

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
SAM GARRISON

VSB Docket No. 02-080-3027

ORDER OF REVOCATION

On April 23, 2004 this matter came on for hearing upon certification by the Eighth District Subcommittee of the Virginia State Bar dated December 12, 2002. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Theophlise T. Twitty, Acting Chair, James L. Banks, Jr., Carl Arthur Eason, Glenn M. Hodge and Chester J. Cahoon, Jr., Lay member.

All notices required by law were sent by the Clerk of the Disciplinary System.

The Respondent, Sam Garrison appeared in person and represented himself.

Claude V. Worrell, II, Esquire, appeared as counsel for the Virginia State Bar (“VSB”).

Donna T. Chandler, RPR, RMR of Chandler & Halasz, Registered Professional Reporters, P. O. Box 9349, Richmond, VA 23227 (804-730-1222), having been duly sworn, reported the hearing.

The Chair opened the hearing by polling all members of the panel as to whether there existed any conflict or other reason why any member should not sit on the panel. Each, including the Chair, responded in the negative.

VSB Exhibits 1- 8, including a Stipulation of Facts, were admitted without objection. The Respondent offered no exhibits.

STIPULATED FACTS

1. At all times relevant hereto, Sam Garrison, Esquire, (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia, though not always in good standing.

2. Beginning in December 2000, the Respondent wrongfully obtained \$6,728.84, (\$607 in fees included in that number), from Wachovia Bank through a check fraud or check kiting scheme. The Respondent confirmed the fact of the scheme and his participation in it in his May 14, 2002 letter to the Virginia State Bar.

3. In his letter to the Bar, the Respondent explained that he and his domestic partner always had separate personal checking accounts and each would make loans to the other. In this instance, the Respondent's law practice was not generating the income necessary to support him and his partner so he wrote checks on his partner's First Union account and deposited those checks into his Wachovia checking account and vice versa. This activity created an artificially inflated account balance in both accounts. The Respondent withdrew funds, used his debit card and/or wrote checks against the artificially high balances in each account

4. The Respondent has repaid the wrongfully obtained funds. The United States Attorney's office declined prosecution, as did the Commonwealth's Attorney's office.

5. The parties stipulate to the admissibility of the exhibits filed by the Virginia State Bar and ask that the exhibits be admitted without objection.

6. The Respondent stipulates that the conduct described herein violates the following disciplinary rules and rules of professional conduct:

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;

The Respondent, in his testimony, admitted that he had engaged in similar check kiting activity prior to 2000 but this prior activity had not resulted in any overdrafts and had not been detected.

CHARGES OF MISCONDUCT

The VSB alleged the forgoing facts give rise to the following charges of misconduct under the Disciplinary Rules and the Rules of Professional Conduct:

DR 1-102 Misconduct.

- (A) A lawyer shall not:
 - (1) Violate a Disciplinary Rule or knowingly aid another to do so.
 - (2) Circumvent a Disciplinary Rule through actions of another.
 - (3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.
 - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

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;
- (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;
- (d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or
- (e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

At the conclusion of the evidence, the VSB withdrew charges of violation of DR 1-102 (A) (2) and Rule 8.4 (d) & (e).

Upon consideration of the foregoing, the Board, in closed session, unanimously found by clear and convincing evidence that the Respondent's conduct constitutes a violation of the following:

DR 1-102 Misconduct

- (A) A lawyer shall not:
 - (1) Violate a Disciplinary Rule or knowingly aid another to do so.
 - (3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.
 - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional, knowingly assist or induce another to do so, or do so through the acts of another;
- (a) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

The Board found there was no violation of Rule 8.4 (c) because Respondent's actions did not involve professional conduct.

After the Board announced its findings, the VSB introduced the Respondent's prior disciplinary record to be considered by the Board in imposing sanctions. The prior disciplinary record consisted of a Disability Suspension effective April 29, 1980; Virginia Supreme Court Revocation effective July 18, 1980; Virginia Supreme Court Reinstatement effective March 11, 1993; Private Reprimand effective November 8, 2000; Private Reprimand w/terms effective December 20, 2002, and Dismissal w/terms effective April 9, 2004.

IMPOSITION OF SANCTION

The Board, having considered all the evidence before it, the nature of the Respondent's actions and the Respondent's prior disciplinary record, hereby ORDERS that the license of the Respondent, Sam Garrison, to practice law in the Commonwealth of Virginia be, and the same is hereby, REVOKED effective April 23, 2004, a summary order having been entered that date; and

It is further ORDERED that, pursuant to Part Six, §IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, Respondent shall forthwith give notice by certified mail, return receipt requested, of this revocation of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling any matters, to all Judges and the clerks of the courts before which Respondent may have any pending cases and to all opposing counsel on all such cases. Respondent shall also make appropriate arrangements for the disposition of matters now in his care, in conformity with the wishes of his client. Respondent shall give such notice within fourteen (14) days of the effective date of the Revocation, and make such arrangements as are required

herein within forty-five (45) days of the effective date of the Revocation. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of the Revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being 543 Allison Avenue, SW, P.O. Box 45, Roanoke, Virginia 24002-0045, by certified mail, return receipt requested, and by regular mail to Claude V. Worrel, II, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

It is further ORDERED that, pursuant to Part Six, §IV, Paragraph 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

ENTERED this _____ day of _____, 2004.

Theophlise T. Twitty, Acting Chair
Virginia State Bar Disciplinary Board