

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
GEORGE WELLS ROWE

VS
VS B Docket No. 11-031-086546
VS B Docket No. 12-000-091393 (CRESPA)

ORDER

These matters came on May 18th, 2012, to be heard upon the Certification of the Third District Subcommittee of misconduct related to unauthorized practice of law during the periods of administrative suspensions for failures to comply with the Virginia State Bar Mandatory Continuing Legal Education requirements, and pursuant to the Virginia State Bar's Request for Hearing before the Board pursuant to the Consumer Real Estate Settlement Protection Act (CRESPA), Va. Code Section 6.1-2.30 *et seq.*, and Real Estate Settlement Agents (RESA), Va. Code Section 55-525.16 *et seq.* A duly-convened panel of the Virginia State Bar Disciplinary Board consisting of Thomas R. Scott, Jr., Chair, presiding, along with Jody D. Katz, Lay Member, William M. Moffet, Michael S. Mulkey, and Samuel R. Walker heard the cases.

Kathryn R. Montgomery, Deputy Bar Counsel, represented the Virginia State Bar and the Respondent, George Wells Rowe, was represented by William D. Bayliss of Williams Mullen. The court reporter for the proceeding was Tracy J. Stroh, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia, 23227, telephone (804) 730-1222.

The Chair opened the hearing by calling the cases. The panel was polled as to whether any member had any conflict of interest or other reason why the member should not participate in the hearing. Each member, including the Chair, answered in the negative.

I. FINDINGS OF FACTS

The exhibits of the Virginia State Bar and the Respondent were admitted without objection. The parties stipulated to the following facts:

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1. Respondent was licensed to practice law in the Commonwealth of Virginia on January 30, 1974.
2. On January 23, 2009, the Virginia State Bar Mandatory Continuing Legal Education ("MCLE") Board sent Respondent a Notice of Noncompliance for 2008 MCLE.
3. On March 24, 2009, Respondent submitted to the bar's MCLE office an executed 2008 MCLE Notice of Noncompliance, certificates of attendance forms, and a check for \$200.00.
4. Although Respondent has indicated that on March 24, 2009 he was under the belief that he had satisfied the requirements with his submission, he later learned that his submission did not satisfy the bar's MCLE requirements.
5. On March 25, 2009, Respondent's license to practice law in Virginia was suspended for failure to comply with the MCLE requirements of the Virginia State Bar.
6. On March 27, 2009, the Director of MCLE sent Respondent a letter notifying him that his license to practice law in Virginia had been suspended on March 25, 2009.
7. On April 16, 2009, Respondent made further submissions to the bar's MCLE office.
8. On April 20, 2009, Respondent's license to practice law in Virginia was reinstated.
9. Respondent admittedly continued to practice law in Virginia from March 25, 2009 to April 20, 2009.
10. Respondent did not at any time report to the bar that in 2009, he had practiced law while his license was suspended.
11. On January 8, 2010, the Virginia State Bar MCLE Board sent Respondent a Notice of Impending MCLE Suspension for 2009 MCLE.

12. On March 10, 2010, Respondent's license to practice law in Virginia was suspended for failure to comply with the MCLE requirements of the Virginia State Bar.
13. On March 11, 2010, the Director of MCLE sent Respondent a letter notifying him that his license to practice law in Virginia had been suspended on March 10, 2010.
14. On December 29, 2010, Respondent's law partners learned that Respondent's license to practice law was suspended. The law partners confronted Respondent with this information.
15. Respondent, by counsel, submitted that he intended to self-report his 2010 misconduct to the Virginia State Bar, and that his counsel and counsel for the law partners had engaged in discussions about reporting the matter to the Virginia State Bar and was in the process of coordinating the reporting prior to January 12, 2011.
16. On January 3, 2011, Respondent complied with the bar's MCLE requirements and his license to practice law in Virginia was reinstated.
17. On January 12, 2011, Respondent's law partner reported Respondent's misconduct to the Virginia State Bar.
18. In response to the bar complaint, Respondent has accepted responsibility for his conduct and has cooperated with the State Bar and has admitted to the Virginia State Bar that he engaged in the practice of law in Virginia while his law license was suspended from March 10, 2010 to January 3, 2011. During the course of the bar's investigation, Respondent admitted that he also practiced law while his license was suspended from March 25, 2009 to April 20, 2009.
19. Respondent also submitted that his wife had been in poor health in recent years, and that he had suffered a stroke in August, 2010.
20. During his two suspensions, Respondent did not disclose to his clients or law partners that his license to practice law was suspended in Virginia.

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21. Respondent was licensed to practice law in the Commonwealth of Virginia on or about January 30, 1974.
22. Respondent's license was suspended and he was not in good standing with the Virginia State Bar from March 25, 2009 to April 20, 2009 and from March 10, 2010 to January 3, 2011.
23. Respondent was registered with the Virginia State Bar as an attorney settlement agent from 1997 to March 2009.

24. Respondent's CRESPA certification was revoked after his license to practice law was suspended on or about March 25, 2009. By letter dated March 27, 2009, the Virginia State Bar notified Respondent that his CRESPA certification had been revoked.
25. Respondent reregistered as an attorney settlement agent with the Virginia State Bar on or about December 19, 2011.
26. In order to function as the settlement agent in residential real estate transactions, Respondent was required to have been registered as a settlement agent with the Virginia State Bar and have in full force and effect the following:
 - a. A lawyer's professional liability insurance policy providing first dollar coverage and limits of at least \$250,000.00 per claim covering Respondent;
 - b. A blanket fidelity bond or employee dishonesty insurance policy providing limits of at least \$100,000.00 covering all other employees of Respondent; and
 - c. A surety bond providing limits of at least \$200,000.00 covering Respondent.
27. Respondent is a named partner in his law firm, and during all periods of time germane to his conduct alleged herein, the Firm, in fact, maintained the professional liability insurance policy and the fidelity and surety bonds required by CRESPA.
28. Respondent acted as settlement agent in 262 residential real estate transactions that were closed between March 27, 2009 and December 18, 2011.

At the hearing, the parties entered into additional stipulations confirming (1) that Respondent had received, read and understood the March 27, 2009, letter from the Director of MCLE informing him of the suspension of his law license, which is referred to above in No. 6; (2) that Respondent had received, read and understood the March 11, 2010, letter from the Director of MCLE informing him of a second suspension of his law license, referenced above in No. 13; and (3) that Respondent had received, read and understood the March 27, 2009, letter from the Virginia State Bar notifying him that his CRESPA certification had been revoked.

II. MISCONDUCT

The Certification as to VSB Docket No. 11-031-086546 charged violations of the following three provisions of the Virginia Rules of Professional Conduct:

RULE 5.5. Unauthorized Practice Of Law; Multijurisdictional Practice of Law

- (c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law; and

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 lawyers fitness to practice law.

The Bar's Request for Hearing, VSB Docket No. 12-000-091393, pursuant to the Consumer Real Estate Settlement Protection Act (CRESPA), Va. Code Section 6.1-2.30 *et seq.*, and Real Estate Settlement Agents (RESA), Va. Code Section 55-525.16 *et seq.* alleged as follows:

Without being properly registered as an attorney settlement agent with the Virginia State Bar, Respondent acted as settlement agent in 262 residential real estate transactions which were closed between March 27, 2009 and December 18, 2011.

Such conduct by Respondent may constitute violations of Regulation 15 VAC 5-80-30, Registration; Reregistration; Required Fee.

III. DISPOSITION

After accepting the written stipulations and the additional stipulations offered at the hearing as to the evidence, and hearing argument on behalf of the Bar and the

Respondent, the Board recessed to deliberate. After due deliberation, the Board reconvened and announced its finding that the Virginia State Bar had proven, by clear and convincing evidence, that the Respondent had violated the following provisions of the Virginia Rules of Professional Conduct during both separate time periods described in the stipulations above:

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

- (c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

The Board found that the Virginia State Bar did not prove by clear and convincing evidence a violation of Rule 8.4(c);

The Board also found that the Respondent violated CRESPA regulations, Regulation 15 VAC 5-80-30, Registration; Reregistration; Required Fee, by not being properly registered as an attorney settlement agent with the Virginia State Bar while acting as a settlement agent in 262 residential real estate transactions which were closed by him between March 27, 2009 and December 18, 2011.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including Respondent's lack of any prior disciplinary record and several witnesses on behalf of the Respondent in mitigation.

The Board then recessed to deliberate as to what sanctions to impose upon its findings of misconduct by Respondent and violation of the CRESPA regulations by the

Respondent. After due deliberation the Board reconvened to announce the Board's determination that regarding VSB Docket No. 11-031-086546 the Respondent's license to practice law in the Commonwealth of Virginia is suspended for a period of thirty (30) days, effective immediately on May 18th, 2012.

As to the CRESPA violations in VSB Docket No. 12-000-091393, the Board imposes a penalty, as provided by §55-525.31 of the *Code of Virginia*, 1950, as amended, of \$5000.00. The Respondent has thirty (30) days from the date of this Order to pay the penalty. A check for the penalty shall be made payable to the Virginia State Bar and should be remitted to the Office of the Clerk of the Virginia State Bar Disciplinary Board.

It is further ORDERED that, as directed in the Board's May 18, 2012, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 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 client. 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 the 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. 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 pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail by Certified Mail an attested copy of this Order to Respondent at his address of record with the Virginia State Bar, 8310 Midlothian Turnpike, Richmond, VA 23235-5120, by regular mail to his counsel, William D. Bayliss, at Williams Mullen, 200 S. Tenth Street, P. O. Box 1320, Richmond, Virginia 23218, and by hand-delivery to Kathryn R. Montgomery, Deputy Bar Counsel, Virginia State Bar, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 30th day of May, 2012.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Thomas R. Scott, Jr.
Thomas R. Scott, Jr., Chair