

VIRGINIA :

**BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
SUSAN PAGE ALLEN**

VSB Docket No. 08-031-075097

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITHOUT TERMS**

On October 26, 2009 a hearing in this matter was held before a duly convened Third District Section I Subcommittee consisting of Joseph P. Rapisarda, Jr., Chair, Stephanie E. Grana, Esquire and William Manns, lay person to consider an Agreed Disposition tendered by Respondent, Susan Page Allen and the Virginia State Bar by Paulo E. Franco, Jr., Assistant Bar Counsel pursuant to Part 6, Section IV, Paragraph 13-15.B.4.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Third District Section I Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, Susan Page Allen ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on September 29, 1983.
3. On July 25, 2006 Phyllis Uzel entered into a contract to sell her property at 2703 Toledo Avenue for \$60,000 to James Garland.
4. Ms. Uzel had previously used Richard Knapp for real estate transactions.
5. Mr. Garland contacted Respondent to provide assistance to the parties and conduct the closing of the transaction.

6. A copy of the contract, along with a contract to purchase another property located on Warwick Avenue, was faxed to Respondent by Mr. Garland on August 23, 2006.

7. Mr. Garland informed Respondent in his transmittal sheet that Ms. Uzel's attorney was Mr. Knapp. Mr. Garland further advised Respondent that "Earl Lewis is purchasing these properties from Eddie Yates. We are assigning our agreements over to Eddie Yates. They should be able to explain to you how they are going to facilitate these deals."

8. Despite Mr. Garland's communication to Respondent that Mr. Knapp would represent Ms. Uzel, Respondent did not contact Mr. Knapp to attempt to verify his status as Ms. Uzel's counsel or to obtain his permission to represent Ms. Uzel.

9. Despite the potential conflict in interest between Ms. Uzel and Mr. Garland, Respondent did not disclose those potential conflicts in writing nor did she obtain Ms. Uzel's consent to the representation in writing.

10. On August 16, 2006, Raven Martin signed a purchase agreement for the property located at 2703 Toledo Avenue for \$75,000 from Eddie Yates.

11. Mr. Yates signed the agreement on August 26, 2006; the same day he signed an "Assignment of Contract".

12. Under the Assignment of Contract, Yates was to substitute as buyer for the purchase agreement signed by Mr. Garland on July 25, 2006. Mr. Garland was to receive an assignment fee of \$4,500 should the closing occur.

13. On September 6, 2006, Mr. Garland sent Respondent a fax advising her of the "terms" for the Toledo Avenue and Warwick Avenue properties. "Eddie Yates & Earl Lewis have agreed to pay Phyllis Uzel \$444.44 for the next 5 months and on the 6th month \$333.35. (This gives her an extra \$2,000.00) They will pay her \$30,000 at closing on September 8, 2006 and the remaining \$30,000 in 6 months or less."

14. Mr. Garland also signed a purchase agreement on August 26, 2008, wherein he agreed to sell 2703 Toledo Avenue to Eddie Yates for \$65,000. This contract appears to have been faxed to Respondent on September 6, 2006.

15. The numerous assignments to various parties that were not a part of the original sales contract dated July 25, 2006, were in violation of that contract because Ms. Uzel had not consented to the assignments in writing.

16. Respondent explained to Ms. Uzel that Ms. Martin was the individual who was able to qualify for a loan to purchase the property, and although Ms. Uzel indicated she wanted to go forward, she did not consent in writing as required by the July 25, 2006 sales contract.

17. Respondent allowed the transaction to close despite having actual and/or constructive knowledge of the fact that there was no written agreement from Ms. Uzel consenting to the assignment of the July 25, 2006 contract.

18. Respondent failed to obtain Ms. Uzel's written consent.

19. Respondent knew or should have known that in order for the contract to be assigned by Mr. Garland, it required Ms. Uzel's written consent.

20. Respondent maintains that she explained to Ms. Uzel that Garland and Yates desired to assign any right they had to purchase the property in exchange for a fee and that the fees would be covered by an increase in the purchase price so that Ms. Uzel would net the same \$60,000 she had agreed to sell the property for. Respondent maintains that Ms. Uzel expressed her desire to sell the property and was willing to move forward as long as her net proceeds were the same. However, Ms. Uzel maintains that the consequences of the assignments were not adequately explained to her.

21. Respondent failed to adequately inform Ms. Uzel that the assignments of contracts Mr. Garland proposed were ineffective and failed to inform her of the consequences of the various assignments.

22. The contract assignments by Mr. Garland and the agreement to accept a deferred purchase money deed of trust, which was not in Ms. Uzel's best interest, created a conflict of interest between Ms. Uzel, Mr. Garland and his assignees. There is no writing or other document memorializing that Ms. Uzel was advised of the potential conflict created by Respondent's ongoing representation of the buyer and seller or that she consented to or waived this conflict of interest.

23. Even though Respondent received the fax from Mr. Garland notifying her that Mr. Knapp was representing Ms. Uzel, Respondent never contacted Mr. Knapp, nor was Ms. Uzel advised that she should contact Mr. Knapp or to seek independent counsel.

24. On September 14, 2006, Mr. Garland sent an email to Respondent advising her of a change in the agreement with Ms. Uzel which stated, "Phyllis Uzel will receive \$30,000 at closing and \$200 every month for the next 6 months. She will get \$30,800 at the end of 6 months."

25. Ms. Uzel and Raven Martin signed a purchase agreement dated September 26, 2006 wherein Martin agreed to purchase 2703 Toledo Avenue from Ms. Uzel for \$75,000. Martin's signature is dated September 26, 2006; Ms. Uzel's signature is undated.

26. On October 2, 2006, Ms. Uzel signed a dual representation notice and disclosure statement. Ms. Uzel also signed a deed of bargain and sale. The deed was recorded on October 31, 2006.

27. The October 30, 2006 settlement statement reflects that the contract sales price was \$75,000. The statement shows a reduction in the amount due to Ms. Uzel of \$30,000 for "Note to Marquis Macklin", with \$30,115.34 cash due to Ms. Uzel at closing. Additional settlement charges were listed, showing assignment fees of \$4,500 to James Garland and \$5,000 to Eddie Yates. Marquis Macklin received a \$1,000 consulting fee.

28. Respondent signed a buyer/seller certification for Ms. Uzel, as her attorney in fact.

29. Raven Martin signed a deed of trust to secure "the payment of a deed of trust note dated October 30, 2006 in the principal sum of Thirty Thousand and No/100 Dollars (\$30,000.00) without interest made by Ozelia Hicks to Phyllis Uzel, due and payable in full, if not sooner paid on April 30, 2007."

30. On November 1, 2006, Respondent sent Ms. Uzel a copy of the HUD-1; balloon note signed by Mr. Hicks on October 30, 2006 and copy of the deed of trust.

31. Respondent was unable to record the deferred purchase money deed of trust contemporaneous with the closing because of Ms. Martin's lender's closing instructions.

32. There is no writing or other document explaining to Ms. Uzel the consequences of the deed of trust not being recorded.

33. On May 4, 2007, Respondent sent Ms. Uzel the original executed and recorded deed of trust dated October 30, 2006 which had been recorded on March 28, 2007.

34. The maker of the balloon note, Mr. Hicks, failed to make any payments. Ms. Uzell contacted Respondent in December of 2006 to discuss the issue. Despite knowing of the defaults under the balloon note, Respondent still took no steps to record the deed of trust.

35. Mr. Hicks had previous child support judgments which attached to the property.

36. By failing to properly record the Deed of Trust, Respondent jeopardized Ms. Uzell's interest in the property and the funds to which she is entitled.

II. NATURE OF MISCONDUCT

Such conduct by Susan Page Allen constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

* * * *

RULE 1.7 Conflict of Interest: General Rule

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or third person or by a personal interest of the lawyer.

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each client consents after consultation, and:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) the consent from the client is memorialized in writing.

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III. PUBLIC REPRIMAND

Accordingly, it is the decision of the subcommittee to impose a PUBLIC Reprimand and the Respondent is hereby so reprimanded.

Pursuant to Paragraph 13-9.E. the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Joseph P. Rapisarda, Jr.
Joseph P. Rapisarda, Jr.
Chair

CERTIFICATE OF SERVICE

I certify that on this 29th day of October, 2009, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination PUBLIC Reprimand Without Terms to Susan Page Allen, Esquire, Respondent, at, S. Page Allen & Associates, P.C., 11521-E Midlothian Turnpike, Richmond, VA 23235-4764, her last address of record with the Virginia State Bar.



Paulo E. Franco, Jr.
Assistant Bar Counsel