Conduct:

### RULE 1.3      Diligence

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

### 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.

### 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.

The Disciplinary Board further finds that such conduct by Darryl Arthur Parker constitutes misconduct in violation of the following provisions of CRESPA and the Regulations issued pursuant thereto:

Va. Code Section 6.1-2.23 (in effect during the above facts). Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

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, [then in effect] 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.

Such conduct also constitutes violations of the following provisions of the Regulations issued pursuant to CRESPA:

15 VAC 5-80-50.B. 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 ORDERS that the Respondent comply with the following term, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of these two matters. The terms are as follows:

Respondent shall pay to the Virginia State Bar a penalty of Five Hundred Dollars (\$500.00). Said penalty shall be paid within forty five (45) days of the entry of this Order, by mail or delivery to the Clerk of the Disciplinary System, Suite 1500, 707 East Main Street, Richmond, VA 23219; and

Within 60 days of the entry of this Order in this matter, Respondent shall engage, at his own expense, the services of a certified public accountant or other qualified consultant (the "Consultant") to examine and review Respondent's trust and

escrow account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct, Chapter 27.3 of Title 55 of the Code of Virginia, and the regulations issued by the Virginia State Bar pursuant to Chapter 27.3 of Title 55 of the Code of Virginia (the "Review").

The Consultant shall complete the Review within 120 days of entry of this Order and shall notify Respondent and the Virginia State Bar, in writing, of the measures Respondent must take to bring himself into compliance with Rule 1.15 of the Rules of Professional Conduct, Chapter 27.3 of Title 55 of the Code of Virginia, and the regulations issued by the Virginia State Bar pursuant to Chapter 27.3 of Title 55 of the Code of Virginia. The Consultant shall provide the appropriate training to Respondent in regard to these measures and shall inform Respondent and the Virginia State Bar, in writing, upon completion of that training. Such training shall be completed no later than 180 days from the entry of this Order.

Upon satisfactory proof that these terms have been met, these matters shall be closed. If, however, these terms are not met within the times specified above, the Disciplinary Board shall impose a six month suspension of license pursuant to Part Six, Section IV, Subparagraph 13-18.O. of the Rules of the Virginia Supreme Court.

IT IS FURTHER ORDERED that, pursuant to Part Six, Section IV, Subparagraph 13-9.E. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

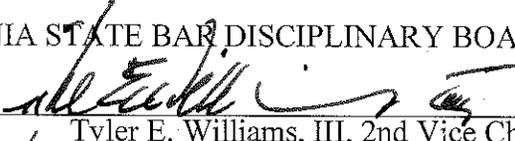
IT IS FURTHER ORDERED that an attested copy of this Order shall be mailed by certified mail to Darryl Arthur Parker, Respondent, at Suite 2A, 3113 West Marshall Street, Richmond, VA 23230, the Respondent's address of record with the Virginia State Bar, by regular mail, and to Michael L. Rigsby, Counsel for the Respondent, at Michael

L. Rigsby, PC, P.O. Box 29328, Henrico, VA 23242, and hand-delivered to Edward J. Dillon, Jr., at the Office of Bar Counsel of the Virginia State Bar.

Valarie L.S. May of Chandler & Halasz, P.O. Box 9349, Richmond, VA, 23227, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: November 8, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
Tyler E. Williams, III, 2nd Vice Chair