

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF HUNTER B. CHAPMAN, ESQUIRE
VSB DOCKET NO. 03-070-2631

**SUBCOMMITTEE DETERMINATION
PUBLIC ADMONITION WITH TERMS**

On the 3rd day of May, 2005, a meeting in this matter was held before a duly convened subcommittee of the Seventh District Committee consisting of John G. Berry, Esq., Lawrence Lambert, lay member, and Grant A Richardson, Esq., presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(c) of the *Rules of Virginia Supreme Court*, a subcommittee of the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC ADMONITION WITH TERMS:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Hunter B. Chapman, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about November 11, 2000, the Complainants, Mr. William R. Green (“Mr. Green”) and Ms. Romaine Minifield (“Ms. Minifield”) signed a contract with Mitchell Homes for the construction of a new home for a contract price of \$235,000.00. Pursuant to terms of contract, construction could be completed within one hundred eighty days, approximately six months, after completion of certain lot modifications. Between November 11, 2000 and December 31, 2000, Mr. Green and Ms. Minifield contacted Respondent as suggested by Cedar Creek Mortgage Company. Cedar Creek recommended that Mr. Green and Ms. Minifield use

private financing underwritten by a private financier, Ronald Frazier. On December 27, 2000, the proposed two-story stick frame home and land appraised for \$450,000.00.¹ Respondent informed Mr. Green and Ms. Minifield of the terms and conditions of the lender's financing.

3. On or about March 12, 2001, Mr. Green and Ms. Minifield closed on the construction loan in Respondent's office. They signed the Note and Credit Line Deed of Trust to secure the construction loan for \$235,000.00. The lender's closing documents included a disbursement schedule for the construction of a two-story stick frame home. At the time of settlement, Ronald Frazier provided only \$150,000.00 to Mr. Green and Ms. Minifield. There was an agreement to fund the remaining \$85,000.00 in 30 days. Mr. Green and Ms. Minifield's closing costs totaled \$31,459.50, of which Respondent received a fee of \$1,500.00 to handle the entire construction loan process. Respondent deposited \$118,540.50 into a trust account for Ms. Minifield. However, the depository that Respondent used for the trust account, Edward Jones and Company Money Market Account, was not on the Virginia State Bar's list of approved trust account depositories.

4. Between March 12, 2001 and April 17, 2001, Mr. Green discovered that the Mitchell Home could not be built within six months of closing and/or they could not afford the mortgage payments on the \$235,000.00 construction loan. In any event, construction could not be completed within six months of settlement because none of the required lot improvements, pursuant to the Mitchell Homes' contract, had been started or were anywhere near completion.

5. On or before April 18, 2001, Mr. Green and Ms. Minifield signed a contract with Clayton Homes to purchase a mobile home and informed Respondent of their decision to

¹ The \$450,000.00 appraised value of the home in the Mitchell Homes' contract served as the basis of the loan to Mr. Green and Ms. Minifield from the lender, Ronald Frazier, private financier. Cedar Creek felt that Mr. Green and Ms. Minifield would be able to refinance in six months because the loan-to-value was greater than 70%. Cedar Creek states that a loan-to-value ratio of greater than 60% was the most important factor in Mr. Green and Ms. Minifield's ability to qualify for refinancing in six months.

purchase a mobile home. However, Respondent, Mr. Green, and Ms. Minifield all failed to inform Cedar Creek Mortgage or Ronald Frazier of the switch to purchasing the Clayton Mobile Home with the loan proceeds intended to purchase a two-story stick frame home until April 27, 2001.

6. In violation of his fiduciary duties, Respondent made disbursements from the escrow account to Mr. Green and Ms. Minifield. The Respondent disbursed construction loan proceeds pursuant to facsimiled handwritten invoices from Mr. Green and Ms. Minifield, as opposed to following the lender's disbursement schedule. The disbursements were for lot modifications, and the purchasing, hauling, and installing of the mobile home. However, Lender ultimately suffered no financial loss as a result.

7. On or about April 6, 2001, Respondent acting as Mr. Green and Ms. Minifield's legal counsel, advanced Mr. Green's legal fees. Respondent negotiated a Mitchell Homes' release in exchange for a \$3,400.00 payment. The source of the \$3,400.00 payment was Respondent's personal bank account. Respondent states that he did not have the escrow account checkbook on his person as the reason for the use of his personal funds to advance legal fees to his client. Thus, a compelling argument can be made that Respondent further violated his fiduciary duties because he would have otherwise used the loan proceeds to pay off Mitchell Homes to release Mr. Green from the Mitchell Homes' contract.

8. On or about April 27, 2001, in exchange for a \$6,800.00 payment from Mr. Green and Ms. Minifield, Robert Frazier released them from liability of the Construction Agreement and the Credit Line Deed of Trust in the amount of \$235,000.00, but not the underlying \$150,000.00 note.

9. On or about May 14, 2001, Loudoun County issued an Occupancy Permit to Romaine Minifield.

10. In June 2001, Mr. Green and Ms. Minifield constructed a well on Mr. Green's Uncle's property instead of their property. Respondent assisted Mr. Green by drafting an easement burdening his Uncle's property to gain access to the well for Mr. Green's benefit. However, Mr. Green's Uncle declined to grant him the easement and a new well had to be constructed. In October 2001, the new well permit issued and it was constructed in the same month.

11. In August 2001, the construction loan due date was extended to September 2001. Respondent negotiated with Ronald Frazier to extend the due date one month in exchange for a payment of \$1,500.00. Thereafter, for each additional month the due date was extended, and additional \$1,500.00 payment was made to Ronald Frazier.

12. In January 2002, Cedar Creek instructed Mr. Green and Ms. Minifield to add a concrete foundation/barrier around the mobile home to assist in their quest for conventional lender financing to pay off Ronald Frazier.² Mr. Frazier initiated foreclosure procedures against Mr. Green and Ms. Minifield.

13. On or about August 24, 2004, Mr. Green and Ms. Minifield retained Mr. Robert Gants, Esquire to assist them with the pending foreclosure. Respondent paid \$19,912.50 to Mr. Green and Ms. Minifield for a release.

² Robert Kearns of Cedar Creek Mortgage alleges that Mr. Green and Ms. Minifield's decision to purchase a doublewide mobile home decreased their loan-to-value ratio below the 60%-65% range because the doublewide mobile home was approximately \$177,000.00 less than the two-story stick frame home as originally proposed. He also states that conventional lenders do not consider mobile homes as good investments because of their mobility, i.e., it easily be relocated to another jurisdiction. Adding the concrete foundation to the mobile home was an attempt to transform it into a dwelling suitable for conventional financing, that is, it cannot be driven away. All of the above was the proximate cause of Mr. Green and Ms. Minifield's failure to secure refinancing. The basis for the original

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct/Disciplinary

Rules have been violated:

RULE 1.2 Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

RULE 1.4 Communication

- (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.

RULE 1.15 Safekeeping Property

- (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.
 - (1) Insufficient fund check reporting.
 - (i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;
 - (ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the

transaction is the two-story stick framed house that appraised for \$450,000.00.

instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution, which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

III. PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent a PUBLIC ADMONITION WITH TERMS. Disposition of this complaint is predicated upon Respondent's compliance with the terms set forth below by September 30, 2005.

TERMS

1. The Respondent shall complete twenty-four (24) hours of continuing legal education in the areas of Real Estate Settlements and/or Consumer Real Estate Protection Act. His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Alfred L. Carr, Assistant Bar Counsel, at

100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

2. The Respondent shall complete four (4) hours of continuing legal education in the areas of Ethics. His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

3. The terms and conditions shall be met and made known to the Bar by September 30, 2005.

4. Upon satisfactory proof that the above noted terms and conditions have been met, a PUBLIC ADMONITION WITH TERMS shall then be imposed.

ALTERNATE DISPOSITION

If, however, the terms and conditions have not been met by the 30th day of September, 2005, and in such event, the Committee shall, as an alternative disposition to a PUBLIC ADMONITION WITH TERMS, certify this matter to the Virginia State Bar Disciplinary Board. Upon certification, the parties shall be deemed to have stipulated to the admissibility into evidence by the Board of the "Findings of Fact" appearing above, and the Respondent shall be deemed to have admitted before the Board to a violation of the provisions of the Professional Rules of Conduct as set forth under the above "Nature of Misconduct" section.

COSTS

Pursuant to Part Six, § IV, ¶ 13(B) (8) (c) (1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

**SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

By _____
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this _____ day of _____, 2005, mailed a true and correct copy of the Subcommittee Determination (Public Admonition with Terms) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Hunter B. Chapman, Esq. , at 14115 Lover's Lane, Suite 110, Culpeper, VA 22701, his last address of record with the Virginia State Bar, and by regular mail, postage prepaid to the Respondent's Counsel, Thomas M. Purcell, Esq., 165 West Main St., P.O. Box 1290, Orange, VA 22960-1547.

Alfred L. Carr
Assistant Bar Counsel