

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
BRIAN KEITH STEVENS,
RESPONDENT

VSB Docket Nos.: 10-032-081361
11-000-087268

ORDER

These matters came to be heard on the 27th day of January 2012, before a duly convened panel of the Virginia State Bar Disciplinary Board composed of Thomas R. Scott, Jr., Chair, William H. Atwill, Jr., Jody D. Katz (Lay member), David R. Schultz and Whitney G. Saunders. Renu M. Brennan, Assistant Bar Counsel, appeared as Counsel to the Virginia State Bar ("VSB" or Bar). The Respondent, Brian Keith Stevens was present and represented himself.

All legal notice of the date and place of the hearing was timely sent by the Clerk of the disciplinary system, in the manner prescribed by law.

The Chair opened the hearing by polling the members of the panel to ascertain if 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 the matters before the panel. Each member, including the Chair, verified that he or she had no such interest.

The board heard an opening statement from the VSB. The Respondent presented a brief statement and rested without the presentation of any evidence on his behalf.

Counsel for the VSB introduced the third District Subcommittee, Section II Certification as VSB Exhibit No. 1, a copy of the Notice of Hearing, dated May 3, 2011 and a copy of the Certified Mail receipt as VSB Exhibit No. 2 and the Counsel for the VSB introduced as VSB Exhibit No. 3, the Stipulations of Fact and Misconduct signed by the Respondent and Assistant Bar Counsel to which Exhibits the Respondent had no objection and each Exhibit was admitted into evidence.

The Chair summarized the charged violations and neither the Bar nor the Respondent presented closing statements. The Chair excused the parties and all others in the court room for the purpose of deliberation.

After due deliberation, the Board found by clear and convincing evidence that the Respondent violated Virginia State Bar regulations under the Virginia Consumer Real Estate

Settlement Protection Act, (CRESPA), Virginia Code Section 55-525.24 (Effective October 1, 2010), previously Virginia Code Section 6.1-2.23 and 15VAC 5-80-50(b) and that the Respondent violated the Rules of Professional Conduct 1.3(a), 1.15(c)(4), 1.15(f)(4)(i) and (ii), 1.15(f)(5)(i)-(iii) and 5.3(a), (b) and (c)(2):

Va. Code Section 55-525.24. (Effective October 1, 2010), previously Va. Code Section 6.1-2.23.

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 §55-525.11 (previously 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.

Virginia State Bar Regulation Issued Pursuant to CRESPA:

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

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.

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:

(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.

(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 to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The Chair asked the Bar to proceed with the sanctions phase of the hearing and the Bar introduced the disciplinary record of the Respondent, which was accepted by the Chair and marked as VSB Exhibit No. 4. The Chair asked the Respondent if he had evidence to present and he indicated that he would like to testify but upon taking the stand further indicated that he had no evidence to present and rested his case.

The panel posed questions to the Respondent and the Bar and upon the conclusion of these questions closing arguments were presented by the Bar and by the Respondent. Upon completion of closing arguments, the Chair requested that the parties and all others in the courtroom remove themselves so that the panel might enter into deliberation.

Upon completion of deliberation by the panel, the Chair requested that the Bar, the Respondent and all other interested parties return to the courtroom where, the Chair stated that, it

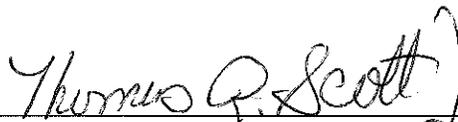
is ORDERED that pursuant to Part 6, §IV, ¶ 13-18(M) of the Rules of the Supreme Court of Virginia, the license of the Respondent to practice law in the Commonwealth of Virginia shall be, and hereby, is SUSPENDED effective January 27, 2012 for a period of sixty (60) days.

It is further ORDERED that the Respondent must comply with the requirements of Part 6, Section 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 revocation 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 all opposing attorneys and presiding judges in pending litigation. The Respondent shall comply with all requirements of ¶13-29 of the Rules of the Supreme Court of Virginia, including but not limited to sending the required notices, making the required arrangements and providing the required proof to the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by ¶13-29 shall be determined by the board.

It is ORDERED that in accordance with Part 6, Section IV, ¶13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against the Respondent.

It is further ORDERED that the Clerk shall mail an attested copy of this opinion and Order to the Respondent, Brian Keith Stevens, by Certified Mail, at his address of record 3205 Attems Court, Glen Allen, VA 23060, and by regular mail to Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2803.

ENTERED this 1st day of March, 2012



Thomas R. Scott, Jr., Chair
Virginia State Bar Disciplinary Board