

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
KIMBERLY LOYD SCOTT

VS. B Docket Nos. 09-021-076863
09-021-078757

MEMORANDUM ORDER

This matter came to be heard on May 17, 2010 via duly noticed teleconference upon a proposed Agreed Disposition entered into between the parties, which was presented to a panel of the Virginia State Bar Disciplinary Board (the Disciplinary Board) consisting of William H. Monroe, Jr., Chair presiding, Paul M. Black, Member, Nancy C. Dickenson, Member, J. Casey Forrester, Member, and Dr. Theodore Smith, Lay Member (the Panel).

M. Brent Saunders, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. The Respondent, Kimberly Loyd Scott, appeared in person with counsel, Michael L. Rigsby.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel for its consideration.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel reconvened and announced its unanimous acceptance of the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence as stipulated by the parties:

1. At all times relevant hereto, Respondent was an attorney licensed in the Commonwealth of Virginia.

VSB Docket No. 09-021-076863

2. This matter arises out of the sale of a real estate parcel containing a single residential dwelling unit located at 5712 Hawthorne Lane, Portsmouth, Virginia 23703 ("Transaction"). The property was listed by Tom Ward ("Ward"), a real estate agent with Rose & Womble Realty Co. ("R&W"). After the property sold, Respondent was hired to act as the settlement agent for the closing of the Transaction, which involved the issuance of a loan to be secured by a first deed of trust on the real estate.

3. The Transaction closed on August 29, 2008¹.

4. When R&W did not receive the \$6,000.00 commission check it was owed under the Transaction within two business days of the date Respondent conducted the closing, Ward attempted to contact Respondent and left three voice mail messages for her over the course of

¹ On August 29, 2008, Respondent received the loan funds and other monies required for settlement and prepared disbursement checks, but did not receive all of the documents required for settlement until September 2, 2008. Respondent caused the deed and deed of trust for the transaction to be delivered to the Portsmouth Circuit Court Clerk's Office on September 3, 2008, but they were rejected the next day and returned to Respondent. Respondent provided no explanation as to why they were not ultimately recorded until September 9, 2008.

several days inquiring about the status of the commission check. After his telephone messages were not returned, Ward emailed Respondent on September 9, 2008 and again inquired about the status of the commission check. The next day, Respondent replied to Ward's email and stated that the commission check "was mailed out again." Respondent had not mailed the commission check and hand delivered it to R&W on September 12, 2008.

5. Advance Title & Abstract, Inc. ("Advance Title") was owed \$260.00 for its services in handling the document facilitation for the Transaction. Advance Title received payment on September 11, 2008 via an envelope with a postmark of September 10, 2008.

6. Hampton Roads Termite & Pest Control was owed \$600.00 for its services in the Transaction and did not receive payment until September 25, 2008.

7. On September 25, 2008, Ward learned that First American Home Warranty, the company that was to issue a warranty on the property that was the subject of the transaction, had not received the \$355.00 premium payment and thus had not issued the warranty. The next day, Ward inquired of Respondent as to why the premium payment had not been issued. Respondent claimed to have previously mailed a check to First American Home Warranty and stated she was sending "another check" that day. First American Home Warranty received a check on October 2, 2008 and issued the warranty despite the fact that the premium payment was not received within the prescribed deadline of 30 days post-closing.

8. Respondent made multiple disbursements of settlement proceeds prior to recordation of the deed and deed of trust on September 9, 2008 as follows:

<u>Disbursement Date</u>	<u>Amount</u>	<u>Payee</u>
September 3, 2008	\$36,076.92	Ryan P. Hankin and Anne G. Moriarty (Sellers)

September 3, 2008	\$1,354.00	Kimberly L. Scott, P.C.
August 29, 2008 – September 4, 2008 ²	\$5,500.00	Tivest Realty
September 8, 2008	\$145,814.96	National City Mortgage

9. Respondent has represented to the bar that she made all disbursements for the Transaction as required by the Wet Settlement Act (§§ 6.1-2.10 *et seq.*, Code of Virginia, 1950, as amended). With regard to R&W’s commission check, she represented to the bar that she mailed it the week of September 2, 2008, and issued a new check and hand delivered it to R&W three days after Ward notified her that he had not received it. While being interviewed by the bar investigator assigned to this matter, Respondent stated that she had held R&W’s commission check because she was uncertain about the address to which it should be sent.

10. No checks issued and purportedly mailed by Respondent for the Transaction were returned to Respondent, and Respondent did not request the issuance of a stop payment on any of such checks.

VS B Docket No. 09-021-078757

11. In August 2007, Respondent was hired to handle the closing of the sale of a real estate parcel containing a single residential dwelling unit located at 6475 Clare Road, Norfolk, Virginia 23513, from the complainant Stacey S. Kennedy (“Kennedy”) and three of his family members to Kendall Campbell (“Campbell”), who financed the purchase with a mortgage loan to be secured by a first deed of trust on the real estate (“Purchase”).

² According to documents Respondent produced for the Transaction, this disbursement check was issued on August 29, 2008 and cleared Respondent’s trust account on September 4, 2008.

12. Respondent allowed the Purchase to close on November 9, 2007. On that date, Respondent conducted the closing by, *inter alia*, allowing Kennedy to execute an Owner's Affidavit in which he declared that the property was free and clear of all liens. By November 13, 2007, Respondent had received the loan funds and all other monies and documents required for settlement. Respondent did not cause recordation of the deed and deed of trust until November 20, 2007³. Respondent made multiple disbursements of settlement proceeds prior to recordation of the deed and deed of trust as follows:

<u>Disbursement Date</u>	<u>Amount</u>	<u>Payee</u>
November 13, 2007	\$26,285.75 ⁴	Kennedy
November 14, 2007	\$ 150.00	Paralegal Services and Title
November 15, 2007	\$5,963.83	1 st Atlas Mortgage Investment
November 15, 2007	\$1,207.00	Kimberly L. Scott, P.C.
November 15, 2007	\$930.39	1 st Choice Title Insurance Agency, LLC
November 16, 2007	\$39,728.17	IMAK Group ⁵
November 19, 2007	\$11,600.00	Byron Macadoo ⁶

13. The title examination performed in conjunction with the Purchase revealed the existence of multiple liens against the property, including a lien arising out of the entry of a judgment on

³ The deed and deed of trust were filed by Respondent with the Norfolk Circuit Court Clerk's Office, but were returned to Respondent on November 14, 2007 for correction. They were re-filed on November 20, 2007.

⁴ These monies were disbursed to Kennedy via wire transfer posted on November 13, 2007. The dates for the balance of the above-listed disbursements reflect the dates on which the respective checks issued by Respondent to the named payees posted to Respondent's trust account.

⁵ According to Respondent, IMAK Group was a creditor of Kennedy to whom he directed Respondent to issue payment from the net settlement proceeds.

⁶ A lienholder.

December 13, 1994 in favor of the Virginia State Education Assistance Authority against a co-owner of the property, Karen K. Wilkes (“Wilkes Lien”). In conjunction with the closing of the Purchase, all liens against the property were released with the exception of the Wilkes Lien⁷. Although the Wilkes Lien remained of record and unresolved, Respondent allowed the Purchase to close with knowledge of the status of the Wilkes Lien, thereby causing: i) Campbell to assume ownership of the property subject to the Wilkes Lien without his knowledge or consent; and ii) the interest of Campbell’s lender in the property to be subordinated to that of the holder of the Wilkes Lien, all without the knowledge or consent of Campbell’s lender. Respondent escrowed a portion of the mortgage loan proceeds pending resolution of the Wilkes Lien. Although the Wilkes Lien secured a judgment in the principal amount of \$6,669.07, plus interest, Respondent escrowed \$35,000.00⁸.

14. Following the closing of the Purchase, Respondent did not diligently pursue the resolution of the Wilkes Lien and made only minimal effort in that regard. Aside from placing a telephone call on or about January 14, 2008, Respondent made no other effort to resolve the matter.

15. Respondent ultimately disbursed the \$35,000.00 to Kennedy on June 9, 2009 without resolving the Wilkes Lien. Respondent concluded the Wilkes Lien “was no longer an issue” since Campbell had refinanced the mortgage issued in the Purchase in March 2009, and, according to Respondent, it was thus no longer necessary to protect Campbell’s original lender.

⁷ Respondent explained that after her initial attempts to resolve the Wilkes Lien were unsuccessful, she informed Kennedy that she “could no longer invest the time and resources needed to clear [the Wilkes Lien].”

⁸ Thus, the amount Respondent escrowed was more than double the face value of the Wilkes Lien. Moreover, the Wilkes Lien attached at most to Wilkes’ interest in the property. Based on the number of owners of record, sales price and closing costs assumed by the sellers, Wilkes’ interest was less than \$30,000.

As of November 2009, the Wilkes Lien had still not been resolved.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Kimberly Loyd Scott constitutes misconduct in violation of the following Rules of Professional Conduct as stipulated by the parties:

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 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that Respondent receive a **PUBLIC REPRIMAND WITH TERMS** effective May 17, 2010. The terms and conditions with which Respondent must comply are as follows:

1. Respondent shall review the following: i) the Wet Settlement Act (§§6.1-2.10 *et seq.* of the Code of Virginia, 1950, as amended); ii) the Virginia Consumer Real Estate Settlement Protection Act (§§6.1-2.19 *et seq.* of the Code of Virginia, 1950, as amended) (“CRESPA”) and the regulations issued pursuant thereto; and iii) the most current version of the Virginia CLE publication Real Estate Transactions in Virginia, and shall certify in writing completion of this requirement to the Office of Bar Counsel, all prior to seeking CRESPA registration or re-registration; and
2. Respondent is placed on probation for a period of three (3) years from the date of the entry of this order. Respondent will not during such probationary period: i) engage in professional misconduct as defined by the Virginia Rules of Professional Conduct; or ii) violate any provision of CRESPA and/or the regulations issued pursuant thereto. Any final determination that Respondent engaged in professional misconduct or violated any provision of CRESPA and/or the regulations issued pursuant thereto during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term.

If any of the terms and conditions are not met by the specified dates, the alternative disposition shall be the suspension of Respondent’s license to practice law in the Commonwealth of Virginia for a period of 12 months.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

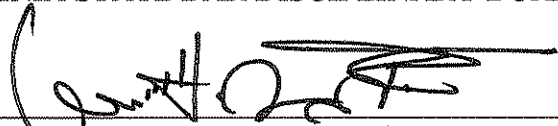
It is further **ORDERED** that the Clerk of the Disciplinary System shall send a copy of this order by Certified Mail, Return Receipt Requested, to Kimberly Loyd Scott at her last address of

record with the Virginia State Bar, 1649 Middlebrook Lane, Virginia Beach, VA 23464, by regular mail to Michael L. Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, VA 23226, Respondent's Counsel, and by hand delivery to M. Brent Saunders, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Valarie May of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone (804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: MAY 19, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
William H. Monroe, Jr., Chair