

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
BRYAN JAMES WALDRON

VS. Docket No. 16-021-105791

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On January 25, 2017, a meeting was held in this matter before a duly convened Second District Subcommittee consisting of Bruce D. Jones, Jr., Chair, Martha J. Goodman, Lay Member, and Christopher I. Jacobs, Member. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was subsequently entered into by the Virginia State Bar, by M. Brent Saunders, Senior Assistant Bar Counsel, and Bryan James Waldron, Respondent, pro se.

WHEREFORE, the Second District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. The City of Norfolk initiated a real estate tax lien enforcement action in October 2013 with the filing of a Complaint in the Norfolk Circuit Court (Civil Case No. CL13-7915). The owner of the property, Verdy Alexandre ("Mr. Alexandre"), and the holder of a deed of trust lien against the property, Mortgage Electronics Registration Systems, Inc., nominee of Southstar Funding LLC ("Lienholder"), were all named defendants and served with notice of the action. None of those parties responded to or otherwise made an appearance.
3. On June 10, 2014, the Court entered a Decree authorizing the auction sale of the property by a Special Commissioner. The property was subsequently sold for \$51,000.00, and by orders entered on June 25, 2014 and June 30, 2014, the Court confirmed the sale and the disbursement of the proceeds. After deducting the amounts of the taxes, penalties, interest, costs, and

attorneys' fees, a surplus balance of \$27,666.34 remained, which was ordered to be paid over to the Clerk of the Norfolk Circuit Court ("Clerk") pursuant to §58.1-3967 of the Code of Virginia, 1950, as amended ("the Code")<sup>1</sup>. On November 24, 2015, a Final Decree was entered which, inter alia, released all liens against the property as of June 25, 2014.

4. Despite having a statutory claim to the surplus proceeds, the Lienholder did not pursue any such claim.

5. On February 4, 2016, Respondent, on behalf of Mr. Alexandre, filed a Motion to Disburse Funds in which he requested that the surplus proceeds be disbursed to Mr. Alexandre, and stated in support thereof that "[b]ased on the affidavits and other records previously submitted to this Court by applicable parties, Verdy Alexandre is entitled to the full amount remaining on deposit with the Circuit Court for the City of Norfolk. The case concluded by 'Final Order' on November 24<sup>th</sup>, Two-Thousand Fifteen (2015). All parties with (sic.) valid claim to funds on deposit in this matter have been satisfied."

6. Just over two weeks later, Respondent submitted for entry an *ex parte* "Order to Reinstate" which contained no provision for the reinstatement of the matter but did include an order directing the Clerk to disburse the surplus funds in their entirety to Mr. Alexandre. Respondent signed the "Order to Reinstate" as "SEEN AND AGREED" and submitted it for entry without having sent a copy of his motion or providing any notice of his presentation of the order to counsel for the City of Norfolk. Notwithstanding, and due in part to an error in the Clerk's office, on February 22, 2016, Respondent's proposed order was erroneously entered without a hearing, pursuant to which the Clerk issued a check in the amount of \$27,666.34 to Mr. Alexandre and mailed it to Respondent.

7. On March 16, 2016, Respondent appeared in the Clerk's Office with that check and requested that it be re-issued in his name. The situation then came to the attention of The Honorable Mary Jane Hall, Judge in the Norfolk Circuit Court, who, after noticing that the "Order to Reinstate" had been entered and the check had been issued without notice to the City of Norfolk, vacated the "Order to Reinstate" and confiscated the check. Judge Hall also confronted Respondent as to why the order "falsely recited" that records indicated Mr. Alexandre was entitled to the surplus proceeds and why he had not given notice of his motion and presentation of the order to the City of Norfolk.

8. The statements in the Motion to Disburse Funds that all parties with valid claims had been satisfied and Mr. Alexandre was therefore entitled to the full amount of the surplus proceeds were inaccurate statements of fact and law since the Lienholder had a superior claim against the surplus proceeds which had not been satisfied. Per the language of §58.1-3967 of the Code, Mr. Alexandre did not have any claim to the funds, rendering the motion without basis in law or fact.

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<sup>1</sup> Under that statute, a lienholder or former owner of a property sold pursuant to a tax lien enforcement action has two years from the date of confirmation of a sale to file a claim against surplus proceeds. However, the former owner's claim is subordinate to that of a lienholder such that if a lienholder does not make a claim within the two-year limitation period, the surplus proceeds escheat to the locality.

9. Respondent admits that in this situation (and the dozen or so prior occasions he has filed similar motions with other courts) he did not research whether lienholders existed before filing the motion and order which he says included his "standard language." He also admits that he was not even familiar with §58.1-3967 of the Code.

## II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### 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 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

### RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

(g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.

## III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand with Terms and Respondent is hereby so reprimanded. The terms with which Respondent must comply are as follows:

1. Respondent shall register for and attend the Virginia State Bar Harry L. Carrico Professionalism Course on March 2, 2017 in Alexandria, Virginia, which Respondent shall not claim as credit toward his annual mandatory CLE requirement. Within 10 days of the completion of this Term, Respondent shall so certify in writing to M. Brent Saunders, the Senior Assistant Bar Counsel assigned to this case.

2. Respondent is placed on probation for a period of three (3) years commencing upon the issuance of this determination. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel, the Supreme Court of Virginia or similar tribunal in another jurisdiction shall conclusively be deemed to be a violation of this Term.

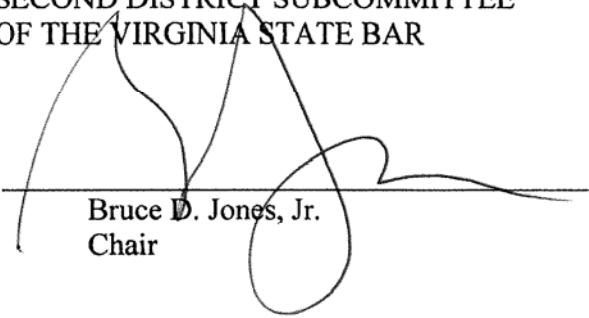
AND

3. Prior to filing any pleading with any court requesting the release or disbursement of surplus proceeds from a tax lien enforcement action, Respondent shall: i) review §58.1-3967 of the Code of Virginia, 1950, as amended; and ii) review the court file to determine whether there exists a good faith basis to make a claim against the proceeds.

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F and G of the Rules of the Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why the alternative disposition of a Certification for Sanction Determination should not be imposed. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

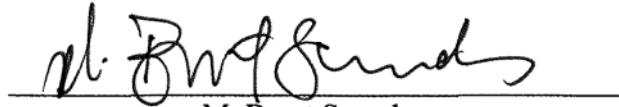
SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR



Bruce D. Jones, Jr.  
Chair

CERTIFICATE OF MAILING

I certify that on this 28<sup>th</sup> day of FEBRUARY, 2017, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Bryan James Waldron, Respondent, at 11312 Lapham Dr, Oakton, VA 22124, Respondent's last address of record with the Virginia State Bar.

A handwritten signature in black ink, appearing to read "M. Brent Saunders", is written over a horizontal line.

M. Brent Saunders  
Senior Assistant Bar Counsel