

VIRGINIA:

**BEFORE THE FIFTH DISTRICT—SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF SEUNG OH KANG, ESQUIRE
VSB Docket Number 06-053-3768**

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND, WITH TERMS**

. On July 13, 2011, a meeting in this matter was held before a duly convened Fifth District--Section III Subcommittee consisting of Garth Michael Wainman, Esq., Mr. Daniel H. Aminoff, lay person, and H. Jan Roltsch-Anoll, Esq., presiding, to review an Agreed Disposition reached by the parties.

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-15.B.4.c., the Fifth District--Section III Subcommittee of the Virginia State Bar accepts the proposed Agreed Disposition and hereby serves upon the Respondent the following Public Reprimand, with Terms, as set forth below:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Seung Oh Kang (aka Seung E. Oh) (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or around March 13, 2006, Respondent conducted a residential real estate closing on behalf of Washington Settlement Group, L.L.C., a settlement agent owned by the Respondent.

3. Prior to the closing, Respondent's review of the title records revealed that there were second and third Deeds of Trust encumbering the property, as well as two (2) judgment liens. The total amount of the debt secured by the property (including the

amount subject to the Deeds of Trust and judgment liens) exceeded the total funds available for settlement. Countrywide Mortgage, the buyer's first trust lender, was provided with a title insurance binder disclosing these facts. Respondent therefore contacted counsel for the judgment lien creditors, and attempted to negotiate a reduction in the judgment lien amounts.

4. Countrywide Mortgage on March 10, 2006, provided its Closing Instructions to Washington Settlement Group. The Closing Instructions specifically required that any and all liens on the property at issue be extinguished on or before closing. The Closing Instructions also required that the settlement agent obtain a written pay-off statement and executed lien release for each existing lien to be paid in full and extinguished. Under Virginia law, for purposes of this residential real estate settlement, Countrywide Mortgage was the Respondent's client because it was not represented by separate counsel.

5. Respondent conducted the closing on March 13, 2006, and prepared or caused to be prepared a HUD-1 Form reflecting the receipt and disbursement of funds for the transaction. The HUD-1 Form showed that all liens, including Complainant's client's judgment lien, were being paid at closing.

6. The Respondent was unable to pay off the two (2) loans secured by the second and third Deeds of Trust until July 7, 2006, and was unable to make payment in satisfaction of the two (2) judgment liens until June 5 and 15, 2006. As of the March 13, 2006, settlement transaction, the Respondent did not have finalized payoff figures for every outstanding lien, and she entered into a written agreement with the buyer and seller (but not the lender), whereby the seller would subsequently furnish any additional funds

required to satisfy all such liens. In fact, the funds collected by the Respondent at settlement were insufficient to satisfy all liens, and the seller was thus required to, and did in fact, furnish approximately \$7,000.00 following the settlement. On behalf of the seller, the Respondent, was, however, successful in negotiating a reduction of the outstanding balances on both of the judgment liens.

7. Although all liens were ultimately satisfied, the sales transaction was fully closed, and no party to the transaction sustained actual harm, the Respondent conducted the real estate settlement transaction contrary to Countrywide's aforesaid Closing Instructions, placed the buyer at some risk of not having clear title to the property, and exposed the buyer's lender to some risk of not having its purchase money Deed of Trust in a first priority position.

8. No act or omission of the Respondent in connection with the foregoing facts was dishonest or fraudulent, and the Respondent acted in good faith at all times.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.4 Communication

- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

III. PUBLIC REPRIMAND, WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand, with Terms in this matter. The terms and conditions are:

The Respondent shall, within one hundred eighty (180) days of the issuance of this Determination, certify in writing to Senior Assistant Bar Counsel Seth M. Guggenheim that she has conformed the name under which she practices law, and advertises in the community, to her official name of record with the Virginia State Bar, *or* that she has conformed her official name of record with the Virginia State Bar to the name under which she practices law, and advertises in the community.

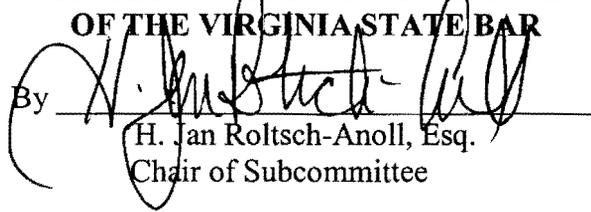
Upon Respondent's compliance with the Terms set forth herein, a Public Reprimand, with Terms, shall be imposed. If, however, Respondent violates any of the Terms set forth herein, then, and in such event, the Committee shall, as an alternative disposition to a Public Reprimand, with Terms, certify this matter to the Virginia State Bar Disciplinary Board for proceedings to be conducted pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-20 ("Board Proceedings Upon Certification for Sanction Determination").

IV. COSTS

Pursuant to Part Six, Section IV, Paragraph 13-9E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

**FIFTH DISTRICT—SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

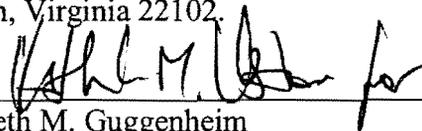
By



H. Jan Roltsch-Anoll, Esq.
Chair of Subcommittee

CERTIFICATE OF SERVICE

I hereby certify that on 21 July 2011 I caused to be mailed by Certified Mail, a true and complete copy of the Subcommittee Determination (Public Reprimand, with Terms) to Seung Oh Kang, Esquire, at Suite 200, 7619 Little River Turnpike, Annandale, Virginia 22003, her last address of record with the Virginia State Bar, and by first-class, regular mail, to Respondent's counsel, John A. DiNucci, Esquire, at 8180 Greensboro Drive, Suite 1150, McLean, Virginia 22102.



Seth M. Guggenheim
Senior Assistant Bar Counsel