

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
BRIAN KEITH STEVENS

VSB DOCKET NOS. 08-032-073327  
10-000-082113

AGREED ORDER

This matter came on for consideration pursuant to the Consumer Real Estate Settlement Protection Act [CRESPA], the Virginia State Bar Regulations [Regulations] under said Act, the Virginia Rules of Professional Conduct and upon the agreement of the parties evidenced by the endorsements hereon.

The Board finds by clear and convincing evidence that the Respondent has violated the CRESPA, the Regulations and the Virginia Rules of Professional Conduct as follows:

1. At all times relevant hereto, Brian Keith Stevens [Respondent], has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On July 9, 2003, a real estate settlement occurred in which Complainant Benjamin M. Venning, Sr. [Venning] purchased that property known as 1805 West 19<sup>th</sup> Street in the City of Richmond, Virginia, [property] from Sarbo. Sarbo had purchased the same property in a prior real estate settlement the same date. Stevens was the settlement agent in both transactions.
3. The above date is reflected in the settlement statement as the settlement date for the Venning purchase of the property. The settlement statement for the Venning purchase also shows the Respondent as the settlement agent.
4. Bon Air Title Agency, Inc. [Bon Air Title] searched the title and issued a commitment in Venning's name for an owner's title policy. The commitment showed no exceptions for outstanding judgments. One of the requirements stated in the Venning commitment, *inter alia*, was the provision of an extra hazardous risk premium to Bon Air Title as a result of the existence of an estate in the chain of title.
5. On or about July 14, 2003, an invoice regarding Venning was issued by Bon Air Title to

Stevens in the amount of \$511.00 which included charges of \$261.00 for title insurance and \$250.00 for the extra hazardous risk premium.

6. On or about July 14, 2003, Stevens paid Bon Air Title \$250.00 on the Venning invoice and submitted an attorney's final certificate and application for title insurance for an owner's title policy for Venning.

7. From July 14, 2003, until January of 2008, Stevens did not pay Bon Air Title the remaining amount due for Venning's owner's title policy of \$261.00 and Bon Air Title did not issue the policy. Instead, Bon Air Title put the issuance of the owner's title policy on hold.

8. In or about 2004, Venning refinanced an existing mortgage on the property.

9. According to Venning, in or about 2005, he had a buyer for the property. A title search was conducted and showed exceptions for certain judgments. According to Venning, he spoke to Stevens about the exceptions and Stevens indicated he would get back to him, but Stevens did not do so. The sale did not occur.

10. According to Venning, in or about 2007, he had new buyers for the property.

11. A title commitment was issued in preparation for the transaction and included certain exceptions for judgments. In order to clear the exceptions from the title, Venning's owner's title policy was sought.

12. On or about June 4, 2007, an employee of American Title & Escrow sent Mary Duncan at Stevens' office a fax asking for either Venning's owner's policy or an affidavit regarding the judgments.

13. According to Venning, he contacted Stevens on more than one occasion about the title problem presented by the judgments. Stevens told him not to worry, that he would take care of it. In one contact, Venning states he told Stevens he was afraid he would lose the buyer.

14. The transaction did not close.

15. Venning obtained counsel who contacted Bon Air Title asking for a copy of Venning's 2003 title commitment.

16. On December 11, 2007, Bon Air Title sent Stevens a fax indicating the balance due of \$261.00 on the 2003 invoice. No response from Stevens or his office was noted in the file of Bon Air Title.

17. On December 21, 2007, Gini DiStanislao of Bon Air Title sent Stevens an e-mail indicating she had been contacted by Venning's attorney and that she had contacted Stevens' office several times to try to clear up the matter of the Venning invoice. She asked Stevens to look into the problem and call her.

18. On December 21, 2007, the Virginia State Bar received the bar complaint of Venning.

19. On or before January 10, 2008, DeStanislao was asked by Stevens whether Bon Air Title would issue the owner's title policy if Stevens sent the remaining premium due. She answered in the affirmative, and Stevens paid the remaining amount due of \$261.00 and Venning's owner's policy was issued.

20. On March 3, 2008, the Virginia State Bar issued a subpoena duces tecum to Stevens seeking all files, records and reports and all trust account records relating to his representation of Venning in a real estate transaction involving the property which closed on July 9, 2003. In response, *inter alia*, Stevens did not provide any trust account records. Stevens indicated the records were on a computer which he has replaced. Stevens was also unable to find his file for the transaction. What he provided to the bar in response was largely documentation obtained from Bon Air Title.

21. During the investigation of this matter, Stevens was interviewed by Bar Investigator Cam Moffatt in July 2008. Regarding trust account reconciliations, Stevens stated his practice is primarily real estate, that it was difficult to do reconciliations because there were usually a certain number of checks which were not cashed for months. It was not unusual for him to have 50-60 outstanding uncleared checks in a month. Stevens stated he tried to make notations of outstanding checks monthly. "Realistically, I would say that I get caught up quarterly." In 2003, Stevens estimated he handled approximately 350 to 400 closings.

22. According to Stevens, at the time of Venning's purchase of the property, Stevens did not handle post-closing matters in real estate transactions and, therefore, did not know whether Bon Air Title had informed his office that the owner's title insurance premium had not been paid.

23. Stevens failed to disburse the Venning owner's title insurance premium within two business days pursuant to the requirements of the Virginia Wet Settlement Act, Va. Code Section 6.1-2.13.

Such conduct by the Respondent constitutes violation of the following provision of CRESPA:

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 § 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.

Va. Code Section 6.1-2.24. Record retention requirements. The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

Such conduct also constitutes violations of the following provisions of the Regulations issued pursuant to CRESPA:

15 VAC 5-80-50.B. 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.

Such conduct also constitutes violations of the following provisions of the Virginia 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
- (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.

- (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;

- (ii) 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.

Accordingly, IT IS ORDERED that the Respondent shall comply with the following term, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The term is as follows:

Respondent shall pay to the Virginia State Bar a penalty of Five Hundred Dollars (\$500.00). Said penalty shall be paid no later than ~~January 1, 2010~~, by mail or delivery to the Clerk of the Disciplinary System, Suite 1500, 707 East Main Street, Richmond, VA 23219.

*PL BCS*  
*\*February 1, 2010*

Upon satisfactory proof that such term has been met, this matter shall be closed. If, however, the term is not met by ~~January 1, 2010~~, the Disciplinary Board shall impose a six month suspension of license pursuant to Part Six, Section IV, Paragraph 13-18.O. of the Rules of the Virginia Supreme Court.

*PL BCS*  
*1/2010*

Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

IT IS FURTHER ORDERED that an attested copy of this Order shall be mailed by Certified Mail, Return Receipt Requested, to Brian Keith Stevens, Respondent, at Suite A, 11225 Nuckols Road, Glen Allen, VA 23059, the Respondent's address of record with the Virginia State Bar, and to Jeffrey Hamilton Geiger, Counsel for the Respondent, at Sands Anderson Marks & Miller, Suite 1800, 801 E. Main Street, P.O. Box 1998, Richmond, VA 23218-1998, and hand-

delivered to Harry M. Hirsch, Deputy Bar Counsel.

VIRGINIA STATE BAR DISCIPLINARY BOARD

ENTERED: March 16, 2010

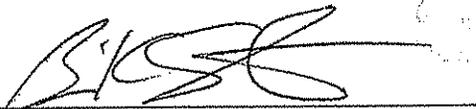
By: 

AGREED:

VIRGINIA STATE BAR



Harry M. Hirsch  
Deputy Bar Counsel



Brian Keith Stevens  
Respondent



Jeffrey Hamilton Geiger  
Respondent's Counsel