

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF ROBERT EDWARD HOWARD, ESQUIRE**

**VSB Docket Number 99-042-0950**

**ORDER**

This matter came on to be heard on April 16, 2004, upon the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fourth District–Section II Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, Esquire, Bruce T. Clark, Esquire, Chester J. Cahoon, lay member, and Robert L. Freed, Esquire, presiding. The convened Board members, Bar Counsel, and the Respondent were advised at the inception of the hearing that one of the Board members scheduled to participate was unavailable. With the approval of the Board, Bar Counsel and the Respondent stipulated on the record that they were willing to proceed in the absence of the fifth Board member, and to accept the four-member panel as duly constituted for the purpose of considering the proposed Agreed Disposition.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Robert Edward Howard, Esquire, appearing *pro se*, presented an endorsed Agreed Disposition, dated April 8, 2004, reflecting the terms of the Agreed Disposition.

The Panel was somewhat reluctant to accept this Agreed Disposition. While we are hopeful that the Agreed Disposition will have substantial rehabilitative effects on the Respondent's use and maintenance of his trust fund, we are not usually so lenient in the imposition of a public reprimand for trust account violations. However, in reaching our decision

to accept this Agreed Disposition, we relied heavily on Bar Counsel's representations that the particular facts present in this matter make this Agreed Disposition appropriate. Accordingly, this Order should be read as strictly limited to the particular facts present in this matter.

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. As of April 20, 1995, Robert Edward Howard, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Amanda P. Ly (hereafter "Complainant") was involved in a motor vehicle accident on or about March 27, 1992, and sustained personal injuries. The Complainant and her parents were referred to the Respondent for legal representation, and the Complainant's parents retained the Respondent and his law firm, Howard & Howard, for that purpose, inasmuch as the Complainant was only fourteen (14) years old at the time of the accident.

3. The Complainant's claim was cognizable under the laws and by the courts of the Commonwealth of Virginia. Accordingly, following a negotiated settlement on behalf of the Complainant, the tortfeasor's insurance carrier, through counsel, petitioned the Circuit Court of the City of Alexandria, Virginia, for approval of the proposed settlement.

4. The Respondent was not licensed to practice law in the Commonwealth of Virginia prior to and as of the time the Court was petitioned to approve the settlement; accordingly, the Respondent assigned a member of the Virginia State Bar associated with his firm to represent the Complainant and her parents, all of whom were named as respondents in the petition filed in the Circuit Court.

5. A "Final Order" was entered by the Circuit Court on January 13, 1993, which, *inter alia*, provided that "Robert Howard, Esquire, as counsel for the Respondents, shall promptly pay the aforesaid sums to the aforementioned individuals as set forth in this Order". *Inter alia*, the Final Order provided that Complainant's parents were to receive the sum of \$2,904.54 "for reimbursement or payment of expenses incurred" for their daughter and the sum of \$6,762.13 "for the education, maintenance and support" of the Complainant.

6. On or about February 25, 1993, the Respondent signed and issued two checks, in the aforesaid amounts, to the Complainant's parents, consistent with the directives contained in the Final Order.

7. On August 30, 1994, the Respondent wrote to the Complainant's parents, stating, *inter alia*, as follows:

Unfortunately, instead of treating Amanda's unpaid medical bills as expenses incurred by you, on her behalf, a check was issued directly to you for \$2,904.54, as per the court order. [Emphasis in original.]

Consequently, after paying some medical bills in Amanda's case, we have a balance of \$1,660.46 remaining from the settlement, but \$4,565.00 in unpaid bills, which represents the \$1,660.46 balance and the \$2,904.54 paid directly to you. In an effort to resolve this situation in a manner that is both fair and reasonable to everyone, we have negotiated an agreement with the remaining medical care providers whereby they will accept reduced payments totalling \$3,112.00, resulting in a saving of \$1,453.00.

Therefore, instead of having to refund the full amount of \$2,904.54, you will only have to contribute \$1,452.00, which will settle Amanda's bills in full. If you cannot reimburse the account in full at this time, the medical providers are willing to accept a payment arrangement.

8. The Respondent thereafter made, or authorized others in his law office to make, certain disbursements to Complainant's health care providers, and he collected a "reimbursement" of \$835.82 from the Complainant's parents. However, he then closed the file

on the Complainant's legal matter, and took no further action on Complainant's or her parent's behalf, leaving the sum of \$3,689.53 in his attorney trust account, and failing to pay \$3,489.53 to five health care providers who had rendered care to Complainant in connection with her personal injury claim.

9. The Virginia State Bar received a letter from Complainant on September 11, 1998, stating that she continued to receive bills, including one from a collection agency, for sums that Respondent was to have paid on her behalf. The Complainant also engaged counsel to recover sums that Respondent failed to disburse on her behalf and any damages flowing therefrom. Complainant's counsel sent a letter to Respondent, in response to which Respondent sent a letter and check in the sum of \$3,689.53 directly to the Complainant on or about February 28, 1999, notwithstanding the fact that he knew Complainant was represented by counsel in the matter to which Respondent's letter pertained.

10. The sum of \$3,689.53 remained undetected by Respondent in Respondent's attorney trust account for a period of years.

The Board finds by clear and convincing evidence that such conduct on the part of Robert Edward Howard, Esquire, constitutes a violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

**DR 6-101. Competence and Promptness.**

- (B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

**DR 7-103. Communicating with One of Adverse Interest.**

- (A) During the course of his representation of a client, a lawyer shall not:

- (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

**DR 9-102. Preserving Identity of Funds and Property of a Client.**

- (B) 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.

**DR 9-103. Record Keeping Requirements.**

- (B) Required Trust Accounting Procedures: The following minimum trust accounting procedures are applicable to all trust accounts maintained by lawyers or law firms holding funds on behalf of clients who reside in this State, or from a transaction arising in this State, whether or not the lawyer or law firm maintains an office in this State.
  - (4) Periodic Trial Balance: A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the trust account balance of the client or other person at the end of each period.
    - (a) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the period and deducting the total of trust monies disbursed for the period.
    - (b) The trial balance shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
  - (5) Reconciliations:
    - (a) 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 trust account checkbook balance, and the trust account bank statement balance.

- (b) 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.
  - (c) Reconciliations shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
- (6) Receipts and Disbursements Explained: The purpose of all receipts and disbursements of trust funds reported in the trust journals and subsidiary ledgers shall be fully explained and supported by adequate records.

Upon consideration whereof, it is ORDERED that the Respondent shall receive a **PUBLIC REPRIMAND, WITH TERMS**, subject to the imposition of the sanction referred to below as an alternative disposition of this matter should Respondent fail to comply with the Terms referred to herein. The Terms which shall be met in accordance with the deadlines set forth below are:

1. The Respondent shall promptly engage the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to review Respondent's current attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event Ms. Johnston determines that Respondent is in compliance with the said Rule, she shall so certify in writing to the Respondent and the Virginia State Bar. In the event Ms. Johnston determines that Respondent is not in compliance with Rule 1.15, then, in that event, she shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the said Rule.
2. The Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar and to Respondent of information concerning this

matter).

3. In the event the Respondent is determined by Ms. Johnston to be not in compliance with Rule 1.15, he shall have sixty (60) days following the date Ms. Johnston issues her written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring himself into compliance. Ms. Johnston shall be granted access to Respondent's office, books, and records following the passage of the sixty (60) day period to determine whether Respondent has brought himself into compliance, as required. Ms. Johnston shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought himself into compliance with the said Rule within the sixty day (60) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

Upon satisfactory proof that the above Terms have been complied with, in full, a **PUBLIC REPRIMAND, WITH TERMS**, shall then be imposed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the Virginia State Bar Disciplinary Board shall be authorized, by agreement of the parties, to conduct a show cause hearing to determine if a one (1) year suspension of Respondent's license to practice law in the Commonwealth of Virginia should be imposed as an alternative disposition to the Public Reprimand, with Terms provided for herein. In the event a show cause hearing is conducted before the Board, the sole issue for consideration by the Board shall be whether or not the Respondent has complied with the Terms hereof, and it shall be the Respondent's burden, by clear and convincing evidence, to

establish his compliance with the Terms hereof.; and it is further

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

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his address of record with the Virginia State Bar, and by first class, regular mail, to Seth M. Guggenheim, Assistant Bar Counsel.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2004.

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Robert L. Freed, Esquire  
Chair of Panel  
Second Vice-Chair of the  
Virginia State Bar Disciplinary Board