

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
KIMBERLY LOYD SCOTT

VS. Docket No. 10-000-082142

MEMORANDUM ORDER

This matter came to be heard on May 17, 2010 via duly noticed teleconference upon a proposed Agreed Disposition entered into between the parties, which was presented to a panel of the Virginia State Bar Disciplinary Board (the Disciplinary Board) consisting of William H. Monroe, Jr., Chair presiding, Paul M. Black, Member, Nancy C. Dickenson, Member, J. Casey Forrester, Member, and Dr. Theodore Smith, Lay Member (the Panel).

M. Brent Saunders, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. The Respondent, Kimberly Loyd Scott, appeared in person with counsel, Michael L. Rigsby.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H and 15 VAC 5-80-50.D.5.d, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel for its consideration.

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 reconvened and announced its unanimous acceptance of the Agreed Disposition.

I. FINDINGS OF FACT

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

1. At all times relevant hereto, Respondent was an attorney licensed in the Commonwealth of Virginia.
2. In August 2007, Respondent was hired to handle the closing of the sale of a real estate parcel containing a single residential dwelling unit located at 6475 Clare Road, Norfolk, Virginia 23513, from Stacey S. Kennedy (“Kennedy”) and three of his family members to Kendall Campbell, who financed the purchase with a mortgage loan to be secured by a first deed of trust on the real estate.

Respondent allowed the purchase to close on November 9, 2007. On that date, Respondent conducted the closing by, among other things, allowing Kennedy to execute an Owner’s Affidavit in which he declared that the property was free and clear of all liens. By November 13, 2007, Respondent had received the loan funds and all other monies and documents required for settlement. Respondent made multiple disbursements of settlement proceeds prior to recordation of the deed and deed of trust, in violation of applicable provisions of the Wet Settlement Act (§§ 6.1-2.10 *et seq.* of the Code of Virginia, 1950, as amended) (“Wet Settlement Act”), the Virginia Consumer Real Estate Settlement Protection Act (§§6.1-2.19 *et seq.* of the Code of Virginia, 1950, as amended) (“CRESPA”) and the regulations issued by the

Virginia State Bar (“Bar”) pursuant thereto (15 VAC 5-80-10 *et seq.*) (“Regulations”).

3. Respondent acted as settlement agent in the sale of a real estate parcel containing one residential dwelling located at 5712 Hawthorne Lane, Portsmouth, Virginia 23703, from Ryan P. Hankin and Anne G. Moriarty to Mary A. Walker, pursuant to a purchase agreement dated July 30, 2008.

The transaction involved the issuance of a loan to be secured by a first deed of trust on the real estate. The transaction closed on August 29, 2008, as reflected in the settlement statement as the settlement date for the transaction. The settlement statement for the transaction also identifies Respondent and/or Respondent’s law firm as the settlement agent.

Respondent: i) made multiple disbursements of settlement proceeds prior to recordation of the deed and deed of trust; and ii) failed to make multiple disbursements within two business days of settlement, in violation of applicable provisions of the Wet Settlement Act, CRESPA and the Regulations.

4. In order to function as the settlement agent in a transaction involving the purchase of or lending on the security of real estate in Virginia containing not more than four residential dwelling units, Respondent was required under CRESPA and the Regulations to have been registered as a settlement agent with the 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 the Respondent;
- b. A blanket fidelity bond or employee dishonesty insurance policy providing limits of at least \$100,000.00 covering all other employees of the Respondent; and
- c. A surety bond of not less than \$200,000¹ covering the Respondent.

¹ Minimum amount of surety bond increased from \$100,000.00 to \$200,000.00 via amendments to CRESPA and the Regulations that took effect on July 1, 2008.

5. By letter dated April 16, 2008 mailed to Respondent's address of record, the Bar: i) notified Respondent of the amendment to CRESPA increasing the minimum amount of the required surety bond from \$100,000 to \$200,000; and ii) advised Respondent that her CRESPA registration would be revoked unless a surety bond in that amount was filed with the Bar by July 1, 2008. Respondent failed to file a surety bond in that amount by that date. By letter dated July 8, 2008 mailed to Respondent's address of record, the Bar advised Respondent that her CRESPA registration was revoked effective July 2, 2008 due to her failure to file the required surety bond. Respondent has not been registered as a settlement agent with the Bar since July 1, 2008.

6. After the revocation of her CRESPA registration and while her CRESPA registration remained revoked, Respondent acted as the settlement agent in the following six (6) transactions involving the purchase of or lending on the security of real estate in Virginia containing not more than four residential dwelling units:

<u>Closing Date</u>	<u>Transaction Type</u>	<u>Parties</u>
7/25/08	Refinance	Andrew Brown
8/29/08	Purchase	Ryan Hankin and Anne Moriarty to Mary Walker
9/4/08	Refinance	James and Brenda Cotman (Darren Drive)
9/4/08	Refinance	James and Brenda Cotman (Plaza Trail)
9/4/08	Refinance	James and Brenda Cotman (Drewry Drive)
9/12/08	Purchase	Kenneth and Connie Detweiller to Allen and Mary Chavez

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Kimberly Loyd Scott constitutes misconduct in violation of the following provisions of CRESPA as stipulated by the parties:

§ 6.1-2.21. Licensing requirements, standards and financial responsibility.

C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses and record retention.

D. A settlement agent other than a financial institution described in subsection A or title insurance company as defined in § 38.2-4601, shall maintain the following to the satisfaction of the appropriate licensing authority:

1. An errors and omissions or malpractice insurance policy providing a minimum of \$250,000 in coverage;
2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of \$100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and
3. A surety bond of not less than \$200,000.

§ 6.1-2.23. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in this Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

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, 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 by Kimberly Loyd Scott also constitutes violations of the following provisions of the Regulations as stipulated by the parties:

15 VAC 5-80-30. Registration; Reregistration; Required Fee.

Every licensed attorney, title insurance company, title insurance agent or real estate broker, as well as every financial institution authorized to do business in Virginia under any of the provisions of Title 6.1, Code of Virginia, or under federal law, and every subsidiary or affiliate of any such financial institution, now providing or offering, or intending to provide or offer, escrow, closing or settlement services as a settlement agent with respect to real estate transactions in Virginia shall register with the Bar on or before September 29, 1997, using the registration form available from the Bar for that purpose. Settlement agents beginning to provide or offer such services after July 1, 1997, shall register with the Bar prior to doing so. The registration requirement in this paragraph shall not apply to attorney settlement agents unless they provide or offer to provide escrow, settlement and closing services for real estate subject to CRESPA, i.e.,

real estate containing not more than four residential dwelling units. Thus, for example, attorneys who handle only commercial real estate transactions are not subject to these Regulations.

Every settlement agent shall thereafter reregister after notice on a schedule established by the Bar, providing updated registration information. Every settlement agent shall have a continuing duty to advise the Bar of any change in name, address or other pertinent registration data that occurs between registrations.

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Registration is subject to revocation or suspension if the Bar or other appropriate licensing authority finds the settlement agent out of compliance with CRESPA or Regulations issued thereunder.

15 VAC 5-80-50. Attorney Settlement Agent Compliance.

A. Attorney Settlement Agent Certification.

Each attorney settlement agent shall, at the time of initial registration and each subsequent reregistration, certify on the form available from the Bar for that purpose, that the attorney settlement agent has in full force and effect the following insurance and bond coverages, and that such coverages will be maintained in full force and effect throughout the time the attorney settlement agent acts, offers or intends to act in that capacity:

1. A lawyer's professional liability insurance policy issued by a company authorized to write such insurance in Virginia providing first dollar coverage and limits of at least \$250,000 per claim covering the licensed attorney acting, offering or intending to act as a settlement agent. The policy may also cover other attorneys practicing in the same firm or legal entity.
2. A blanket fidelity bond or employee dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia providing limits of at least \$100,000 covering all other employees of the attorney settlement agent or the legal entity in which the attorney settlement agent practices.
3. A surety bond issued by a company authorized to write such bonds in Virginia, on a form approved by the Virginia State Bar, providing limits of at least \$200,000 covering the licensed attorney acting, offering or intending to act as a settlement agent. A copy of the approved bond form is available from the Bar. The bond may also cover other attorney settlement agents practicing in the same firm or legal entity. The original surety bond must be attached to the attorney settlement agent's certification form and furnished to the Bar; a surety bond on which a law firm is named as principal may be

furnished by the firm or any one attorney settlement agent in the firm, with other such attorney settlement agents in the same firm attaching a copy to their forms.

The Bar reserves the right to require other evidence of the above insurance and bond coverages beyond the attorney's certification and surety bond, at its discretion.

An attorney settlement agent who has no employees other than the attorney settlement agent or other licensed owner(s), partner(s), shareholder(s), or member(s) of the legal entity in which the attorney settlement agent practices may apply to the Bar for a waiver of the coverage required in Section A.2. above, using the waiver request form available from the Bar. Such waiver requests will be acted on by the Executive Committee of the Bar, whose decision shall constitute final action by the agency.

B. Separate Fiduciary Trust Account.

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 Respondent receive a **PUBLIC REPRIMAND WITH TERMS** effective May 17, 2010. The terms and conditions with which Respondent must comply are as follows:

1. Respondent shall review the following: i) the Wet Settlement Act (§§6.1-2.10 *et seq.* of the Code of Virginia, 1950, as amended); ii) the Virginia Consumer Real Estate Settlement Protection Act (§§6.1-2.19 *et seq.* of the Code of Virginia, 1950, as amended) ("CRESPA") and the regulations issued pursuant thereto; and iii) the most

current version of the Virginia CLE publication Real Estate Transactions in Virginia, and shall certify in writing completion of this requirement to the Office of Bar Counsel, all prior to seeking CRESPA registration or re-registration; and

2. Respondent is placed on probation for a period of three (3) years from the date of the entry of this order. Respondent will not during such probationary period: i) engage in professional misconduct as defined by the Virginia Rules of Professional Conduct; or ii) violate any provision of CRESPA and/or the regulations issued pursuant thereto. Any final determination that Respondent engaged in professional misconduct or violated any provision of CRESPA and/or the regulations issued pursuant thereto during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term; and
3. Respondent shall pay to the Virginia State Bar a penalty of Six Thousand Dollars (\$6,000.00). Said penalty shall be paid by mail or hand delivery to the Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, within thirty (30) days of the entry of this order.

If any of the terms and conditions are not met by the specified dates, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of 12 months.

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 the Disciplinary System shall send a copy of this order by Certified Mail, Return Receipt Requested, to Kimberly Loyd Scott at her last

address of record with the Virginia State Bar, 1649 Middlebrook Lane, Virginia Beach, VA 23464, by regular mail to Michael L. Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, VA 23226, Respondent's Counsel, and by hand delivery to M. Brent Saunders, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Valarie May of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone (804) 730-2222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: MAY 19, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
William H. Monroe, Jr., Chair