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IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE FEB 2 2009

VIRGINIA STATE BAR
EX REL. EIGHTH DISTRICT COMMITTEE

VSB CLERK'S OFFICE

VSB Docket No. 06-080-4094
Case No.: CL08-1036

v.

JOHNNIE WARREN TOMLIN

ORDER
(5 DAY SUSPENSION)

4 cc to:

~~B. Lanier~~

1 cc to:

This matter came before the Three-Judge Panel consisting of The Honorable Colin R. Gibb of the Twenty-seventh Judicial Circuit, designated as Chief Judge, The Honorable Ford C. Quillen, Retired Judge of the Thirtieth Judicial Circuit, and The Honorable Charles H. Smith, Jr., Retired Judge of the Twenty-eighth Judicial Circuit, which was empanelled by designation of the Chief Justice of the Supreme Court of Virginia pursuant to §54.1-3935 of the Code of Virginia. The parties, the Virginia State Bar, by Assistant Bar Counsel Kathryn R. Montgomery, and the respondent Johnnie Warren Tomlin ("Respondent"), by counsel Michael L. Rigsby, appeared telephonically and presented for approval an Agreed Disposition for five day suspension pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia. The proceedings were recorded by stenographic means by Chandler & Halasz, Inc., P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

J. Tomlin

M Rigsby

K Montgomery

scan

1-30-09

The Court, having reviewed the Agreed Disposition and having considered the statements of counsel, by a two to one vote, hereby approves the Agreed Disposition of the parties and hereby finds by clear and convincing proof the following:

I. FINDINGS OF FACT

1. At all times relevant, Respondent was admitted to practice law in the Commonwealth of Virginia.
2. On May 23, 1993, Respondent and the complainant, Carolyn Diane Hope, also known as Carolyn D. Hope-Tomlin, ("Complainant"), were married.
3. On June 29, 2002, Respondent and Complainant separated. On or about March 17, 2003, the parties were divorced.
4. Prior to their separation, in April 2002, Respondent agreed to purchase a beach house in Nags Head, North Carolina ("the beach house"). Nags Head is located in Dare County, North Carolina.
5. At the time, Complainant knew nothing about the beach house or Respondent's agreement to purchase it.
6. Michael G. Sweeney acted as the settlement agent for the closing of the sale of the beach house. However, Respondent and his law office prepared and handled much of the paperwork for the closing. Brumsey & Brumsey, a law firm in North Carolina, performed the title search and recording of the papers related to the purchase. The closing occurred on or about April 29, 2002.
7. Prior to and in connection with the closing, Respondent, or someone at his direction (other than Complainant), prepared a Special Power of Attorney dated April 26, 2002. The Special Power of Attorney purported to appoint Respondent as Complainant's attorney in fact to make and execute all documents necessary to consummate Respondent's purchase of the beach house.

8. During the course of their marriage, Respondent and Complainant had occasion to sign each other's names to legal documents without the spouse's prior knowledge of the document or prior specific authority to sign the other's name.

9. Complainant did not sign the Special Power of Attorney, nor did she have knowledge of the document until after the closing.

10. Complainant did not give Respondent or any other person prior specific authority to sign her name to the Special Power of Attorney.

11. Respondent signed Complainant's name to the Special Power of Attorney.

12. On or about April 26, 2002, Respondent presented the Special Power of Attorney to his law office assistant, who was a notary public. The assistant notarized the Special Power of Attorney at Respondent's request.

13. In connection with the closing, Respondent signed a Promissory Note in his own name only and a Deed of Trust securing the Promissory Note as Complainant's attorney in fact. At the time, Complainant had no knowledge of Respondent's actions.

14. Following the closing, on or about May 7, 2002, the Special Power of Attorney and the deed of trust signed by Respondent as Complainant's attorney in fact were filed with the Register of Deeds in Dare County, North Carolina.

15. Complainant did not learn of Respondent's purchase of the beach house, or of the Special Power of Attorney, or of the mortgage until after the closing. On November 15, 2002, Respondent and Complainant executed a Stipulation Agreement In Accordance With Title 20 Paragraph 109.1 of the Code of Virginia (1950) As Amended, which provided for a 50-50 equitable distribution. Complainant does not challenge the

Agreement or the disclosures made therein with regard to the beach house. On July 26, 2006, Complainant filed the instant complaint with the Virginia State Bar.

16. Respondent timely made all payments on the mortgage. Complainant made no payments. Respondent paid off the mortgage in 2005 and a certificate of satisfaction was filed. Complainant suffered no financial loss as a result of Respondent's actions.

17. Respondent has been a member in good standing with the Virginia State Bar since 1988 and has no disciplinary record.

18. Respondent was licensed to practice law in North Carolina in 1977, and has no disciplinary record in North Carolina. Respondent voluntarily petitioned the North Carolina Bar for permission to change the status of his law license from "active" to "inactive" and was granted such permission in 2008.

II. RULES OF PROFESSIONAL CONDUCT

Based upon the factual findings above, the Court finds by clear and convincing evidence that Respondent violated the following Rule of Professional Conduct:

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 lawyers fitness to practice law.

III. DISPOSITION

The parties have proposed an Agreed Disposition of a five day suspension of Respondent's law license for the week of February 23-27, 2009. Because of the brief duration of the suspension, the parties propose that Respondent fulfill his notice duties under Paragraph 13.M. by February 16, 2009. Respondent has agreed that the Virginia

State Bar Disciplinary Board shall hear and decide all issues concerning the adequacy of the notice and the arrangements required by Paragraph 13.M.

Having reviewed the filings of the parties and the Agreed Disposition, and having heard the statements of counsel and of Respondent, and finding that is just and proper to do so, it is hereby

ORDERED that Respondent's license to practice law be suspended for the week of February 23-27, 2009.

It is further ORDERED that Respondent fulfill his notice duties under Paragraph 13.M. by February 16, 2009 and that the Virginia State Bar Disciplinary Board hear and decide all issues concerning the adequacy of the notice and the arrangements required by Paragraph 13.M.

It is further ORDERED that the Clerk of the Disciplinary System shall assess the appropriate administrative fees, and the Clerk of the Circuit Court of Roanoke County shall mail a certified copy of this Order to:

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Barbara S. Lanier, Clerk of the Disciplinary System
Virginia State Bar
707 E. Main Street
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This Court notes that the acceptance of the agreed disposition was by a vote of two to one, which is sufficient for approval under part Six, Section IV, Paragraph 13.B.5.c of the Rules of Court.

ENTERED THIS 29th DAY OF January, 2009.



Colin R. Gibb, Designated Chief Judge

A COPY TESTE: STEVEN A. MCGRAW, CLERK
CIRCUIT COURT, ROANOKE COUNTY, VA.
BY Khanda Perdue
DEPUTY CLERK