

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DANIEL ROBERT GOODWIN

VS B Docket No. 17-000-108658

MEMORANDUM ORDER OF SUSPENSION

This matter came to be heard on May 17, 2019, before a panel of the Virginia State Bar Disciplinary Board (the “Board”) consisting of John A.C. Keith, Acting Chair; Yvonne S. Gibney; Jeffrey L. Marks; Steven B. Novey; and Martha J. Goodman, lay member. The Virginia State Bar (the “Bar”) was represented by Elizabeth K. Schoenfeld, Assistant Bar Counsel. Daniel Robert Goodwin (the “Respondent”) appeared in person and was represented by Michael T. Pritchard, Esquire. Tracy J. Stroh, court reporter of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Clerk of the Disciplinary System (the “Clerk”) timely sent all required notices to Respondent by certified mail in the manner prescribed by the *Rules of the Supreme Court of Virginia* (the “Rules”), Part Six, §IV, ¶13.

The Acting Chair opened the hearing by polling the members of the panel to ascertain if any member had a personal or financial interest that may affect, or reasonably be perceived to affect, his or her ability to be impartial in hearing this matter and serving on the panel. Each member, including the Acting Chair, responded that he or she had no such interest or conflict.

This matter came before the Board on a Rule to Show Cause and Order of Summary Suspension and Hearing (“Show Cause Order”) entered on March 9, 2017, in accordance with Part Six, §IV, ¶13-22 of the *Rules*, as a result of Respondent having been found guilty of wire fraud

and conspiracy to commit wire fraud, in violation of 18 U.S.C. §1343 and 18 U.S.C. §371, on February 9, 2017 in the United States District Court for the Eastern District of Kentucky, in the matter of *United States v. Daniel R. Goodwin*, Crim. No. 6:14-cr-31-GFVT-HAI-2. The Board took judicial notice of the Show Cause Order, the attachments thereto, and the Clerk’s notice letter, and received them into evidence collectively as **Board Exhibit 1**. The Show Cause Order summarily suspended Respondent’s license to practice law in the Commonwealth of Virginia, effective March 15, 2017, and ordered him to appear and show cause why his law license should not be further suspended or revoked based on his felony convictions. The Show Cause Order was modified by an Order of Continuance, entered on January 24, 2019, continuing the hearing on the Show Cause Order until May 17, 2019.

Counsel for the parties represented to the Board that the parties had agreed to the admission of **VSB Exhibits 1** through **11** and **Respondent Exhibits 1** through **12** and all such exhibits were admitted at the outset of the hearing without objection. They further represented that Respondent does not contest that he has been convicted of a “Crime,” as defined by the *Rules*, Part Six, §IV, ¶13-1.

The Board heard testimony from the following individuals during the proceeding: the Respondent and Dennis Kennedy. The Bar called no witnesses.

MISCONDUCT

In his opening statement, Respondent’s counsel acknowledged that his client had been convicted of the crimes reflected in **Board Exhibit 1**, but emphasized that Respondent maintains that he is innocent of those crimes.

The Bar's opening statement focused on the opportunities Respondent has had to prove his innocence, including a post-trial motion to overturn the conviction and an appeal to the Sixth Circuit Court of Appeals, all of which were unsuccessful.

In his testimony Respondent explained that he served as legal counsel to USA Global Holdings Trust, which was to provide financing for a project in Manchester, Kentucky for the development of a park. Respondent explained that he also served as the escrow agent for the disbursement of \$1.32 million in funds for the park project. Respondent testified that a written escrow agreement¹ specified how the funds were to be disbursed, but he admitted that he followed the directions of the trustee when disbursing the funds, rather than the express terms of the escrow agreement. In particular, Respondent relied on the instructions reflected in **Respondent Exhibits 8 and 9**, which he received from one of the trustees. As a result, none of the escrow funds were returned to Elza Construction, as required by the escrow agreement.

Respondent admitted that he had a fiduciary duty to Elza Construction and that Elza Construction had not approved any of the disbursements made by Respondent. The disbursements included \$40,000 in legal fees paid to Respondent's law firm, of which Respondent is the sole member. Other than his law firm, Respondent had no ownership interest in any entity to which he disbursed the escrow funds.

Respondent confirmed that he had served a fourteen-month prison sentence, followed by thirty days in a half-way house. Although he has been ordered to pay \$1.32 million in restitution, Respondent has not yet made any payments.

¹ Neither the Bar nor Respondent introduced the escrow agreement during the hearing. The August 28, 2018 opinion of the Sixth Circuit Court of Appeals affirming the judgment of the trial court directly quoted from the escrow agreement at pages 7 and 8 of the opinion, however. *See VSB Exhibit 11*. The terms of the escrow agreement provided that the “ ‘deposit funds will be returned to Elza’ Construction” – a contractor that was to perform excavation and grading work for the project – “with 30% within 45 days of the escrow deposit to the account, with another 30% within 75 days, and another 40% within 105 days.” *Id.* at 000044.

RULING

Respondent bears the burden of proving why his license should not be further suspended or revoked.² After considering the witness testimony and the exhibits, argument of counsel for Respondent and for the Bar, and meeting in private to consider its decision, the Board finds, by clear and convincing evidence, that Respondent has been convicted of a “Crime,” as defined by the *Rules*, Part Six, §IV, ¶13-1.³

SANCTION PHASE OF HEARING

After the Board announced its finding, the Board received additional evidence and heard argument of counsel regarding aggravating and mitigating factors applicable to the appropriate sanction to be imposed. The Board was guided by the *ABA Annotated Standards for Imposing Lawyer Sanctions*⁴ in reaching its decision.

Respondent’s counsel requested that Respondent’s license not be revoked. He noted that failing to follow the escrow agreement was a mistake and that the actions Respondent took were carried out in good faith. He noted, further, that Respondent has accepted responsibility for his mistake, served his prison sentence, and his license has been suspended for more than two years. He also noted that Respondent has practiced law for nearly 40 years without any disciplinary issues. This was supported by **VSB Exhibit 12**, an Affidavit from the Bar’s Director of Member Compliance, which confirms that Respondent has been a member of the Bar for 39 years, and **VSB Exhibit 13**, the Certification from the Clerk, which confirms that Respondent has no prior public or private disciplinary record. Both exhibits were admitted into evidence.

² *Rules*, Part Six, §IV, ¶13-22(D).

³ *Rules*, Part Six, §IV, ¶13-22.

⁴ American Bar Association, *Annotated Standards for Imposing Lawyer Sanctions* (2015).

The Bar recommended revocation of Respondent's license, relying on Standard 4.1, which addresses a lawyer's failure to preserve the client's property.⁵

Respondent's conduct that resulted in his criminal convictions for wire fraud and conspiracy to commit wire fraud reflects a failure to maintain personal integrity, for which disbarment is appropriate absent mitigating circumstances.⁶ The Board was persuaded, however, by several mitigating factors that weighed against revocation.⁷ Respondent has no prior disciplinary record over a legal career of nearly four decades. There was no evidence of a selfish motive behind Respondent's disbursement of the escrow funds contrary to the terms of the escrow agreement. Respondent fully and freely cooperated with the Bar and Board in this matter and during this proceeding. Respondent has served his prison sentence and remains subject to an order of restitution. Finally, Respondent has acknowledged that he engaged in the conduct that resulted in his criminal convictions.

DISPOSITION

After recessing to deliberate the appropriate sanction, the Board reconvened and announced its decision. Having considered the testimony and evidence presented and the argument of counsel, it is ORDERED, by unanimous vote of the Board, that Respondent's license to practice law in the Commonwealth of Virginia be SUSPENDED for a period of three years, effective March 15, 2017, the date of his summary suspension.

It is further ORDERED that Respondent must comply with the requirements of the *Rules of the Supreme Court of Virginia*, Part Six, §IV, ¶13-29. The Board acknowledges that Respondent

⁵ *Annotated Standards for Imposing Lawyer Sanctions*, Standard 4.1.

⁶ *Annotated Standards for Imposing Lawyer Sanctions*, Standard 5.1. The Board notes that it found Standard 5.1 more appropriate to the facts of this matter than Standard 4.1, suggested by the Bar, because Standard 5.1 addresses matters "involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation."

⁷ *Annotated Standards for Imposing Lawyer Sanctions*, Standard 9.32.

filed his Affidavit of Compliance with those requirements on May 11, 2017. All issues concerning the adequacy of the notice and arrangements required by ¶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 those requirements.

It is further ORDERED that pursuant to the *Rules of the Supreme Court of Virginia*, Part Six, §4, ¶13-9(E), the Clerk of the Disciplinary System shall assess all costs against Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent, Daniel Robert Goodwin, at his address of record with the Virginia State Bar, which is 14595 Crown Hollow Ct., Gainesville, VA 20155, by certified mail, return receipt requested; by regular mail to Michael T. Pritchard, Respondent's counsel, at his address: Hogan & Pritchard, PLLC, 4101 Chain Bridge Road, Suite 300, Fairfax, Virginia 22030; and by hand delivery to Elizabeth K. Schoenfeld, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED:

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: **John A. C. Keith** Digitally signed by John A. C. Keith
Date: 2019.05.29 16:15:50 -04'00'

John A.C. Keith, Acting Chair