

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

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VIRGINIA STATE BAR EX REL
FIFTH DISTRICT COMMITTEE, SECTION III
VSB Docket Nos. 11-053-087095, 11-053-085637,
11-053-088168, 12-053-091441, 13-053-093155

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Complainant

Case No.: CL2013-17951

MICHAEL ARTHUR PERRY

**MEMORANDUM ORDER
(SUSPENSION OF ONE YEAR)**

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VIRGINIA STATE BAR

On 23 September 2014, a duly-convened Three Judge Panel consisting of The Honorable J. Martin Bass, Judge Designate, The Honorable Ann Hunter Simpson, Judge Designate, and The Honorable Richard D. Taylor, Jr., Chief Judge Designate met and heard, by means of teleconference, the Agreed Disposition of the parties, Respondent Michael Arthur Perry, by counsel Michael M. Rigsby, and the Virginia State Bar, by Assistant Bar Counsel Prescott L. Prince, made pursuant to Part Six, Section IV, Paragraph 13-15.B.4 of the Rules of the Supreme Court of Virginia. The Court hereby approves the Agreed Disposition of a one year suspension and makes the following findings:

FINDINGS OF FACT

1. At all times relevant to the conduct set forth herein, Michael A. Perry ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent is a partial owner of a business known as American Home Relief Foundation, LLC. American Home Relief Foundation, LLC (AHRF) is a Delaware Corporation, and was licensed as a foreign business in the State of Maryland.

3. Respondent, along with his associates, David Schmidt and Nick Stanco, neither of whom are attorneys, engaged in a plan to market mortgage modification services to homeowners.

4. Respondent and his associates, through AHRF, purchased through a third party vendor, names of individuals who were reported to have been late or in arrears on mortgage payments, and sent through the United States Postal Service what Mr. Perry described as a "self-help mortgage modification hand book and consulting services".

5. As the result of complaints received by the Virginia State Bar regarding the actions of Mr. Perry, the Virginia State Bar (VSB) opened an investigation and assigned VSB Investigator William H. Sterling, III.

Facts relating VSB Docket No. 11-053- 087095 (Complainant Dieuner Decopin)

6. Dieuner Decopin lives in Orlando, FL. Mr. Decopin received a solicitation from AHRF dated 10 September 2010 advising Mr. Decopin that they had information to the effect that he may be delinquent on his home mortgage and urged him to contact AHRF as soon as possible.

7. As the result of his receipt of the mailed documents, Mr. Decopin called AHRF at the telephone number provided in the solicitation.

8. Mr. Decopin was informed by an individual identifying himself or herself as an AHRF employee that, upon receipt of full payment, a package of documents would be sent to him (Mr. Decopin).

9. As the result of the telephone call, Mr. Decopin decided to retain AHRF for assistance in obtaining a mortgage modification and paid \$1,495 by credit card in two payments to AHRF, the final payment being made on or about 22 November 2010. The two credit card charges were paid to the Law Office of M. A. Perry in Fairfax, Virginia.

10. The bank account into which said credit card charges were paid was an account controlled by Michael A. Perry, but was not a trust account.

11. Mr. Decopin was instructed to complete the documents and return the completed documents to AHRF. Mr. Decopin was informed that these documents would be used by AHRF personnel to assist him in obtaining a mortgage modification.

12. Upon receipt of the package of documents, Mr. Decopin completed the documents and requested and returned said documents to AHRF on or about 27 December 2010.

13. Mr. Decopin never received any assistance in obtaining a mortgage modification from either AHRF or from Mr. Perry.

14. No contact information for Mr. Perry was listed on any of the documents provided by AHRF. Nevertheless, Mr. Decopin conducted research and obtained a number for the "Law Office of Michael A. Perry". When Mr. Decopin called the number for the Law Office of Michael A. Perry, the telephone was answered by an individual who identified herself as an employee of the Michael A. Perry Law Office. After Mr. Decopin identified he was calling regarding AHRF, the individual said that Mr. Perry "no longer worked for AHRF".

15. As the result of his failure to receive assistance from American Home Relief Foundation or from Mr. Perry, Mr. Decopin filed a Bar Complaint against Mr. Perry with the Virginia State Bar.

16. Mr. Perry did not retain funds in any trust account for Mr. Decopin and did not reimburse Mr. Decopin as the result of alleged failure of AHRF to provide the services as promised.

Facts relating VSB Docket No. 11-053-088168 (Complainant Anne North)

17. Anne North resides in the Commonwealth of Massachusetts. Ms. North received a solicitation from AHRF in mid-2010 advising her that she might be able to obtain a modification for her home mortgage through AHRF. At the time she received the letter, Ms. North had fallen behind on her monthly mortgage payments due to unemployment. She believed that, at that time, she owed more than the current market value of the home.

18. As the result of her receipt of the mailed documents, Ms. North called AHRF at the telephone number provided in the solicitation. Upon calling the telephone number, she spoke with an individual who stated that he worked for the Law Office of Michael A. Perry, a lawyer out of Virginia.

19. The representative told Ms. North that, if retained, AHRF would negotiate with her mortgage loan holder (Bank of America), and would get her a loan modification that would lower her interest rate on her mortgage, eliminate her second mortgage, and have the new mortgage based upon the current market value of her home. He specifically noted to Ms. North that AHRF could facilitate the process because "they were a law firm".

20. Ms. North was quoted a fee of \$1,990.00, all of which needed to be paid before AHRF could do anything to assist her. Accordingly, Ms. North provided her debit/credit card number to AHRF and was charged \$1,990.00.

21. The bank account into which said credit card charges were paid was an account controlled by Michael A. Perry, but was not a trust account.

22. After Ms. North paid the fee of \$1,990, she received a number of documents which she was required to complete and return to AHRF. Ms. North completed the documents and returned them as instructed.

23. Ms. North made her payment of \$1,990 to AHRF in October of 2010. On a number of occasions subsequent to her making her payment, she contacted AHRF to inquire as to the progress on her case and on each occasion she was advised that her case was proceeding. She was told, generally, that, "These things take time." She was also told not to worry and to not make continuing payments to the mortgage holder.

24. Eventually, Ms. North called and discovered that the AHRF numbers were "out of service". She contacted the mortgage/holder (Bank of America) and was informed that they had not heard from AHRF regarding her case.

25. No contact information for Mr. Perry was listed on any of the documents provided by AHRF. Nevertheless, Ms. North conducted research and obtained a number for the "Law Office of Michael A. Perry". Ms. North contacted the office by telephone and spoke with a female who declined to identify herself, but who informed Ms. North that Michael Perry was the owner of AHRF and that Mr. Perry ran AHRF. Ms. North further stated that the individual suggested that she file a complaint against Mr. Perry with the Virginia State Bar.

26. As the result of his failure to receive assistance from American Home Relief Foundation or from Mr. Perry, Ms. North filed a Bar Complaint against Mr. Perry with the Virginia State Bar. At deposition, Ms. North testified that she did not contend that she had an attorney-client relationship with Mr. Perry.

27. Mr. Perry did not retain funds in any trust account for Ms. North and did not reimburse Ms. North as the result of alleged failure of AHRF to provide the services as promised.

Facts Relating to VSB Docket No. 12-053-091441 (Complainant Erica Greene/North Carolina Department of Justice)

28. Erica Greene resides in the State of North Carolina. Ms. Greene received a solicitation by U.S. Mail from AHRF dated 30 April 2010 advising her that AHRF had information to the effect that Ms. Greene was "seriously delinquent" on her home mortgage and urged her to contact AHRF as soon as possible.

29. As the result of his receipt of the mailed documents, Ms. Greene called AHRF at the telephone number provided in the solicitation.

30. Ms. Greene was told by the AHRF representative that she had to make an up-front payment of \$1,495.00 before AHRF could assist her. After further discussion, she provided the AHRF representative with her debit/credit card number and authorized AHRF to charge her account \$1,495.00. Ms. Greene noted that she was advised by the AHRF representative that the bank statement would indicate that the charge would be made in the name of "The Law Office of M.A. Perry."

31. The bank account into which said credit card charges were paid was an account controlled by Michael A. Perry, but was not a trust account.

32. After Ms. Green paid the fee of \$1,495.00, she received a number of forms which she was required to complete and return to AHRF. Ms. Green completed the documents and returned them as instructed.

33. After a period of time during which she heard nothing from AHRF, Ms. Greene contacted her mortgage holder, that being BB&T, to determine the status of the loan modification.

34. Ms. Greene learned that, at that juncture, no action had been taken by AHRF. A representative from BB&T informed Ms. Greene that they would not work with AHRF, but that Ms. Greene could herself request a loan modification from BB&T and that they would work with her. Ms. Greene did in fact work directly with BB&T and did, in fact, eventually receive a loan modification.

35. As the result of her experience with AHRF, Ms. Greene filed a complaint with the Consumer Affairs Division of the North Carolina Department of Justice. The North Carolina Department of Justice forwarded the Complaint to the Virginia State Bar.

36. Mr. Perry did not retain funds in any trust account for Ms. Greene and did not reimburse Ms. Greene as the result of alleged failure of AHRF to provide the services as promised. Mr. Perry contends that Ms. Greene received services from AHRF and that AHRF therefore earned the money paid by Ms. Greene.

Facts Relating to VSB Docket No. 13-053-093155 (Complainant Heather Phillips)

37. Heather Phillips and her husband reside in the state of Oregon. In late 2010 she received a direct mail flyer via U.S. Mail from AHRF offering relief from foreclosure on her home and a loan modification.

38. As a result of the solicitation letter, Mr. Phillips contacted the number from the flyer and was told that for a payment of \$1,495.00, AHRF could "guarantee" that he and his wife would receive a modification on their home mortgage.

39. As a result of the representations of the AHRF representative, Mr. Phillips provided AHRF with a debit/credit number owned by him and his wife and authorized payments in the amount of \$1,495. Three payments were authorized and were transacted, one in the amount of \$500 dated 22 November 2010, one in the amount of \$500 dated 6 December 2010, and one in the amount of \$495 dated 18 January 2011.

40. Each of the three charges were made to the "Law Office of M A Per" and include a telephone number subsequently identified as belonging to the Perry Law Office.

41. The bank account into which said credit card charges were paid was an account controlled by Michael A. Perry, but was not a trust account.

42. After Mr. Phillips paid the \$1,495 fee, the Phillips received a number of documents which they were required to complete and return to AHRF. They completed the documents and returned them as instructed.

43. Mr. and Mrs. Phillips did not receive any communication from AHRF after returning the forms. On more than one occasion, Mrs. Phillips called AHRF and was told that the file was in "underwriting". Eventually, Mrs. Phillips called and discovered that the telephone was disconnected. Mrs. Phillips then called the telephone number which was on the bank statement, that being the number for the Law Office of Michael A. Perry.

44. When Heather Phillips called the number associated with the Law Office of Michael A. Perry, a female answered the phone and, after Mrs. Phillips told her that

she was calling about AHRF, the representative took Mrs. Phillips' number and told her that Mr. Perry would call her back.

45. Mrs. Phillips did not receive a call back from Mr. Perry, or from any representative of the Perry Law office, so she called the number on several more occasions. In these subsequent telephone calls, Mrs. Phillips did not identify the call as being related to AHRF. Mrs. Phillips never received a return call from Mr. Perry.

46. As the result of his failure to receive assistance from American Home Relief Foundation or from Mr. Perry, Mrs. Phillips filed a Bar Complaint against Mr. Perry with the Virginia State Bar. At deposition, Mrs. Phillips testified that she did not contend that she had an attorney-client relationship with Mr. Perry.

47. Mr. Perry did not retain funds in any trust account for Mrs. Phillips and did not reimburse Mrs. Phillips as the result of alleged failure of AHRF to provide the services as promised.

Facts relating VSB Docket No. 11-053-085637 (Complainant Matthew Conlon)

48. At the time of the matters set forth pertaining to these actions, Matthew Conlon was employed by a U. S. Housing and Urban Development (HUD) approved Housing Counseling Program located in Atlantic City, NJ. In the course of his duties Mr. Conlon had occasion to come in contact with individuals seeking mortgage loan modifications, including one or more individuals who reported had been contacted by AHRF and that AHRF had failed to provide services that had been paid for.

49. To investigate the complaints of his clients, Mr. Conlon, using a fictitious identity, called AHRF at telephone number 877-719-2448, that being a telephone number

appearing as a mortgage modification "helpline" on a mailer from AHRF provided to Mr. Conlon by one of the clients who had complained to Mr. Conlon about AHRF.

50. Mr. Conlon represented himself to AHRF employees who answered the telephone as a "prospective customer". The several individuals with whom Mr. Conlon spoke identified Mr. Perry as providing legal oversight and support for AHRF. Mr. Conlon asked for a contact number for Mr. Perry, but was advised that Mr. Perry was only in the office "sometimes" and the staff could not provide a contact number for him.

51. It is stipulated that whereas employees of AHRF represented to Mr. Conlon that Mr. Perry had some association with AHRF they did not represent to Mr. Conlon that Mr. Perry provided legal services through AHRF. It is further stipulated that Mr. Conlon never spoke with Mr. Perry, never contracted for Mr. Perry to provide him with any legal services, and that Mr. Conlon never provided Mr. Perry with any funds.

52. Accordingly, it is stipulated that the Complaint filed by Matthew Conlon, VSB Docket No. 11-053-085637, is hereby DISMISSED.

Facts Common to All Complaints

53. In addition to the Complainants identified herein, through the course of his investigation, Investigator Sterling was provided access to the Better Business Bureau (BBB) of Greater Maryland's database to view and copy complaints against Mr. Perry and AHRF, which included a group of 73 complaints received by the BBB. As a result of reviewing the provided BBB complaints, information in 12 of the complaints to BBB specifically noted that either Michael A. Perry was associated with AHRF or noted that an unnamed law firm was associated with AHRF.

54. Each of the 12 individuals who filed said BBB complaints were interviewed by Investigator Sterling. Common facts in the BBB complaints filed by each of said victims interviewed by Investigator Sterling included, but were not limited to:

- a. that each asserted that he or she had received a solicitation for mortgage modification services from AHRF through the U.S. Mail;
- b. that each had been promised mortgage modification assistance from AHRF upon the payment of the funds and completion and return of a packet of information;
- c. that each had paid substantial amounts of money to AHRF¹ and completed and returned the requisite forms;
- d. that on each occasion, the bank account into which said funds were paid for the benefit of AHRF was an account controlled by Michael A. Perry, but was not a trust account;
- e. that none of said individuals received the promised mortgage modification assistance or assistance of any other nature from AHRF or from Mr. Perry.

55. When interviewed by Investigator Sterling, Mr. Perry acknowledged his association with AHRF. Mr. Perry stated that he invested money in the amount of \$220,000 in AHRF, but specifically denied having any involvement in the management or the day-to-day operation of the company. Mr. Perry further contends that whereas he was marginally aware of some complaints regarding AHRF, he was not aware of any consistent course of conduct by AHRF or any employee of AHRF where services were not provided as promised.

¹ Amounts reportedly paid ranged from a low of \$995 to a high of over \$3,000.

56. Through his investigation, Investigator Sterling also confirmed the existence of a Wachovia Custom Business Checking Account in the name of "Perry and Associates" established in April 2010 into which processed numerous credit card transactions during the period of May 2010 through January 2011, the statements of which were mailed to the address of the Law Office of Michael A. Perry, that being 10400 Eaton Place, Suite 420, Fairfax, VA 22030. Said Custom Business Checking Account was not listed as a Trust Account for Mr. Perry.

II. NATURE OF MISCONDUCT

Such conduct by Michael A. Perry constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

Rule 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

III. DISPOSITION

The Court hereby approves the Agreed Disposition of SUSPENSION for a period of ONE (1) YEAR and hereby ORDERS that Respondent's license to practice law shall be SUSPENDED for One Year commencing on 24 September 2014 and ending at midnight on 23 September 2015.

The Clerk of the Disciplinary System shall assess the appropriate administrative fees.

ENTERED this 7th day of November, 2014

Richard D. Taylor, Jr.
Chief Judge Designate

J. Martin Bass
Judge Designate

Signature Date: 10/27/14

Ann Hunter Simpson
Judge Designate

Signature Date: 10/9/14

We ask for this:

Prescott L. Prince, Esquire
Assistant Bar Counsel

Michael L. Rigsby, Esquire
Counsel for Respondent

A COPY TESTE:
JOHN T. FREY, CLERK

BY: Indumathi S. Sosale
Deputy Clerk

Date: 2/3/15
Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia