

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
PETER CAMPBELL SACKETT**

VS **Docket No. 08-090-072950**

PUBLIC REPRIMAND WITH TERMS

MEMORANDUM ORDER

This matter came on to be heard on November 24, 2008 by the Disciplinary Board of the Virginia State Bar (the Board) to review and accept or reject an Agreed Disposition of a Public Reprimand with Terms in the above-referenced matter. A panel of the Virginia State Bar Disciplinary Board was duly convened and consisted of Robert E. Eicher (Chair), Paul M. Black, Timothy A. Coyle, Russell W. Updike, and Rev. W. Ray Inscoc, lay person (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 he had no such interests. Terry S. Griffith of Chandler & Halasz, PO Box 9349, Richmond, Virginia 23227 (804) 730-1222 was the court reporter for the hearing and transcribed the proceedings.

Renu Mago, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Peter Campbell Sackett, Respondent appeared *pro se*.

Bar Counsel presented the Agreed Disposition for Public Reprimand with Terms, and both Bar Counsel and Respondent answered questions from the Panel regarding the Agreed Disposition.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary

record with the Bar and thereafter retired to closed session to deliberate on the Agreed Disposition. The Panel then reconvened in open session, and the Chair announced that the Panel accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board accepts the findings of fact to which Respondent and Bar Counsel stipulated in the Agreed Disposition for Public Reprimand with Terms, as set forth herein:

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In 2007, Respondent represented Charles Rose, III, the buyer in a land sale transaction involving Mr. Rose's purchase of land from sellers Thomas Lee, Jr. and Gracie Horsley.
3. Respondent acted as the Settlement Agent for the real estate transaction.
4. In the spring of 2007, Respondent notified buyer Mr. Rose of the amount of money required for settlement.
5. On April 16, 2007, Respondent wrote to one of the sellers, Mr. Lee, requesting he execute and have notarized a deed and enclosing a settlement statement. In the letter, Respondent asserts that upon receipt and recordation of the deed, he will forward to Mr. Lee the sum of \$11,758.82, which represents the contract price of \$12,000.00 less settlement costs and the debit for pro-rated taxes.
6. While the HUD-1 statement reflects that settlement occurred on March 22, 2007, Mr. Rose's check for \$18,622.24, which represented the sum due for the transaction at

issue and one other lot, was not deposited in Respondent's real estate trust account until May 15, 2007.

7. On May 16, 2007, the deed dated March 7, 2007, listing as Grantor Gracie Horsley to Grantee Charles R. Rose III, received of Respondent, was recorded by the Amherst Circuit Court.
8. On May 24, 2007, seller Gracie Horsley was paid \$7,323.69, by check # 3673 from Respondent's real estate trust account.
9. In the spring of 2007, Respondent contacted Mr. Lee and stated that Mr. Rose had given Respondent the funds to conclude the sale of real property from Mr. Lee to Mr. Rose.
10. Mr. Lee subsequently attempted to contact Respondent several times regarding the status of the sale, however Respondent did not return Mr. Lee's calls or otherwise advise Mr. Lee of the status of the sale.
11. The deed from Mr. Lee to Mr. Rose was recorded on July 3, 2007. Mr. Rose subsequently questioned Respondent as to the delay in transmission of the funds from the sale to Mr. Lee. Neither Mr. Rose nor Mr. Lee received any explanation from Respondent, and Respondent did not disburse to Mr. Lee his share proceeds from the sale at or near the time of settlement.
12. On July 25, 2007, Bank of the James sent Respondent a fax regarding Mr. Lee's lots, in which the Bank stated "upon receipt of \$10,300 principal payment, Bank of the James has agreed to release the .48 and .52 acres."

13. Respondent finally spoke with Mr. Lee in the fall of 2007. Mr. Lee instructed Respondent to pay off Mr. Lee's bank loan with Bank of the James in the amount of \$10,300.00 and send Mr. Lee the balance on the sale price (\$1,488.12).
14. On November 6, 2007, in order to pay off Mr. Lee's real estate loan held by Bank of the James, Respondent issued a check for \$10,300.00, drawn on Respondent's general account with Community First Bank, to Bank of the James.
15. Upon receipt of the \$10,300 check drawn on Respondent's general account, Bank of the James issued a certificate of satisfaction to Respondent. The certificate of satisfaction released the Bank of the James' lien against the lots owned by Mr. Lee.
16. Respondent's check to Bank of the James was returned for insufficient funds.
17. On November 7, 2007, Respondent deposited a \$10,000 check from Luck D. Sackett and Laura M. Sackett, dated November 6, 2007, into his real estate trust account.
18. On November 7, 2007, the balance in Respondent's real estate trust account was \$10,206.91.
19. Respondent issued a replacement check in the amount of \$10,300 to the Bank of the James. This check was drawn on Respondent's real estate trust account with Community First Bank.
20. This replacement check to Bank of the James was presented for payment on November 8, 2007. On November 8, 2007, Respondent's real estate trust account had a balance of \$10,173.91. The replacement check for \$10,300 written on Respondent's real estate trust account was thus also returned for insufficient funds.

21. While the lien of the deed of trust was released, the outstanding balance on the loan remained unpaid given the bad checks.
22. In November 2007, Mr. Lee contacted Respondent to inquire about what had happened and about the \$1,488.12 due. On November 27, 2007, Respondent advised Mr. Lee he was delivering a cashier's check to the Bank of the James for the loan payoff and was sending him a cashier's check for the \$1,488.12. Respondent never explained to Mr. Lee the basis for the delay in concluding the sale.
23. It was not until November 30, 2007, after counsel for Bank of the James filed the instant bar complaint, and after Bank of the James caused a Warrant-in-Debt to be issued against Respondent that Respondent delivered a cashier's check in the amount of \$10,426.00 to Bank of the James, representing the \$10,300 loan balance + \$126 in returned check bank fees. By December 4, 2007, Respondent paid Mr. Lee the remaining \$1,488.12 he was owed by cashier's check.
24. The Wet Settlement Act, Va. Code §6.1-2.10 *et seq.*, requires the settlement agent to disburse settlement proceeds within 2 business days after settlement. Settlement is defined as the time when the settlement agent has received the duly executed deed, loan funds, loan documents, other documents and funds required to carry out the terms of the contract between the parties and the settlement agent reasonably determines that prerecordation conditions of such contracts have been satisfied. Wet Settlement Act, Va. Code §6.1-2.10. As set forth, Mr. Rose's check for the purchase of the lots was issued to Respondent on May 15, 2007. Moreover, the deeds were recorded on May 16, 2007 and July 3, 2007, respectively. It thus appears that

Respondent was required to have disbursed funds by or before July 3, 2007, and certainly before November 30, 2007.

25. In the course of the Bar's investigation of this complaint, the Bar subpoenaed Respondent's real estate trust account records for the period February through November 2007. The Bar also subpoenaed from Respondent all trust account and operating account records, including cancelled checks, cash receipts journals, cash disbursements journals, subsidiary ledgers, bank statements, deposit tickets and evidence of reconciliations, for the August thru November 2007 time period.

Respondent failed to provide journals, ledgers, and reconciliations to the Bar. It does not appear from Respondent's response to the subpoena that Respondent has trust account records for this period.

26. The real estate trust account monthly statements reflect the following monthly balances subsequent to Respondent's deposit of the May 11, 2007 check in the amount of \$18,622.24 from Mr. Rose:

May 31, 2007:	\$62,210.53
June 30, 2007:	\$35,294.27
July 31, 2007:	\$10,099.36
August 31, 2007:	\$ 1,821.91
September 30, 2007:	\$ 6.91

Respondent's monthly statements thus reflect that Respondent was out of trust with respect to the funds deposited on May 15, 2007.

II. NATURE OF MISCONDUCT

Having adopted the findings of Bar Counsel and the Respondent in the Agreed Disposition of Public Reprimand with Terms, the Panel agrees that the above factual stipulations give rise to a finding of a 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.

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
- (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.
- (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

Upon consideration whereof, it is **ORDERED** that the Respondent shall receive, effective November 24, 2008, a Public Reprimand with Terms.

Having considered all the evidence before it, as well as the presentations of Bar Counsel and Respondent, the Disciplinary Board **ORDERS** that Respondent shall perform the following terms:

(1) Respondent, if he has not already done so, shall certify that Respondent has engaged the services of a certified public accountant ("CPA"), as required by the Memorandum Order entered October 2, 2008. The CPA shall, if he/she/the firm has not done so, certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct. The CPA must be pre-approved by Assistant Bar Counsel Paulo E. Franco, Esq., or Renu Mago, Esq., to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent is in compliance with Rule 1.15, the CPA shall so certify in writing to Respondent and the Virginia State Bar. In the event the CPA determines Respondent is NOT in compliance with Rule 1.15, the CPA 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. Respondent shall, if he has not done so already, provide the CPA with a copy of the Agreed Disposition at the outset of his engagement with the CPA.

(2) Respondent remains obligated to pay when due the CPA's fees and costs for services (including provision to the Virginia State Bar and to Respondent of information concerning the matter).

(3) In the event the CPA determines that Respondent is NOT in compliance with Rule 1.15, Respondent shall have forty-five (45) days following the date the CPA issues a written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring him into compliance. The CPA shall then be granted access to Respondent's office, books, and records, following the passage of the forty-five (45) day period to determine whether Respondent has brought himself into compliance as required. The CPA shall thereafter certify in writing to the Virginia State Bar and to Respondent either that Respondent has brought himself into compliance with Rule 1.15 within the forty-five (45) day period or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the forty-five (45) day period shall be considered a violation of the Terms set forth herein.

(4) Unless an extension is granted by the bar for good cause shown to accommodate the CPA's schedule, the Terms specified in paragraphs 1, 2, and 3, shall be completed no later than February 27, 2009.

(5) In February 2010, and no later than February 28, 2010, the CPA engaged pursuant to paragraph 1 shall reassess Respondent's attorney's trust account record-keeping, accounting, and reconciliation methods and procedures to ensure continued compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent has NOT remained in compliance with this Rule, such non-compliance will be considered a violation of the Terms set forth herein.

In the event that Respondent fails to comply with any or all of the terms outlined in paragraphs 1 through 5 above to the satisfaction of Bar Counsel, Bar Counsel shall issue a Rule to Show Cause to the Respondent requiring the Respondent to Show Cause, if any, why the Disciplinary Board should not impose an alternative sanction of SUSPENSION for One (1) Year. The sole issue to be determined by the Disciplinary Board will be Respondent's compliance with the terms. The Respondent shall bear the burden of proof by clear and convincing evidence that he has met all the terms. Further, Respondent agrees to waive his right to have a three judge panel pursuant to Va. Code Ann. Section 54.1-3900 *et seq.* hear such matter. In the event that Respondent fails to show by clear and convincing evidence that he has met all the terms, the Disciplinary Board shall impose the alternative sanction of a One Year

Suspension.

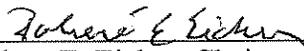
Bar Counsel and Respondent agree that any notice required to be given by Rule to Show Cause shall be by Certified Mail, Return Receipt Requested to Respondent at Peter C. Sackett, P.C., 714 Court Street, Lynchburg, Virginia 24505. Respondent and Bar Counsel agree that any notice required shall be deemed given and complete by Bar Counsel depositing such notice as set forth herein.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to Peter Campbell Sackett at his last address of record with the Virginia State Bar, Peter C. Sackett, P.C., 714 Court Street, Lynchburg, VA 24504, and by hand to Renu Mago, Assistant Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 25th day of November, 2008.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Robert E. Eicher, Chair