

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
JAMES STEPHEN DEL SORDO**

**VS B Docket No. 18-053-110776**

**MEMORANDUM ORDER OF SUSPENSION**

**THIS MATTER** came to be heard on April 26, 2019 on the Subcommittee Determination of Certification by the Fifth District, Section III Subcommittee, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of Michael A. Beverly, Chair, Devika E. Davis, Martha J. Goodman (Lay Member), John A. C. Keith, and Bretta Marie Zimmer Lewis. The Virginia State Bar (“VSB”) was represented by Elizabeth K. Shoenfeld (“Bar Counsel”). Respondent James Stephen Del Sordo (“Respondent”) was present and was represented by Timothy J. Battle (“Respondent’s Counsel”). Tracy J. Stroh, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

At the outset of the hearing, the Chair polled the members of the panel as to whether any of them were conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court.

Prior to the proceedings, VSB Exhibits 1-6; 8-38; 40-43; 45-78; 81-98; 100; 112-152 and, Respondent's Exhibits 1-7, were admitted into evidence by the Chair, without objection. VSB Exhibit 117 was withdrawn.

The Board heard testimony from the following witnesses who were sworn under oath: James Scott Phillips, Esq., Mary Hill, the Respondent, and VSB Investigator William Sterling. The Board considered the exhibits introduced by the parties; heard arguments of counsel and met in private to consider its decision.

## **MISCONDUCT**

### **I. Findings of Fact and Proceedings before the Board**

Respondent is an attorney who is licensed to practice in Virginia, having been admitted to the bar in 1992. The following paragraphs summarize the Board's findings of facts material to this matter.

James Scott Phillips and Respondent formed Argus Legal, PLLC in February of 2015. Under their verbal agreement, each of them was entitled to 100% of the revenue from work they brought into the firm unless the other did the work, in which case they split the revenue 50/50. They further agreed that Phillips would receive a \$40,000 monthly draw; Respondent's draw would be \$15,000. At year end a "true up" would determine how much more income each lawyer was entitled to receive. Respondent was responsible for maintaining the books and records for the firm and was to receive an additional \$25,000 for performing this function, however, there was no agreement as to when or how each year [i.e. monthly, quarterly, lump sum, etc.] this additional \$25,000 would be paid to the respondent.

In the summer of 2017, Mr. Phillips' payroll check bounced two months in a row. He asked Respondent to explain and the response was that client expenses caused funds on hand to

be insufficient. Phillips asked Mary Hill, the bookkeeper who had begun working for Argus Legal, to investigate. Ms. Hill conducted an investigation and found that there was \$21,074.99 less in the firm's trust account than should have been there and that Respondent had been paying personal expenses, such as groceries, restaurants, and charges related to his sons' college expenses, from the firm's operating and trust accounts.

Upon learning of the information Ms. Hill discovered, Mr. Phillips filed a bar complaint against Respondent and withdrew all but approximately \$9000 of the funds from Argus's accounts and placed them into the trust account of another firm, to which Phillips is of counsel. As of the date of the Board hearing, none of the funds withdrawn by Mr. Phillips in response to Ms. Hill's discovery have been disbursed from the trust account to which Phillips transferred the funds. Mr. Phillips restored the \$21,074.99 Argus trust account deficit from the operating account which had sufficient funds available for that purpose. The VSB commenced an investigation and issued a subpoena for Argus's trust accounting records. VSB Exhibit 148. Later, a subpoena was issued to SunTrust Bank. VSB Exhibit 151.

Mr. Phillips testified that Respondent never told him that he was paying personal expenses from the firm's bank accounts.

Mary Hill, a bookkeeper with 30 years' experience working in law firms, examined the bank accounts of the law firm as well as the firm records kept on its PC Law system. She testified that the trust ledgers did not match the bank accounts. VSB Exhibit 99 was admitted without objection and showed a trust account shortfall of \$21,074.99. Ms. Hill further testified that she saw no evidence of any trust account reconciliations having been performed. She also stated that although some deposits were made into the wrong account, a record for each deposit was found.

William Sterling, the VSB's investigator testified about his examination of the bank records. His work product, consisting of lists of irregular checks drawn by Respondent were offered into evidence and admitted by the Chair. These VSB exhibits included Exhibits 7 (questioned transactions); 44 (operating account questioned transactions); 101 (checks written by Respondent to himself and cash withdrawals); 102 (ATM withdrawals); 103 (charges to grocery stores); 104 (charges to restaurants); 105 (payments relating to his children's' educational expenses); 106 (charges for personal travel); and 107 (miscellaneous personal charges). The witness testified that the Respondent told him that he did not keep track of the payments to himself. One check was written to an automobile dealership for \$51,795.08 to purchase an Acura MDX for Respondent's wife. VSB Exhibit 84.

Investigator Sterling testified that Respondent filed numerous petitions for bankruptcy, all apparently on the eve of foreclosure on his house. The bankruptcy filings listed only Respondent's monthly draw of \$15,000, not his actual total annual income, which was considerably higher. The automobile purchased with a firm check also was not reported on the bankruptcy schedules. VSB Exhibits 128 and 135.

Sterling testified that, for the three years of the Argus Legal relationship between Mr. Phillips and Respondent, Respondent made \$298,396.45, \$451,460.78, and \$387,308.05 respectively.

On cross examination, Investigator Sterling testified that Respondent cooperated in the investigation, that no money was missing according to the firm's records, and that by making payments directly to vendors for personal expenses, Respondent "skipped a step."

At the close of the VSB's case, counsel for Respondent moved to strike the charges against the Respondent, and the Bar withdrew the charge that Respondent had violated Rule 1.15

(c)(2). After deliberation, the Chair announced the decision of the Board to strike the alleged violations of Rules 1.15(a)(3) and 1.15(c)(4).

The Respondent testified both during the VSB's case as an adverse witness and after the Motion to Strike. He admitted during his testimony as an adverse witness that he did not do the trust account reconciliations required by the Rules of Professional Conduct. During his testimony as an adverse witness and during his case in chief, he testified that with regards to the payments made either to himself or to others for his benefit from the firm's operating and trust accounts, he had earned and was owed the money and that he simply paid himself as the year went along rather than waiting until the end to do a formal reconciliation. As an adverse witness, he testified he did these calculations in his head and that he knew how much he was entitled to receive. During his case in chief he claimed that he did not understand all of the questions on the Bankruptcy forms. He also testified during his case in chief that he had disclosed underreported income to the IRS only after the Bar's investigation had already begun and had entered a payment plan to pay additional taxes. Respondent's Exhibit 4.

## **II. Rule Violations**

Based upon the evidence presented, including the exhibits, the testimony of the witnesses and the arguments of counsel, the Board finds, by clear and convincing evidence, that the Respondent's conduct constitutes misconduct in violation of Rules 1.15(b)(5); 1.15(c)(1); 1.15(d)(3); 1.15(d)(4); and Rule 8.4(c) of the Rules of Professional Conduct. The Board found that violations of Rules 3.3(a)(1) and 8.4(b) had not been proven by clear and convincing evidence.

Rule 1.15(b)(5) prohibits a lawyer from disbursing or using client's funds held in a trust account without their consent. Respondent's disbursement of trust funds to himself or to pay his sons' college expenses are clear violations of this Rule. E.g., VSB Exhibit 7

Rule 1.15(c)(1) requires a lawyer to keep, *inter alia*, cash receipts and disbursements journals for each trust account that reflect, at a minimum, identification of the client matter for each transfer from an account. Clearly, Respondent's transfers and payments to himself and to others for his personal benefit from the IOLTA (trust) account did not reflect which client's funds were being transferred, since the transfers were for Respondent's benefit and not related to any firm client.

Rule 1.15(d)(3) deals with reconciliations required to be performed of (i) the subsidiary ledger of trust accounts for each client – quarterly; (ii) cash balance reflected on cash receipts journal, cash disbursements journal, trust account checkbook and trust account bank statement – monthly; and (iii) the cash balance with the subsidiary ledger balance – quarterly. These reconciliations are to be approved by a lawyer in the firm to ensure that the amounts on the firm's books agree with the funds in the firm's trust account. Respondent received bank statements for the firm's trust account. VSB Exhibits 8 – 37. Respondent also kept by hand a check register on which he calculated the balance in the firm's trust account. E.g., VSB Exhibit 149 (Bates numbered VSB776 000702 through 000737). Respondent performed none of the reconciliations required by Rule 1.15(d)(3), and, when Ms. Hill examined the firm's books and records in the second half of 2017, she found a shortfall of over \$21,000. VSB Exhibit 99.

Rule 1.15(d)(4) requires the purpose of all receipts and disbursements of trust funds reported in the trust journals to be fully explained and supported by adequate records. Examples of Respondent's violation of this rule are the many checks written by Respondent to himself as

shown on VSB Exhibit 7. These withdrawals of client's funds for Respondent's benefit were neither explained nor supported, nor could they be.

Rule 8.4(c) forbids a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflect adversely on his fitness to practice law. The Board found by clear and convincing evidence that Respondent's conduct violated this rule by blatantly violating the financial arrangement with his partner by his voluminous undisclosed and unauthorized withdrawals, his questionable reporting of assets on his personal bankruptcy schedules, and the gross understatement of his annual income to the IRS, notwithstanding his latter day attempts to correct the situation

### **THE BOARD'S FINDINGS**

Having heard the testimony of the witnesses and the documentary evidence presented at the hearing, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its finding that the VSB had proven, by clear and convincing evidence, violations of Rules 1.15(b)(5); 1.15(c)(1); 1.15(d)(3); 1.15(d)(4); and Rule 8.4(c) of the Rules of Professional Conduct.

### **SANCTIONS**

In the sanctions phase of the hearing, the Board received further argument and evidence in aggravation and mitigation. The VSB introduced Exhibit 153, a certification of Respondent's disciplinary record in Virginia. The record revealed a Private Reprimand with Terms on four separate matters from 2004 and a Public Admonition with Terms from the Board in 2012 on two matters. Strikingly, all of the prior discipline dealt with trust account violations of Rule 1.15. The terms imposed required Respondent to read Rule 1:15; to read *Lawyers and Other People's Money*, Fifth Edition, by Frank A. Thomas, III and Kathleen M. Uston; to take a CLE course;

and to engage a law office management consultant to review Respondent's policies, methods, systems, escrow account maintenance and record keeping to insure compliance with the disciplinary rules. Neither the VSB nor the Respondent put on any further evidence.

### **DISPOSITION**

After hearing evidence and argument relating to sanctions, the Board recessed to deliberate. After due deliberation and review of the exhibits and testimony of the witnesses, the Board reconvened and announced its decision to impose a suspension; accordingly, it is

ORDERED, by a majority vote of the Board, that Respondent's license to practice law in the Commonwealth of Virginia is suspended for a period of one year and one day, effective April 26, 2019.

It is further ORDERED, that as directed in the Board's April 26, 2019 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, of the one year and one day suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, April 26, 2019, and make such arrangements as are required herein within 45 days of the effective date of the suspension. Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if Respondent is not handling any client matters on the effective date of April 26, 2019, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within 60 days of the effective day of the suspension. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Memorandum Order to Respondent by certified mail, return receipt requested, at Argus Legal, PLLC, 9255 Center St., Suite 307, Manassas, VA 20110, and a copy by regular mail to Respondent's Counsel, Timothy Joseph Battle, Esq. at Office of Timothy J. Battle, PO Box 320593, Alexandria VA 22320-4593; and by hand delivery to Elizabeth K. Shoenfeld, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 7<sup>th</sup> day of May, 2019.

VIRGINIA STATE BAR DISCIPLINARY BOARD



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Michael A. Beverly  
Second Vice Chair