V I R G I N I A :

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF JOHN JOSEPH VAVALA, ESQUIRE
VSB Docket Numbers: 04-021-2543
04-021-3102

On November 18, 2005 this matter came before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Joseph R Lassiter, Jr., Chair Designate, William M. Moffett, Roscoe B. Stephenson, III, Bruce T. Clark and Werner H. Quasebarth, lay member. The Bar was represented by Edward L. Davis, Assistant Bar Counsel. The Respondent appeared and was represented by John E. Pappas.

At the outset of the hearing, the Chair polled the members of the panel to determine whether any member had any business or financial interests or any personal bias that would impair or could be perceived to impair his or her ability to hear the matters to come before the panel fairly and impartially. Each member, including the Chair, responded in the negative.

By agreement between the Bar and the Respondent, the following Stipulations of Fact were submitted to the Panel:

I. STIPULATION OF FACTS

1. During all times relevant hereto, the Respondent, John Joseph Vavala, was an attorney licenced to practice law in the Commonwealth of Virginia, having been admitted to the Bar in June of 1982.

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Complainants: Ernest H. and Jennie H. Palacios

2. In October 2003, the complainants, Ernesto H. and Jennie H. Palacios, paid Mr. Vavala $2,500 to investigate some stock certificates from the Occidental Oil Corporation dating back to the 1920's.

3. The Palacios' wanted to know if the certificates were of any value, and to have them titled in their names if they were.

4. Mr. Vavala confirmed the engagement by letter, dated October 22, 2003. His fee arrangement provided for a fee of twenty percent of the value of the stock, with a ceiling of $3,500. The agreement also provided for a sliding scale refund of the fee to the Palacios, less $150, if the stock was worth less than $12,500.

5. On October 20, 2003, Mr. Vavala received some information about Occidental from Stephen A. Johnson. The same day, Mr. Vavala wrote to Mellon Investor Services requesting information about the stock.

6. By letter, dated October 29, 2003, Mellon replied that it was unable to find any information about the company, and that it did not have any accounts in the names of the persons named on the stock certificates.

7. Mellon advised Mr. Vavala further that the shares may have been replaced, or that they may have escheated to the government. Mellon recommended that Mr. Vavala contact four possible depositories where the stock may have escheated.

8. According to the Palacios', Mr. Vavala advised them that the stock had escheated to the government. The Palacios' then asked him for a refund in accordance with the terms of the fee agreement.

9. Despite repeated promises to do so, Mr. Vavala never issued the refund. The Palacios' eventually obtained a judgment against him in May 2004.

10. Mr. Vavala paid the judgment to the Palacios' in the following manner: $400 on or about October 14, 2004, $500 on or about October 22, 2004, $500 on or about October 29, 2004, $500 on or about November 25, 2004, and $1,011.11 on or about September 17, 2005.

11. By letter, dated March 5, 2004, the Virginia State Bar issued a formal complaint to Mr. Vavala at his last address of record with the Virginia State Bar setting forth the Palacios' allegations of misconduct and requesting a response within 21 days. Mr. Vavala failed to respond to the complaint.

12. On April 15, 2004, the bar issued a subpoena duces tecum returnable on or before May 6, 2004, for the complete client file of the Palacios', as well as his escrow account records concerning these clients. Service was obtained on Mr. Vavala when he or his office signed for the subpoena duces tecum.

13. Notwithstanding personal service of process of the subpoena duces tecum and a subsequent written reminder of his duty to comply, Mr. Vavala failed to respond, comply, or object to the subpoena duces tecum, resulting in the interim suspension of his license to practice law on June 15, 2004.

14. On May 24, 2004, during an interview with Virginia State Bar Investigator Eugene L. Reagan, Mr. Vavala advised that he never placed the Palacios' fee into an attorney trust account, but that he placed it into an operating account.

15. By electronic mail (e-mail) on July 31, 2004, Mr. Vavala advised the bar that he did not have an attorney trust account at the time, and had no time records for this case.

16. Mr. Vavala also admitted to not responding to the Palacios' numerous inquiries.

Complainant: Roderick E. Johnson

17. During 2003, Roderick E. Johnson and NiColette Jackson were partners in a business known as TETRA IT Services, LLC, in Virginia Beach, Virginia.

18. In May 2003, the partners chose to dissolve the business. Mr. Johnson hired Mr. Vavala to assist him. Ms. Jackson hired attorney Kris Cardwell to represent her interests.

19. On June 7, 2003, Mr. Johnson paid Mr. Vavala $400 with a check drawn on the TETRA company account.

20. Mr. Vavala agreed to prepare articles of dissolution for Mr. Johnson, and to negotiate a settlement for the early termination of the office lease with the leasing company, Pembroke Office Park, L.P.

21. Mr. Vavala prepared the articles of dissolution, and negotiated a settlement with Pembroke in the amount of $12,000 with no additional costs.

22. Mr. Vavala and Ms. Cardwell reached an agreement for their respective clients to pay $6,000 each toward the settlement, contingent upon an acceptable division of business equipment between Mr. Johnson and Ms. Jackson.

23. Toward this end, on June 9, 2003, Mr. Johnson paid Mr. Vavala $5,500 by money order, and on an unknown date, paid him an additional $1,000 (prior to October 2003). Six Thousand Dollars ($6,000) of the funds were to be used to pay Mr. Johnson's share of the settlement with Pembroke.

24. Instead of paying the money directly to Pembroke, on Mr. Vavala's instructions Mr. Johnson paid the money to Mr. Vavala instead.

25. Mr. Johnson thought that the matter was concluded.

26. In October 2003, having received no payment toward the settlement, Pembroke's attorney filed a warrant in debt against TETRA for unpaid rent, serving the warrants on Mr. Johnson and Ms. Jackson.

27. Pembroke's attorney agreed to continue the case several times to allow the settlement to occur. Each time, Mr. Johnson would contact Mr. Vavala to ascertain why the case had not been closed. Having received no response from Mr. Vavala, he tried to visit him at his office only to find that Mr. Vavala had moved without notifying him.

28. After several continuances, the warrants in debt were scheduled for hearing on February 9, 2004.

29. On Friday, February 6, 2004, Mr. Vavala met with Ms. Cardwell and reached an agreement for the division of the business equipment. The same day, Ms. Cardwell made a check in the amount of $6,000 to Pembroke, representing her client's share of the settlement.

30. The same day, by e-mail, Mr. Vavala advised Pembroke's attorney:

> *meeting with Ms. Cardwell right now*
> *one problem has arisen*
>
> *she can attest to the fact that I am "quite busted up" (she will explain)*
>
> *i have his money ($6,000) we have settled the "other matters" (pending her client's approval)*
>
> *i have to go home now for the rest of the day*
> *ms cardwell will explain*
> *i should be well enough by wed to fund the thing—kris will explain that the reason is quite obvious*
> *please call kris—i will be available by cell phone—after about 1:00 today*

31. Likewise, during his meeting with Ms. Cardwell, Mr. Vavala said that he was sure that he had paid Johnson's money into his escrow account, and that he would pay the money to Pembroke, but that he did not have his checkbook with him. Ms. Cardwell confirmed this conversation in a letter to Mr. Vavala, dated March 8, 2004.

32. On the assurances that the settlement would be paid, Pembroke's attorney continued the case to March 1, 2004.

33. On March 1, 2004, Ms. Cardwell and her client appeared in court and paid the $6,000 share of the settlement.

34. Mr. Vavala, however, failed to appear in Court on March 1, 2004, and failed to pay the $6,000 to Pembroke.

35. Thinking that the matter was concluded, Mr. Johnson knew nothing about a court appearance on March 1, 2004, and did not appear.

36. On March 1, 2004, Pembroke obtained a judgment against Mr. Johnson in the amount of $9,854.56, representing the principal sum of $12,476 plus interest, costs and attorney's fees, less a $6,000 credit for the share paid by Cardwell on behalf of Jackson.

37. Pembroke then served Mr. Johnson with a garnishment summons. Alarmed about the turn of events, Mr. Johnson hired another attorney, who had the matter dismissed from the docket upon Mr. Johnson's payment of $9,854.46 to Pembroke. Mr. Johnson had to mortgage his home to raise the money.

38. Pembroke's attorney advised the bar that she would have accepted the $6,000 from Johnson as earlier agreed, but that interest and costs over time made that prohibitive.

39. By paying $6,000 to Mr. Vavala and $9,854.46 to Pembroke to dismiss the garnishment summons, Mr. Johnson paid a total of $15,854.46 to resolve a matter that would have been resolved for only $6,000 had Mr. Vavala paid the money to Pembroke as agreed.

40. Mr. Vavala did not deposit any of the money that Johnson paid to him into an attorney escrow or trust account. Instead, he deposited the funds into what he called a "general" account. Upon further inquiry by the bar, he said that his main business was investment banking, and that the funds would have been paid into the account of one of those companies.

41. Mr. Vavala never paid the $6,000 to Pembroke as directed, never refunded any to Mr. Johnson until on or about September 16, 2005, when he issued a cashier's check in the amount of $9,900 to Mr. Johnson, who executed a release of all claims against Mr. Vavala.

42. Mr. Vavala said that his problems were occasioned in part by his bout with a severe case shingles that rendered him unable to move about at times.

43. Mr. Vavala advised the Virginia State Bar investigator that the problem encountered by Mr. Johnson in this matter was, in all honesty, due to Mr. Vavala's neglect. He also acknowledged that Mr. Johnson tried to call him and he did not return those calls. Further, he did not send letters to clients notifying them about the move of his office because his primary business was investment banking which did not lend itself to writing letters to clients for whom he sold businesses.

44. By letter, dated May 4, 2004, The Virginia State Bar issued a formal complaint to Mr. Vavala at his last address of record with the Virginia State Bar setting forth Mr. Johnson's allegations of misconduct and requesting a response within 21 days. Mr. Vavala failed to respond to the bar complaint.

45. On November 4, 2995 (sic) Roderick Johnson executed the attached appendage to the Stipulation of Fact requesting that his complaint against John Joseph Vavala not be pursued.

The above stipulation was admitted into evidence as a joint exhibit. VSB Exhibits 1 through 17 in the Palacios case and 1 - 17 in the Johnson case were preadmitted into evidence without objection at a prehearing, and were marked as group exhibits, VSB Exhibits 1 and 2, respectively. The Respondent offered four exhibits, which were admitted into evidence without objection. The Respondent declined to testify or to offer any witnesses on his behalf.

The panel then retired to determine whether one or more ethical violations had occurred. Based upon the evidence and stipulations presented, the Board, following due deliberation, found that the Respondent was in violation of the following disciplinary rules:

II. RULE VIOLATIONS

(Palacios Complaint)

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

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 as a lawyer;

II. RULE VIOLATIONS

(Johnson Complaint)

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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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 as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

III. SANCTIONS

The panel then heard evidence as to the sanctions phase of the proceedings. The Bar admitted into evidence the Respondent's prior disciplinary record, noting that in 25 years of practicing law the Respondent had had only two violations, which arose from his loss of his license administratively, which subsequently resulted in a charge of practicing law without a license.

There are few matters which come before the Board which raise such serious concerns as the mishandling of a clients funds by an attorney. In both of these cases, the Respondent violated the trust of his clients by failing to properly segregate his client's funds in a trust account as required by the rules, failing to properly apply such funds as clearly agreed upon and ultimately failing to return such funds to their rightful owners in a timely fashion following demands for the same.

To his credit, the Respondent did ultimately make his clients financially whole, but only after causing them serious inconvenience and difficulty, and only shortly before trial of these charges of ethical violations. Moreover, the Panel appreciates the fact that while the Respondent at first failed to comply with the rightful inquiries of the Bar, he did in the end cooperate in the preparation and submission of stipulations in which he clearly acknowledged his wrongdoing. The Panel is also not unmindful that the Respondent has had a long career as an attorney in Virginia with a record which, while not spotless, in no manner reflects any prior hints of dishonesty or impropriety in the handling of client funds.

Nevertheless, the charges against Respondent are troubling. In the Johnson case, Respondent received over $6,000.00 in funds from his client which were clearly designated as client funds to settle threatened litigation. Nevertheless, the funds were not deposited into a trust account. Following months of negotiation with counsel for his client's former partner, who was jointly and severally liable for the claims, Respondent expressly confirmed to counsel that he had the $6,000.00 in funds necessary to fund Johnson's share of the settlement. Notwithstanding, Respondent failed to satisfy his client's share of the settlement, either in October, 2003 when Johnson was first served with a warrant in debt, or prior to March 1, 2004, when judgment was taken on a refiled warrant in debt. Respondent offers no evidence or testimony to explain why the money was not paid prior to judgment, or for that matter prior to September, 2005, other than unsubstantiated representations that the money was always available and that the Respondent was suffering from undisclosed medical problems.

The issues in Palacios are similar. Respondent accepted a $2,500.00 fee to attempt to recover the value of certain stock no longer listed on the exchange. Once again the funds were not deposited to a trust account. According to Respondent's written fee agreement, the bulk of the fee was to be refunded if the stock proved to be worthless. Notwithstanding being advised that the stock may have escheated to the government, Respondent took no action to see if the value could be recovered, and instead informed his clients that the stock was worthless. Despite prompt demand and the clear language of the fee agreement, Respondent failed to refund the unearned portion of the fee. As late as November, 2004, Respondent was contending to bar

counsel that he should not have to refund the fee. The full refund was not made until September, 2005, following a prehearing in this matter.

Having considered the above, the Panel hereby ORDERS that the licence of the Respondent to practice within this Commonwealth be and hereby is SUSPENDED for a period of five years beginning on the 18th day of November, 2005, effective immediately.

It is further ORDERED that, as directed in this Order, Respondent must comply with the requirements of Part Six, ß IV, 13(M) 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. The Respondent shall also furnish proof to the Bar that such notices have been timely given and such arrangements made for the disposition of matters.

Pursuant to Part 6, Sec. IV, Para. 13.B.8.c. of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified U.S. Mail, return receipt requested, to the Respondent, John Joseph Vavala, 124 South Lynhaven Road #103, Virginia Beach, Virginia 23452 his address of record with the Virginia State Bar; by First Class U.S. Mail, postage prepaid, to his counsel of record, John E. Pappas, Esquire, P.O. Box 1398, Portsmith, Virginia 23705 and to Edward L. Davis, Esquire, Assistant Bar Counsel, Virginia State Bar,707 East Main Street, Suite 1500, Richmond, Virginia 23219. Victoria V. Halasz, Chandler and Halasz, Inc., Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, 804/730-1222, was the reporter for the hearing and transcribed the proceedings.

ENTERED this 6 day of December, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____
JOSEPH R. LASSITER, JR., CHAIR DESIGNATE