

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

ELI S. CHOVITZ

Attorney at Law

On November 8, 2004, came Eli S. Chovitz and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his resignation at a time when disciplinary charges are pending, he admits that the charges in the attached Certification are true.

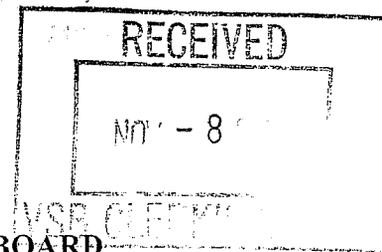
The Board having considered the said Affidavit Declaring Consent to Revocation accepts his resignation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Eli S. Chovitz be and the same hereby is revoked, and that the name of the said Eli S. Chovitz be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this 9th day of November, 2004

For the Virginia State Bar Disciplinary Board

By *Barbara S. Lanier*

*Barbara Sayers Lanier
Clerk of the Disciplinary System*



VIRGINIA :

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF ELI S.CHOVITZ
VSB Docket No. 04-021-0555

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Eli S. Chovitz, after being duly sworn, states as follows:

1. That he was licensed to practice law in the Commonwealth of Virginia on August 7, 1952 ;
2. That, pursuant to Part 6, § IV, ¶ 13(L) of the *Rules of the Supreme Court of Virginia*:
 - a. His consent to revocation is freely and voluntarily rendered, that he is not being subjected to coercion or duress, and that he is fully aware of the implications of consenting to a revocation of his license to practice law in the Commonwealth of Virginia;
 - b. He is aware that there is currently pending a a Proceeding involving, allegations of Misconduct, the docket number for which is set forth above. The allegations are that he serves as Trustee to the Edward Robert Land Trust; that as Trustee, he recently attempted to make a distribution of \$4,000.00 to the Trust Beneficiary, Sonia G. Land . The Trust check was returned for insufficient funds because in fact there were insufficient funds in the Trust, notwithstanding the fact that prior distributions authorized by the Trust have not depleted the available funds of the Trust below \$4,000.00. Respondent has not accounted for such funds or for the insufficiency of funds to meet on-going obligations of the Trust to the Trust beneficiary. Accordingly, Respondent is charged with failing to safe-keep property as required under RPC 1.15(a), and failing to maintain books and records for the Trust as required under RPC 1.15(e)(2).
 - c. He acknowledges that the material facts upon which the allegations of

Misconduct, set forth above, are true, and

- d. He submits this Affidavit and consents to the Revocation of his license to practice law in the Commonwealth of Virginia because he knows that if the disciplinary Proceedings based on the said alleged Misconduct were prosecuted to a conclusion, he could not successfully defend them.

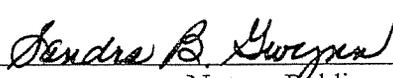
Executed and dated this 4th day of November, 2004.


Eli S. Chovitz

STATE OF VIRGINIA
AT LARGE, to wit:

I, Jandra B. Gwynn, a Notary Public in the state aforesaid, do hereby certify that ELI S. CHOVITZ appeared in person before me in the City/County of Virginia Beach, Virginia, on this 4th day of November, 2002, and was by me duly sworn and thereupon executed in my presence and acknowledged to me the truth of the contents and the voluntariness of execution of the foregoing Affidavit.

GIVEN under my hand this 4th day of November, 2003.


Notary Public

My Commission expires: 10/31/07

VIRGINIA:

BEFORE THE SECOND DISTRICT - SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF ELI S. CHOVITZ
VSB Docket No. 04-021-0555
(Land)

DISTRICT SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On May 26, 2004, a meeting in this matter was held before a duly convened Second District - Section I Subcommittee panel consisting of Croxton Gordon, Esquire, Mr. David J. McDonald (Lay Member), and William Hanes Monroe, Jr., Esquire, Chair presiding.

Pursuant to Part 6, §IV, ¶13(G)(1)(b) of the Rules of the Supreme Court, the Second District - Section I Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

I. FINDINGS OF FACT

1. At all times material to these allegations, Eli S. Chovitz, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or around October 12, 1995, Respondent qualified as Substitute Trustee of the Edward Robert Land Trust, hereinafter "Trust."
3. On October 12, 1995, Respondent, as Trustee, posted a bond with surety in the amount of \$140,000. On November 1, 1995, Respondent acknowledged receipt from the Trust's sole beneficiary, Sonia G. Land, the stock of Edson Corporation valued at \$120,000.
4. Thereafter, Mrs. Land periodically requested Respondent to disburse trust funds to her. On March 18, 2003, Respondent issued check #1292 for \$4,000.00 to Mrs. Land, payable to

Edson Corp from Respondent's attorney escrow account at Crestar Bank. Mrs. Land was and is the sole officer of Edson Corporation.

5. After Mrs. Land deposited Respondent's escrow account check #1292 on March 21, 2003, the check was returned for insufficient funds on March 26, 2003. The check has never been paid.
6. In the course of the investigation of this complaint, the bar has repeatedly requested, through its investigator and via a *subpoena duces tecum*, information regarding the location of said trust funds; records for such funds to include trust and/or fiduciary account bank statements reflecting funds deposited and/or funds expended on behalf of the Edward Robert Land Trust; and Respondent's own records of said funds to include all required escrow and/or fiduciary account records.
7. Notwithstanding repeated and persistent requests for such information and records, Respondent has failed to provide such information and such records.
8. Respondent's failure to produce said information and records has obstructed and prevented the bar from further investigating and determining whether, and to what extent, Respondent as Substitute Trustee has upheld his duty to safe-keep and preserve the property of the Edward Robert Land Trust.

II. NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility :

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...
- (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.

- (d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:
- (1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:
 - (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
 - (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
 - (iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or
 - (iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia Section 55-58 through 55-67 are applicable;
 - (2) funds, securities, or other properties may be maintained in a common account:
 - (i) where a common account is authorized by a will or trust instrument;
 - (ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or
 - (iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

- (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;
 - (iii) 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.
- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court

supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

- (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
- (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

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:

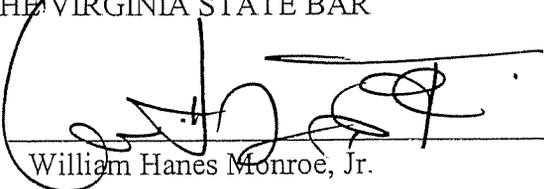
- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

III. CERTIFICATION OF MISCONDUCT

Accordingly, it is the decision of the Subcommittee to certify the charges of misconduct to the Virginia State Bar Disciplinary Board.

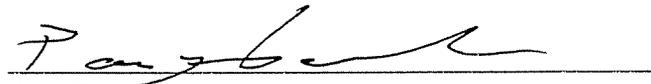
SECOND DISTRICT - SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: _____


William Hanes Monroe, Jr.
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that I have this 15th day of June, 2004, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the foregoing District Subcommittee Determination (Certification) to the Respondent, Eli S. Chovitz, at St. Paul Building, Suite 503, 125 St. Paul's Boulevard, Norfolk, Virginia, 23510, his last address of record with the Virginia State Bar, and by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent at his residential address, 6827 Woodridge Drive, Norfolk, Virginia 23518.



Paul D. Georgiadis
Assistant Bar Counsel