VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF	VSB Docket No. 17-032-108377
JOHN B. RUSSELL, JR.	VSB Docket No. 18-032-110165
	VSB Docket No. 18-032-110860

MEMORANDUM ORDER OF SUSPENSION

This matter was heard on October 25, 2019, and November 1, 2019, before a panel of the Virginia State Bar Disciplinary Board consisting of Yvonne S. Gibney, Chair; Thomas R. Scott, Jr.; Donita M. King; Steven B. Novey; and Steven A. Wannall, lay member (collectively, the "Panel"). The Virginia State Bar was represented by Laura Ann Booberg, Assistant Bar Counsel (the "Bar"). Respondent, John B. Russell, Jr. (the "Respondent") was represented by Leslie A.T. Haley, Esquire and Elliot P. Park, Esquire. Tracy J. Stroh, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearings and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Panel to determine whether any member had any personal or financial interest or bias that might affect, or could reasonably be perceived to affect, his or her ability to be in partial in this matter. Each panel member responded to this inquiry in the negative.

The matter came before the Board on the Determination (Certification) of the Third District, Section II, Subcommittee of the Virginia State Bar. All legal notices of the dates and place were timely sent by the Clerk of the Disciplinary System (the "Clerk") in the manner prescribed by the Rules of the Supreme Court of Virginia ("Rules"), Part Six, Section IV, Paragraph 13-18.

Prior to the proceedings and at the Prehearing Conference, the Chair admitted VSB Exhibits 1-87 into evidence, without objection. The Board notes that the Respondent did not file

an answer to the Certification, did not participate in the pretrial conference, did not file a witness or exhibit list, and did not object to the Bar's witness or exhibit lists.

The Board heard testimony from the following individuals on behalf of the Bar during the misconduct phase of the hearing: Respondent; Tylette Bryant; Tara B. Mobley; Kathryn S. Wagner; and Cynthia Wright.

The Board considered the witnesses' testimony and the exhibits, heard argument of counsel for the Bar and for the Respondent and met in private to consider its decision. All the factual findings made by the Board were found to have been proven by clear and convincing evidence.

RESPONDENT'S MOTIONS FOR CONTINUANCE

On October 22, 2019, Respondent filed a Motion for Continuance, asserting that he "failed to participate in any meaningful and timely manner to the [three disciplinary cases that are the subject of this hearing] until he retained counsel, Leslie A.T. Haley, on Friday, October 18, 2019." Respondent argued that his failure to file an answer, exhibits, exhibit list or witness list, or participate in the pre-hearing conference in this matter, in light of his forty-one years without a disciplinary record, suggests an impairment, and that the "need for an impairment evaluation is an exceptional circumstance and necessary to prevent injustice" pursuant to Part 6, Section IV, Paragraph 13-18.F of the Rules.

The Bar objected, citing the language of the Notice of Hearing given to the Respondent on June 5, 2019, which set the hearing for October 25, 2019, and the language of the Pre-Hearing Order. The Notice of Hearing states that "it is the Policy of the Disciplinary Board not to grant a continuance" and that "if the hearing date conflicts with your schedule . . . the Board will consider a request for a continuance if made in writing within fourteen days after mailing of the notice of hearing." The Pre-Hearing Order stated, in pertinent part, "Motions for continuances of any of the

dates . . . are strongly discouraged and are only granted under the most dire circumstances." It further stated that "Motions heard less than 10 days prior to the hearing are rarely granted."

The Chair denied the Motion in a hearing by teleconference, in which counsel for the Bar and for the Respondent participated, on October 23, 2019.

On October 24, 2019, the Respondent filed his Second Motion for Continuance, again claiming the need for an impairment evaluation and requesting that the entire Board hear the Motion. On October 25, 2019, in a closed hearing requested by the Respondent held prior to the hearing of this matter, the Board heard argument of counsel on the motion. In the absence of any evidence or proffer of evidence to suggest that the Respondent may have an impairment, other than his counsel's assertion that his failure to participate in this disciplinary matter until the 11th hour suggested an impairment, the Board denied the Motion.

With respect to Respondent's claim of a possible impairment that would justify delaying the proceedings, Respondent offered no evidence to suggest the existence of an impairment. Indeed, Respondent's counsel stated that Respondent continued to represent clients in federal court with competence and diligence and that the alleged impairment did not affect his representation of his current clients. Rather, Respondent claimed that the claimed impairment affected only Respondent's ability to respond to the Bar complaints that were the subject of the hearing.

The Board elected not to postpone the hearing to initiate an impairment proceeding, pursuant to ¶13-23.B of the Rules, as Respondent provided no evidence on which to base a belief that the Respondent may have an impairment.

Because the hearing did not conclude on October 25, 2019, the hearing was continued to November 1, 2019, following discussion with Respondent, counsel for the Bar and the Respondent, and the Board members. During the discussion Respondent stated that he believed he had a

meeting with a representative of the Department of Justice in Richmond on behalf of a client on the morning of November 1, 2019. The Board advised that it would attempt to accommodate his schedule on November 1, 2019.

On October 31, 2019, Respondent filed a Third Motion for a Continuance, requesting a continuance of the November 1, 2019 hearing due to a meeting with the DOJ that Respondent claimed was a conflict. The motion claimed that the meeting was to be held in Washington, DC at 11 a.m. In support of his Motion, he attached an email from William.M.Montague@usdoj.gov to JBR@jbrusselllaw.com, which the Motion describes as "a message from DOJ sent by electronic mail on October 29, 2019 at 1343 [1:43 p.m.]" The sender's message stated, in pertinent part, "I am available on Friday [November 1st], and can meet at any time before noon or after 2:00. Let me know what works best for your schedule." Thus, the attached email reflected that 5 days after the hearing had been continued to November 1st, Respondent was actively scheduling a meeting with the DOJ for November 1st and that the DOJ representative was available to meet with Respondent "anytime after 2:00," which would have avoided any conflict with the continued hearing in this matter.

The Board therefore denied the Third Motion for Continuance. The Respondent thereafter testified on November 1, 2019 by telephone both in the misconduct phase and in the sanction phase.

FACTUAL FINDINGS COMMON TO ALL THREE COMPLAINTS

VSB DOCKET NO. 18-032-110860 Complainant: Tara Breeding Mobley
VSB DOCKET NO. 17-032-108377 Complainant: LeAllen Alexander
VSB DOCKET NO. 18-032-110165 Complainant: Kathryn S. Wagner

Respondent has been a member in good standing of the Virginia State Bar and licensed to practice law in the Commonwealth of Virginia since 1978. Respondent is the sole attorney in his

firm, John B. Russell, Jr. and Associates. He is not licensed to practice law in any state other than Virginia.

Respondent entered a business relationship with Jonathan Rubin ("Rubin"), a non-attorney, in December 2014. Rubin was the sole owner of JR Portfolio Management, LLC. The terms of the business relationship between Respondent and Rubin are documented in the "JR Portfolio Management, LLC Operating Agreement." The Agreement states that

- JR Portfolio Management, LLC provides "legal assistant services to law firms on a contract basis";
- Respondent's law firm is the "sole customer" of JR Portfolio Management, LLC;
- "To provide the services required by" Respondent's law firm, JR Portfolio Management, LLC "will be required to open bank accounts and merchant accounts in their name dba John B. Russell, Jr & Associates";
- JR Portfolio Management, LLC "will give [Respondent's law firm] access to all records of any accounts opened per this Agreement"; and
- Respondent's law firm will "provide oversight, guidance, and direction for JR Portfolio Management, LLC's operations."

VSB Ex. 7.

Rubin operated JR Portfolio Management, LLC as a mortgage assistance relief service provider, a business that solicited clients in financial need who would be encouraged to enter into a contractual agreement with Respondent's firm.[1] Under these contractual agreements the firm would charge the clients a fee to prepare a loan modification proposal to be submitted to their lenders.

Rubin sought Respondent out to take advantage of an exemption contained in a Federal Trade Commission ("FTC") regulation referred to as the MARS Rule, described below. That exception, Rubin believed, would allow Rubin to operate his business more profitably. As

[1] The names used to identify Respondent's firm are not consistent in the documents used by JR Portfolio Management, LLC's operation. The various names include "Attorney John B. Russell Loss Mitigation Division," "Loss Mitigation Division of John B. Russell Law Firm," "John B. Russell Jr. Attorneys at Law," "John B. Russell Law Firm," and "John B. Russell, Jr. & Associates, PLC."

Respondent described it, if that exemption could not be utilized, "the MARS Rule essentially made it impractical, if not impossible to run a business and comply with the MARS Rule."

The Mortgage Assistance Relief Services ("MARS") Rule of the Federal Trade Commission, 12 CFR § 1015, governs JR Portfolio Management, LLC's operation. The MARS Rules states that it is a violation "for any mortgage assistance relief service provider to request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's loan dwelling holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling holder or servicer." 12 CFR § 1015.5(a).

The MARS Rule contains an exemption from this provision if the mortgage assistance relief service provider is an attorney and the attorney: "(1) provides mortgage assistance relief services as part of the practice of law;" and "(2) is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer's dwelling is located." The exemption further requires that the attorney "deposi[t] any funds received from the consumer prior to performing legal services in a client trust account; . . ." 12 CFR § 1015.7.

Respondent researched the MARS Rule and the attorney exemption and concluded that Rubin and JR Portfolio Management, LLC could utilize the exemption after entering the Agreement with Respondent.

To address the requirement in the attorney exemption to the MARS Rule for the attorney to be licensed to practice law in the state where the consumer resides or where the consumer's dwelling is located, Respondent entered an agreement with Friedman Law Associates, P.C. ("Friedman"), a New York law firm. The agreement with Friedman provided Respondent a

network of attorneys throughout the country who could serve as local attorneys for Respondent's clients. It required Respondent's firm to compensate Friedman $250.00 for each client referred to Friedman, which amount was due and payable when Friedman received the file from Respondent. The local attorney provided by Friedman was to contact the referred client by telephone and e-mail within 72 hours of receiving the file and would "then be responsible for file oversight, compliance calls and e-mails, and related legal advice." VSB Ex. 6.

During his business relationship with Rubin Respondent maintained his law office in the name of "John B. Russell, Jr. & Associates, PLC" in Midlothian, Virginia and allowed JR Portfolio Management, LLC to operate as John B. Russell, Jr., Attorneys at Law, or variations on that name (see footnote 2), out of an office located in Virginia Beach, Virginia.[2] All the employees of JR Portfolio Management, LLC were in Virginia Beach, except Richard Swentzel, a non-lawyer employee who worked from his home in Maryland.

The standard fee agreement that the Virginia Beach office presented to clients and which was executed by the three Complainants, provides:

> We have agreed to a total fee of $ _____ and extended payment terms. Accordingly, the fee deposit of $_____ is due _____ the receipt of which is acknowledged along with the execution of this agreement. The following ____ payments of $ _____ are due every 30 days after the first payment beginning _____ or upon completion of the loan modification package, and then every thirty (30) days. In addition, if our Loss Mitigation Team successfully discounts the note or has your lender forgive or recapitalize your outstanding arrearages, or is successful in reducing the monthly principle and interest amount you owe after the modification, then our firm shall receive a twenty percent (20%) incentive . . .. A portion of your payments will be used to retain local counsel for you in _____ when we begin the negotiations and structuring your workout with your lender.

VSB Ex. 12, 49, and 75. Respondent's signature appears on none of their executed fee agreements.

[2] The address listed on correspondence from the Virginia Beach location was 1215 North Military Highway, Norfolk, Virginia 23502.

Based on the client's financial circumstances and home state, each agreement executed by the Complainants specified the amount of the fee, the fee installment payment dates, and the location of local counsel that would be assigned to represent the client. The agreements also contained an outline of the tasks that the firm would perform, including, a commitment that "You will be assigned legal representation locally vis-à-vis our National Attorney Network."

The Virginia Beach office transmitted the agreement to the Complainants with a form cover letter, written on letterhead with the heading, "John B. Russell, Jr., Attorneys at Law, Loss Mitigation, Foreclosure Assistance, Loan Modification." Cynthia Wright, a non-lawyer employee in the Virginia Beach office, signed the form cover letter. The form cover letter stated, in part:

> **WARNING: During our loss mitigation services, your lender will continue to contact you regarding monies owed and attempt to collect your debt using threatening language and correspondence. Please refer all calls or letters to our office. Remember we are <u>YOUR</u> advocate and liaison to successfully completing a favorable loss mitigation outcome.**
>
> Our loss mitigation division processes specific proprietary documents in order to receive financial relief, foreclosure assistance and in some cases forgiveness of accrued debt. Our firm participates in a nationwide network of attorneys that specialize in loss mitigation, negotiations, and foreclosure assistance. …
>
> As discussed, I have attached our standard engagement agreement so that we may begin your legal representative [sic] and document preparation services that will result in a dedicated bank ready loan modification proposal.
>
> Doing nothing is not an option, … Kindly visit our firm's website at www.jrlawgroup.com to learn more of what the Loss Mitigation Division of John B. Russell Law Firm can do for you.

VSB Ex. 12, 49, and 75. Respondent approved the form cover letter.

Attached to the fee agreement was a Credit Card/Debit Card Authorization form that stated, "Deposit for service is non-refundable and will not be refunded if a filing is rejected because of submitting fraudulent Information or client failures [sic] to comply with lender requests." The top of this form contained the following statement: "For convenient processing, Attorney John B.

Russell Loss Mitigation Department uses JR Portfolio Management for credit card processing. Please complete the payment form below. All funds received will be immediately placed in the law firm's trust account."

Non-lawyers from the Virginia Beach office would determine the fee a new client was to be charged. They based the fee on what the client was able to pay and the amount of work required. The fee was to be paid in installments, based on a predetermined schedule, regardless of whether the client's lender had offered a loan modification that the client had accepted. By signing the fee agreement and credit card authorization form, clients agreed to have their credit/debit cards charged/debited in increments following the predetermined schedule. All fees were deposited directly to Rubin's business account. Contrary to the statement on the Credit Card Authorization form, none of the fees collected from clients was deposited into Respondent's trust account.

Rubin managed the Virginia Beach office and all employees answered directly to him. Rubin told the Virginia Beach office employees not to contact Respondent. Respondent never visited the Virginia Beach office and had little to no communication with those employees. Rubin conducted the training of the employees there. The Virginia Beach office clients' files were kept at the Virginia Beach office. Respondent admitted that all his communications about the operation of the Virginia Beach office came exclusively from Rubin. Respondent was not involved in screening or approving clients, nor did he set the fees or explain the fees to the clients. Respondent also admitted that Rubin opened the bank accounts for the Virginia Beach office and Respondent "monitored" the bank accounts, although less frequently over time. Rubin wrote checks out of those accounts to pay the overhead and salaries, including paying himself. Respondent did not know when, or even if, local counsel was ever retained for his clients through Friedman's network of national attorneys. Respondent exercised no oversight or control of the daily operations of the

Virginia Beach office and was not involved with the transactions and communications with prospective or actual clients, unless a client reached out to him out of frustration.

Throughout Respondent's hands-off business relationship with Rubin, Respondent allowed the following practices in the Virginia Beach office: Rubin often told clients and potential clients that he was an attorney; Rubin often told clients and potential clients that he was John Russell, Jr.; nonlawyers told potential clients that they were guaranteed a loan modification; nonlawyers told potential clients that "immediate representation will stop all legal action;" nonlawyers told clients not to pay their mortgage payments and not to speak to their lenders, in violation of the MARS Rule, 12 CFR § 1015.3(a), which states that "it is a violation of this rule for any mortgage assistance relief provider to . . . [represent] that a consumer cannot or should not contact or communicate with his or her lender or servicer;" and nonlawyers gave potential clients legal advice that "doing nothing is not an option."

The Virginia Beach office did not send, or stopped sending, the required fee to Friedman under the Agreement to engage local attorneys for out of state clients. As a result, Friedman had not provided local counsel for the clients who resided outside of Virginia. None of the Complainants were assigned local counsel in their home states.

ADDITIONAL FACTUAL FINDINGS FOR VSB DOCKET NO. 18-032-110165
Complainant: Kathryn S. Wagner

In August 2016, Kathryn S. Wagner ("Wagner"), a Michigan resident, received a letter from Cynthia Wright, on "John B. Russell Jr. Attorneys at Law" letterhead, stating she was "indeed eligible for a home loan modification consistent with the waterfall guidelines of your lender and underwriting criterion established under the government Keeping Home Affordable Program (HAMP)." VSB Ex. 12.

Attached to the letter was a credit card authorization form and fee agreement, which required Wagner to pay $2,100 in $700 increments, with the first increment to be paid with the execution of the agreement. The agreement stated, in part, that a portion of the fee would be used to hire local counsel in Michigan. Wagner paid the fee per the schedule and timely provided all documents requested by the Virginia Beach office employees. In late September a Virginia Beach office employee told Wagner that her "loan modification package is complete and awaiting [her] signature." In early October 2016, Wagner received an email from the Virginia Beach office stating "We have an interview scheduled with your lender. There is nothing that you need to do."

Despite these assurances from the Virginia Beach office, between September 2016 and January 2017, Wagner received communications from her mortgage lender, Sun West, about her mortgage. Following guidance she received from the Virginia Beach office, Wagner did not respond to Sun West, but instead forwarded the communications to the Virginia Beach office, requesting further guidance and updates on the status of the loan modification proposal. She was told that her "case was under review."

On Christmas Eve 2016, a notice Sun West posted on Wagner's front door stated that her house would be auctioned on January 26, 2017. She sent this notice to the employees of the Virginia Beach office, requesting them to call her. Despite this threat of legal action, Respondent's firm assigned no Michigan attorney to help her. After Wagner sent several additional emails to the Virginia Beach office, the staff there finally spoke with her on January 2, 2017, and told her that her lender had denied her loan modification proposal.

On January 6, 2017, Wagner received an email from the Virginia Beach office requesting that she sign a loan modification package and provide documentation. On January 9, the loan modification package was signed, and on January 12, it was submitted to Sun West. On February

2, 2017, Wagner received a letter from Sun West advising her that no one from Respondent's firm had contacted Sun West until January 12, 2017.

It became apparent to Wagner that the law firm she had spent $2,100 in fees to assist her in obtaining a loan modification had done nothing on her behalf for nearly five months. Because her home was scheduled to be auctioned, Wagner abandoned her hope for a loan modification and instead borrowed money from her employer to bring her loan current, resulting in the cancellation of the auction. Wagner requested a refund from Respondent's firm of the amount of the fees she had paid, but received no response.

Wagner had paid a total of $2,100 in legal fees. Her lender, Sun West, had never offered a loan modification. Wagner's fees were never deposited into an attorney trust account, contrary to the statement on the credit card authorization form. No Michigan attorney was ever assigned to represent Wagner, despite her apparent need for representation in the face of the lender's planned auction of her home.

On August 2, 2018, Wagner, by counsel, filed a civil suit against John B. Russell, Jr. and Associates; John B. Russell, Jr., P.L.C.; JR Portfolio Management, LLC; John B. Russell, Jr., individually, and Jonathan Rubin, individually, in the Norfolk Circuit Court. Respondent prepared a Demurrer and forwarded it to counsel for Wagner, but never filed it with the Court. Respondent failed to answer discovery, and then ignored the court's subsequent order to answer discovery. On January 15, 2019, Wagner's counsel filed a Motion for Show Cause Summons for Respondent to appear and show cause why he should not be held in contempt for his failure to comply with the order of the court. The motion remains pending. Respondent has never reimbursed her any amount.

ADDITIONAL FACTUAL FINDINGS FOR
VSB DOCKET NO. 18-032-110860 Complainant: Tara Breeding Mobley
and
VSB DOCKET NO. 17-032-108377 Complainant: LeAllen Alexander

Both Tara Mobley ("Mobley") and LeAllen Alexander ("Alexander"), who owned homes in Georgia and Alabama, respectively, fell behind in their mortgages and sought the assistance of Respondent's firm. Both received the same fee agreement and credit card authorization as Wagner, and were charged fees of $4,700 and $2,700, respectively, to be paid in increments. Both paid the first installment when submitting the signed agreements and the credit card authorizations, and subsequently paid the additional installment payments according to the firm's payment schedule. None of the fees paid were placed into Respondent's trust account or any trust account. Neither of their lenders offered them a loan modification agreement. Neither were assigned a local attorney in their home states to consult, as promised in Respondent's fee agreement and despite Mobley and Alexander having paid for such legal representation. Eventually, Mobley filed for bankruptcy to protect her home and Alexander's home was auctioned off by her lender.

RULE VIOLATIONS PROVEN IN VSB DOCKET NO. 18-032-110165
Complainant: Kathryn S. Wagner

RULE 1.3 Diligence

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

Respondent violated this Rule by failing to contact Wagner's lender or submit a loan modification proposal between August 2016, when she retained his firm, and January 12, 2017, despite multiple notifications to his firm that she was receiving communications from her lender that the foreclosure of her home was imminent, and despite having timely providing the requested documents to the Respondent's employees.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representations.

(b) 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.

Despite email after email and numerous telephone calls by Wagner to the Respondent's Virginia Beach office employees from November 21, 2016 until January 6, 2017, where Wagner practically begged for information as to the status of her loan modification proposal, Wagner received no communications from Respondent or any employees of his Virginia Beach office during that time. This failure violated paragraph (a) above.

Likewise, during this same time frame, Wagner requested legal advice from Respondent's employees as to whether she should communicate with her lender in response to its notices of an impending auction of her home and her related question about the status of the loan modification proposal. Neither Respondent nor his employees answered her inquiries so that she could make informed decisions, i.e., talk to her lender, pay the balance due, ask for a loan from a different a source, or move out of the house. Furthermore, she was never provided a local attorney in her home state of Michigan from which she could seek legal advice. Thus, Respondent violated paragraph (b) above.

Respondent also violated paragraph (c), above, as he failed to inform Wagner of the facts pertinent to her foreclosure that affected the resolution of the matter. He failed to inform her that she should continue to pay her mortgage. He also failed to inform her that if the loan modification proposal was not accepted by her lender and she failed to pay her mortgage, then her house would

be foreclosed on and sold. As stated above, he failed to inform her that his employees in Virginia Beach had misled her into believing that they had taken action on her behalf to obtain a loan modification when, in fact, neither he nor his employees ever communicated with her lender or submitted a loan modification proposal between August 2016 and January 12, 2017.

RULE VIOLATIONS PROVEN COMMON TO ALL COMPLAINANTS' CASES
VSB DOCKET NO. 18-032-110860 Complainant: Tara Breeding Mobley
VSB DOCKET NO. 17-032-108377 Complainant: LeAllen Alexander
VSB DOCKET NO. 18-032-110165 Complainant: Kathryn S. Wagner

RULE 1.15 Safekeeping Property

(a) Depositing Funds

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

Despite Respondent's notice on the credit card authorization form, none of the payments received from these Complainants were ever placed in Respondent's trust account. Respondent's argument that he earned each incremental payment before receiving it lacks merit. No work was performed before each Complainant signed the fee agreement and paid the first installment. Furthermore, the installment payments were not tied to the completion of specific work by the firm, but were instead tied simply to a specific date. Respondent's acceptance of fees before the client and client's lender had executed a written loan modification agreement and his failure to deposit the fees into his trust account violated the FTC's MARS Rule, and violated Rule 1.15(a)(1).

RULE 1.16 Declining or Terminating Representation

(a) Except as otherwise stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

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(c) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling of records as indicated in paragraph (e).

The Respondent initially entered the business relationship with Rubin so that Rubin's mortgage assistance relief services business could take advantage of the attorney exemption to the MARS Rule. That exemption requires that all funds received from the consumer/client before performing legal services must be placed in a client trust account. Because no payments received from the Complainants were placed in Respondent's trust account, Respondent's representation of them violated the MARS Rule. The attorney exemption also requires that the attorney be licensed in the state in which the consumer/client resides or in which his or her home is located. Because Respondent was not licensed in any of the states where the Complainants resided or where their homes were located, nor was a licensed attorney in their respective home states ever associated to represent them, Respondent's representation further violated the MARS Rule. In addition, as noted above, Respondent's acceptance of fees before the client and client's lender had executed a written loan modification agreement violated the MARS Rule. Respondent consequently violated paragraph (a) (1) above.

Under Respondent's agreement with Friedman, $250.00 of the Complainant's fees were to be sent to Friedman to retain local counsel in their home states. Because these fees were not sent to Friedman, however, the Complainants did not receive the local representation they paid for.

When Respondent's representation of each Complainant ended, Respondent failed to refund the unearned $250.00 fee to the Complainants. This violated paragraph (d) above.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

> **(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurances that the person's conduct is compatible with the professional obligations of the lawyer;**
>
> **(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and**
>
> **(c) a lawyer shall be responsible for conduct of such person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:**
>
> > **(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or**
> >
> > **(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over that person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

Respondent was the only lawyer in his law firm. He associated the nonlawyers who operated out of the Virginia Beach office and was therefore the only lawyer with managerial authority over those employees. He alone was responsible for the employees who were communicating (and in Wagner's case, not communicating) with the Complainants about their mortgages and attempted modifications. He exercised no oversight of their conduct and interactions with the Complainants; he left the entire operation in the hands of Rubin. Furthermore, Respondent exercised no oversight of Rubin. Respondent made no efforts to ensure the Virginia Beach employees' (including Rubin's) conduct was compatible with the Respondent's

professional obligations. Because Respondent abdicated these responsibilities under Rule 5.3, Respondent allowed the following conduct by the nonlawyers under his managerial authority: Rubin told clients that he was an attorney; clients' fees were not deposited in the firm's trust account; clients were given legal advice by nonlawyers that "doing nothing is not an option;" and clients were told not to make their mortgage payments and not to speak to their lenders, in violation of the MARS Rule.

RULE 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer the portion of the total compensation that fairly represents the services rendered by the deceased, disabled or disappeared lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may accept discounted payment of his fee from a credit card company on behalf of his client.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

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(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except as provided in (a)(3) above, or except that a fiduciary representative of the

estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof, except as permitted by law; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Respondent violated paragraph (a), as he and Rubin had a business arrangement wherein all fees were deposited into the operating account of JR Portfolio Management, LLC, controlled by Rubin, a nonlawyer. Despite language in the operating agreement that Respondent was the client of JR Portfolio Management, LLC, Respondent allowed JR Portfolio Management, LLC to operate as "John B. Russell, Jr., Attorneys at Law," and the fees taken in from clients were shared by Respondent and Rubin, a nonlawyer.

Respondent also violated paragraph (b) when he entered a business partnership with Rubin, operating as "John B. Russell, Jr., Attorneys at Law," in which they provided legal advice to clients as stated above.

Likewise, Respondent violated paragraph (c) of this Rule by giving Rubin an ownership interest in the firm.

RULE 7.1 Communications Concerning a Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this Rule if it:

(1) contains false or misleading information; or

(2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merit; or

(3) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated; or

(4) is likely to create an unjustified exception about the results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law.

The cover letter sent to the Complainants with the fee agreement attached contained the heading "John B. Russell, Jr., Attorneys at Law." Throughout his business relationship with Rubin and JR Portfolio Management, LLC, however, Respondent was the sole attorney working at his firm and for JR Portfolio Management, LLC. Thus, he allowed the cover letter to convey a false or misleading impression to the Complainants and the public that there was more than one attorney at the firm. Furthermore, on the top of the credit card authorization form Respondent approved which was sent to the Complainants and other clients, the form stated that "all funds received will be immediately placed in the law firm's trust account." This statement was false. Respondent's false and misleading statements about his services, thus, violated Rule 7.1(a).

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

…

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

As stated above, Respondent violated numerous Rules of Professional Conduct in the operation of the loan modification business he established and operated with Rubin, and knowingly assisted Rubin in doing so, in violation of paragraph (a).

Respondent held his firm out as having other attorneys in his firm when he was the sole attorney. He authorized the use of a statement that went out to all clients, representing that all fees

would be deposited into a trust account when he knew that the statement was inaccurate. He collected fees from the Complainants for the retention of local counsel in their home states, but did not take steps ensure that representation was obtained. He failed to refund to Complainants the portion of the fees that were collected for the retention of local counsel. This conduct reflects adversely on Respondent's fitness to practice law, in violation of paragraph (c).

RULE VIOLATIONS NOT PROVEN

The Board found that the Bar failed to prove by clear and convincing evidence violations of the following Rules:

Rule 1.5(a)	Fees
Rule 1.5(b)	Fees
Rule 1.16(e)	Declining or Terminating Representation
Rule 5.5(c)	Unauthorized Practice of Law; Multijurisdictional Practice of Law
Rule 8.4(b)	Misconduct

SANCTION

After the Board announced its findings as stated above, it received further evidence and arguments in aggravation and mitigation from the Bar and Respondent, including additional testimony from the Respondent. The Board introduced into evidence exhibits that included: 1) the clerk's certificate that the Respondent had no prior public or private disciplinary record; 2) an order from the Circuit Court of the City of Richmond from a September 20, 2019 hearing wherein Respondent had been held in contempt of Court for failing to produce documents and an affidavit as ordered by the Court, and was ordered to pay attorney's fees and costs to the Commonwealth as a result; and 3) documents, transcripts, orders of the court, and pleadings from a civil case in the Madison County Circuit Court that issued a Capias to Show Cause against Respondent for failure to comply with the court's order directing Respondent to return his file to his client's new attorney and for his failure to appear in court. The records from that case also reflect that the bond

on the Capias had been revoked for Respondent's failure to appear, resulting in the issuance of a second Capias to Show Cause directing that the Respondent be held without bond.

The Board then recessed to deliberate. In its deliberation, the Board considered Respondent's misconduct as a violation of his ethical duty to his clients, the complainants, and his duty to the legal profession. The Board also considered the aggravating and mitigating factors outlined in the ABA's Standard for Imposing Lawyer Sanctions. As aggravating factors the Board found that Respondent engaged in a pattern of misconduct; he committed multiple offenses; he has refused to acknowledge the wrongful nature of his conduct; the victims of his misconduct were vulnerable; and he has been indifferent to making restitution to them. In mitigation, the Board noted Respondent's lack of a prior disciplinary record.

The Board then reconvened to announce the sanction imposed. After consideration of the evidence and arguments of counsel, the Board, by unanimous vote, ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be, and hereby is, suspended for a period of two (2) years, effective November 1, 2019.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the two (2) year 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. The 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 fourteen (14) days of the effective date of November 1, 2019 and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall

also furnish proof to the Bar within sixty (60) days of the effective date of the suspension that such notices have been timely given and such arrangements for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of November 1, 2019, the Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective date 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, paragraph 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 send an attested copy of this Order by certified mail, return receipt requested to: Respondent, John B. Russell, Jr, at his address of record with the Bar, John B. Russell & Associates, PLC, 2621 Promenade Parkway, Suite 102, Midlothian, Virginia 23113; by regular mail to Respondent's counsel, Leslie Ann Takacs Hailey and Elliot Park, Park Haley LLP, 1011 East Main Street, Suite 300, Richmond, Virginia 23219-3537; and by hand delivery to Laura Ann Booberg, Counsel for the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED this _____ day of _____, 2019.
VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney Digitally signed by Yvonne S. Gibney
Date: 2019.12.02 12:51:41 -05'00'

Yvonne S. Gibney, 2nd Vice Chair