

VIRGINIA:

VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF DAVID CHARLES DICKEY, ESQUIRE  
VSB Docket # 04-070-2582

ORDER

This matter came on the 12<sup>th</sup> day of May, 2005, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Seventh District Committee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Ann N. Kathan, Esquire, William C. Boyce, Jr., Esquire, Dr. Theodore Smith, Lay Member, Janipher W. Robinson, Esquire, and Peter A. Dingman, Esquire, presiding.

Alfred L. Carr, Esquire, representing the Bar, and the Respondent, David Charles Dickey, Esquire, presented an endorsed Agreed Disposition. The hearing was transcribed by Donna Chandler, Court Reporter, of Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227, 804-730-1222.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, the Respondent, David Charles Dickey, Esquire (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On March 4, 2004, Cynthia W. Brown (hereinafter "Complainant") complained to the Virginia State Bar (hereinafter "VSB") about Respondent's actions. Respondent did not respond to the Bar's written demand for a response to the bar complaint.

3. Complainant retained Respondent to represent her in the purchase of a tract of raw land described as Lot 9, Daniel's Mountain Subdivision, Greene County, VA. Complainant paid Respondent a \$300.00 advance fee. On May 29, 2003, Respondent's secretary ordered a title search and title policies for Complainant. On June 4, 2003, Southern Title Insurance Company (hereinafter "Southern Title") issued a title commitment. Southern Title's title search revealed the seller's unpaid delinquent real estate taxes plus applicable penalties and interest and an unpaid judgment lien against the seller on Schedule B – Section 1- Requirements section of the title commitment documents mailed and received by Respondent.

4. On June 13, 2003, the date of Complainant's real estate closing, Respondent was in the courts of Albemarle and Greene County. Respondent told the VSB Investigator that he had reviewed the entire real estate settlement package prior to settlement and allowed his secretary to handle Complainant's settlement without his presence in the office. Pursuant to the settlement Respondent paid \$217.00 for the title examination and title insurance with Southern Title Insurance Company, circuit court fees of \$58.00 and Complainant's pro rata share of the 2003 real estate taxes. Respondent did not pay off the seller's delinquent real estate taxes or the judgment lien against the seller at settlement nor did Respondent inform Complainant of the title encumbrances on the subject property she was purchasing.

5. After settlement, Complainant discovered that there were unpaid real estate taxes owed by the seller and an unpaid lien against the seller, thus, clouding her ownership in the property. Complainant made numerous unsuccessful attempts to reach Respondent by telephone and by mail concerning the unpaid taxes and unpaid judgment lien. Respondent did not return

Complainant's telephone calls to discuss the status of the unpaid real estate taxes or the unpaid judgment lien against the seller.

6. In February of 2004, Complainant contacted the Co-Manager of the Charlottesville Branch of Southern Title Southern Title to inquire as to the whereabouts of her Owner's Title Insurance Policy. The Co-Manager informed Complainant "her attorney has not delivered all the needed information we require to issue the policy." The Co-Manager explained that Southern Title could issue her an owner's title insurance policy; however, under the Schedule B - Exceptions From Coverage section, the policy would exclude the unpaid taxes and unpaid lien as exceptions not covered by the policy.

7. The Co-Manager contacted Respondent to inquire whether he had taken care of the unpaid lien. Respondent told the Co-Manager that he would look into it; however, Respondent never contacted Southern Title regarding the status of the unpaid lien on Complainant's property.

8. On May 12, 2004, Complainant contacted Southern Title and directed them to issue the owner's title insurance policy with the exceptions for the judgment and delinquent taxes. Before issuing the owner's title policy, Southern Title further researched the title and discovered that only the seller's unpaid judgment lien remained as an encumbrance on the title.

9. In April of 2004, the seller paid all delinquent taxes on the subject property. Southern Title's title research reveals the release of the judgment lien against the seller in September of 2004; some fifteen (15) months after the settlement.

10. The VSB Investigator examined Respondent's trust account for April 2003 through May 2004. During the course of the trust account review, Respondent stated that he does reconciliations on his trust account only every eight or nine months.

The Board finds by clear and convincing evidence that such conduct on the part of David Charles Dickey, Esquire constitutes a violation of the following Rules of Professional Conduct:

**RULE 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

**RULE 1.3 Diligence**

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

**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.

**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.
  - (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.

### **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;

It is hereby ORDERED that the Respondent shall receive a Public Reprimand with Terms effective upon entry of this order as representing an appropriate sanction if this matter were to be heard. The terms and conditions shall be met by October 1, 2005 and are as follows:

1. Respondent shall complete 12 hours of continuing legal education in the areas of Real Estate Title Examinations and 4 hours of continuing legal education in the area 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).

If the terms and conditions have not been met by October 1, 2005, the alternative sanction shall be a thirty-day (30) suspension of the Respondent's license to practice law in the Commonwealth of Virginia.

It is further ORDERED that, pursuant to the *Rules of the Supreme Court of Virginia*, Pt. 6, § IV, ¶ 13(B)(8)(c)(1), the Respondent shall be assessed an administrative fee and costs for this Agreed Disposition proceeding.

It is further ORDERED that this matter be removed from the Board's docket and placed among the closed files, since there is no further action to be taken unless the Respondent fails to comply with the terms imposed by the Disciplinary Board, in which case a show-cause proceeding will be initiated.

It is further ORDERED that upon representation by the Assistant Bar Counsel to the Virginia State Bar Disciplinary Board that the Respondent has failed to comply with the terms and conditions as set forth above, a show-cause proceeding will be initiated before the Disciplinary Board seeking imposition of the alternative sanction. Any show-cause proceeding will be considered a new matter, and under Pt. 6, § IV, ¶ 13(B)(8)(c)(1) of the *Rules of the Supreme Court of Virginia*, the Respondent will be assessed an administrative fee and costs of such show-cause proceeding.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, David Charles Dickey, Esq., at P.O. Box 218, Stanardsville, VA 22873, his last address of record with the Virginia State Bar, and by regular first-class mail to Assistant Bar Counsel Alfred L. Carr, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, VA 22314.

Enter this Order this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: \_\_\_\_\_  
Peter A. Dingman, 2<sup>nd</sup> Vice Chair