VIRGINIA:

BEFORE THE THIRD DISTRICT—SECTION III SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
STEVEN SCOTT BISS **VSB Docket No: 05-033-0055**

THIRD DISTRICT—SECTION III SUBCOMMITTEE DETERMINATION (DIRECT CERTIFICATION)

On May 9, 2007, a meeting in this matter was held before a duly convened Third District—Section III Subcommittee of the Virginia State Bar consisting of Cullen D. Seltzer, Esquire, Chair and presiding officer, Dr. Frederick Rahal, lay member, and Dennis R. Kiker, Esquire.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.c of the Rules of the Supreme Court of Virginia, the Third District—Section III Subcommittee of the Virginia State Bar hereby serves upon the Respondent, Steven Scott Biss (hereinafter "Respondent"), the following Certification:

I. INTRODUCTION

1. In the fall of 2002, Respondent represented Cyberian Enterprises Limited ("Cyberian"), a Hong Kong company, in its efforts to purchase several million shares of stock in BrandAid Marketing Corporation ("BrandAid"), a Delaware corporation, through a Subscription Agreement. In conjunction with this representation, Respondent agreed to hold BrandAid shares in escrow until he received the purchase price in cleared funds from Cyberian. Respondent subsequently breached his duties to hold the shares in the escrow.

2. While the sale was pending, Respondent made numerous representations to BrandAid that funds from Cyberian were imminently forthcoming or had already been wired to his account. These representations were false and/or misleading.

3. In the spring of 2003, Cyberian disclosed to BrandAid that it did not have the funds to purchase BrandAid's shares and proposed that BrandAid merge with a Cyberian-related company and accept Chinese real estate for its stock. BrandAid did not act on the offer.

4. Respondent subsequently orchestrated a cashless takeover attempt of BrandAid. In April 2003, he purported to vote the BrandAid shares he was holding in escrow to approve Cyberian's proposal. Respondent later solicited voting proxies from BrandAid shareholders in violation of federal securities laws and subsequently purported to vote those shares to replace BrandAid's management with Cyberian affiliates and approve Cyberian's proposal. Pursuant to this purported approval of the proposal, Respondent then transferred the escrowed BrandAid shares to Cyberian.

II. JURISDICTION

5. At all times material to this Certification, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

III. PARTIES

6. Complainant Paul Sloan was the Chairman, Chief Operating Officer, and Secretary of BrandAid, which was a publicly-traded Delaware corporation specializing in in-store advertising.

7. Cyberian is a Hong Kong company represented by Respondent in its dealings with BrandAid.

8. Peter Markus acted as business advisor for BrandAid. Mr. Markus worked for Corporate Services Group, LLC ("CSG"), a Connecticut corporation that prepares filings for public companies and provides business-consulting services. CSG negotiated contracts for BrandAid.

9. Steven Massey was an agent of Cyberian.

10. Lawrence Artz was an agent of Cyberian.

11. At times relevant to this Certification, Mel Stewart, Howard Borenstein, and Francis Weber were securities brokers and clients of Respondent.

IV. ALLEGATIONS OF FACT

12. On November 11, 2002, pursuant to BrandAid's request for information about Cyberian, Respondent sent Peter Markus a letter from Cyberian. In it, Cyberian describes the source of funds for purchasing the BrandAid shares as follows: "The source of cash is from investments and is currently placed in New York at one of the largest USA Banks."

13. On or about November 14, 2002, Cyberian and BrandAid entered into a Subscription Agreement whereby Cyberian would purchase 23,500,000 shares of BrandAid stock for $21,000,000.00. The sale was set to close in thirty days. Pursuant to the Subscription Agreement, Respondent was designated to receive all written or other communication to Cyberian relating to the stock sale.

14. The sale between BrandAid and Cyberian was not publicly announced; however, within weeks of the signing the Subscription Agreement, the stock price and trading volume of BrandAid rose significantly. Between themselves and their clients, brokers Mel Stewart, Francis Weber, and Howard Borenstein acquired a significant number of BrandAid shares.

15. On December 7, 2002, Respondent sent an e-mail to Peter Markus indicating that "we are on schedule," and Cyberian "fully expects to meet the contractual deadline of the 13th. We look forward to the closing next week." Complainant received a copy of this e-mail.

16. On December 9, 2002, on behalf of BrandAid, CSG sent Respondent a single stock certificate registered in Cyberian's name representing 23,500,000 shares of BrandAid, which was certified as "fully paid and non-assessable shares of the common stock." CSG instructed Respondent to hold the certificate in trust until December 13, 2002, the anticipated closing date, and release it to Cyberian only after he had received $21,000,000 in cleared funds from Cyberian. CSG further instructed Respondent to return the certificate if the funds were not received.

17. The closing did not occur on December 13, 2002, and the parties agreed on a deadline of January 14, 2003 to close the sale.

18. On December 20, 2002, Respondent sent Peter Markus an e-mail stating that his clients were in the "batters box," and hoped to close the sale before December 25, 2002. Complainant received a copy of this e-mail. The sale did not close in December.

19. On January 8, 2003, Respondent sent Complainant and Peter Markus an e-mail in which he stated, "As I understand it, the deal will be done in two phases. Phase 1, up to 6.5 million shares, to commence immediately. Phase 2, the remaining 17MM shares, to be completed within 1 week of the completion of Phase 1. We can arrange for funds to be delivered to Paul [Complainant] by Friday, but we need delivery of up to 2 million shares of "registration on demand" stock."

20. "Registration on demand" stock was not contemplated under the terms of the Subscription Agreement, and BrandAid did not intend to issue such shares.

21. Prior to and during the pendency of the Subscription Agreement, BrandAid was in need of cash, which Complainant relayed to Steve Massey and Respondent. As a result of the delayed closing of the sale, in early January 2003, Respondent arranged bridge-financing for BrandAid. At the time, Complainant believed Respondent was securing bridge-financing from Cyberian, but in fact, Respondent arranged for his clients Mel Stewart and Howard Borenstein to provide the financing.

22. On January 9, 2003, Respondent negotiated a finder's fee of over two million dollars to be paid by BrandAid to "his clients" when the Cyberian sale closed. Complainant understood that the finder's fee was a condition of receiving the bridge loan. However, Complainant did not learn until months later that the "clients" of Respondent who would receive the finder's fee were Mel Stewart and Francis Weber.

23. The Addendum to Finder's Fee Agreement is dated January 9, 2003. It provides that "upon receipt of the Purchase Amount from Cyberian, Biss [Respondent] shall be authorized to withhold up to a total of $2,021,250....for disbursement to his clients. All remaining portions of the Purchase Amount shall be disbursed by Biss [Respondent] in accordance with the instructions dated December 9, 2002 received from counsel for BrandAid." "Purchase Amount" is defined in the Addendum to the Finder's Fee as $21,000,000.

24. On the morning of January 13, 2003, Respondent e-mailed Complainant and said, "You are on the verge of receiving 6.5MM." Later that day, Respondent e-mailed Complainant and Peter Markus the following: "Attached is my letter to Hector Cruz. I

confirm that I will have funds tomorrow to be wired to BrandAid. The wire is being delivered first thing in the morning. The reason it was not delivered today was that it took all day to DTC the stock." Attached to the e-mail was a letter from Respondent to Hector Cruz of Manhattan Transfer Registrar Company dated January 13, 2003 requesting that 23,500,000 restricted, legend bearing common shares of BrandAid be issued to Cyberian. The letter also states in bold, all-capital lettering the following: "ALL CERTIFICATES WILL BE HELD IN ESCROW AND WILL NOT BE RELEASED TO THE PURCHASER UNTIL I HAVE RECEIVED THE PURCHASE PRICE IN CLEARED FUNDS, SAID FUNDS BEING IMMEDIATELY DELIVERABLE IN ACCORDANCE WITH INSTRUCTIONS FROM COUNSEL FOR THE COMPANY."

25. On January 14, 2003, the day that the sale was set to close, Complainant received e-mails from Respondent that the money had been wired into his account and would be sent to BrandAid the next day. One e-mail stated, "I just received notification that the money has been wired to my account." Another said, "You will receive $225,944.30 tomorrow." Contrary to these representations, in fact no money had been wired into Respondent's account and Respondent did not send any funds to Complainant or BrandAid the following day.

26. The sale did not close on January 14, 2003 and Respondent did not wire any funds to BrandAid. At this time, no new closing date was set.

27. On January 15, 2003, in connection with the pending Subscription Agreement and pursuant to Respondent's request, BrandAid delivered to Respondent new stock certificates representing 23,500,000 shares of BrandAid to substitute the sole stock certificate delivered on December 9, 2002, which Respondent had been holding in

escrow. Like the sole stock certificate previously delivered, the new certificates were registered in Cyberian's name and marked as "fully paid and non-assessable shares of the common stock." Complainant understood that this exchange would facilitate the release of $21,000,000 in funding. Respondent was to hold the certificates in escrow until he received $21,000,000 in cleared funds from Cyberian.

28. In connection with the bridge loan, Respondent subsequently wired to BrandAid the following amounts: $106,593.80 on January 16, 2003, $50,000 on January 17, 2003, $20,000 on January 22, 2003, and $49,350.50 on January 29, 2003. These amounts, which totaled approximately $225,000, constituted less than one-third of the bridge loan amount of $712,000 Complainant expected to receive. Despite the bridge loan, BrandAid remained in a precarious financial situation.

29. On February 7, 2003, Complainant told Respondent that BrandAid's current financial crisis was directly related to Cyberian's failure to honor its contractual obligations under the Subscription Agreement. On February 8, 2003, Respondent sent Complainant an e-mail which said, "Steve Massey now has signed written contracts. As majority shareholders of the company, they are certain you will comply with your fiduciary duties to keep the company operational until Steve Massey brings the new business to BrandAid and the funding begins." Later that day, Respondent sent another e-mail to Complainant saying, "I spoke with Steve Massey this afternoon. The contracts are signed. I will have the particulars of the contracts and funding tomorrow and will email them to Peter Markus." However, no "signed written contracts" were produced and no funds were sent.

30. On or about March 24, 2003, BrandAid and Cyberian entered into an Addendum to the Subscription Agreement, which substituted a thirty-six month installment payment plan for the single lump sum payment previously agreed to. The Addendum set a firm closing date of May 23, 2003, with the first installment payment being due on May 23, 2003. The Addendum also increased the number of shares Cyberian would purchase from 23,500,000 to 27,000,000 and the amount to be paid from $21,000,000 to $24,030,000. Paragraph 4 of the Addendum states in part: "Certificates representing 27,000,000 shares of BrandAid shall be delivered to counsel for Cyberian and shall be held in escrow until paid for."

31. On or about April 1, 2003, Lawrence Artz and Steve Massey advised Complainant and Peter Markus that they had a proposal for BrandAid's consideration. On April 1, 2003, Complainant and Mr. Massey exchanged e-mails about meeting to discuss the proposal. Respondent was copied on the e-mails.

32. In early April 2003, Steven Massey and Lawrence Artz met with Peter Markus. During the meeting, Mr. Massey advised that Cyberian did not have the funds to close the transaction and therefore Mr. Artz's assistance was necessary. Mr. Artz advised that he represented Empire Management Company and Standard Financial Group (SFG), and that Empire was "the power" behind Cyberian. Mr. Artz proposed, among other things, that Cyberian pay for the BrandAid shares with Chinese real estate instead of cash. In addition, he proposed that Empire acquire BrandAid and merge it with SFG. Mr. Artz did not offer any due diligence materials to support the proposal. (The proposal is hereinafter referred to as "the Artz Proposal").

33. On April 3, 2003, Lawrence Artz e-mailed Peter Markus a 7-page document describing Empire Management and its goals. In the e-mail, Mr. Artz disclosed that in 2000 he had entered into a settlement agreement with the Securities and Exchange Commission ("SEC") with "no admission of wrongdoing."

34. Complainant was wary of the Artz Proposal because there was no supporting due diligence material and because Mr. Artz had been the subject of and had settled an SEC enforcement action. Complainant was concerned that the offer was a scheme and did not pursue it.

35. Under Delaware law, under certain circumstances, a majority of shareholders may effect corporate action by "consent" in lieu of a shareholder's meeting.

36. On April 16, 2003, Respondent sent Complainant a letter which stated that it served as Cyberian's written consent to the Artz Proposal. In the letter, Respondent directed Complainant to "immediately execute any and all letters of intent or other agreements necessary to effectuate the proposal." Respondent further stated that if Complainant continued to refuse to execute letters of intent, Cyberian, as majority shareholder, would demand that a shareholders' meeting be held at Respondent's office, at which Cyberian would vote in favor of the Artz Proposal. Respondent said if Complainant still refused to accept the Artz Proposal and call a special meeting, Cyberian would initiate legal action. Respondent enclosed a copy of a Complaint seeking declaratory judgment that he filed on behalf of Cyberian in the United States District Court for the Eastern District of Virginia. At the time Respondent wrote this letter, Cyberian had not paid any amount for the BrandAid stock. The suit papers were never served on BrandAid or Complainant.

37. On May 4-8, 2003, a series of e-mails were exchanged between Complainant, Peter Markus, Lawrence Artz, and Respondent about the Artz Proposal. Complainant advised that he was not interested in the Artz Proposal.

38. On May 5, 2003, Respondent e-mailed Peter Markus the following: "I am in receipt of the email from Paul Sloan [Complainant]. Peter, you and Paul are in an impossible position. You have no justification for not proceeding with the plan of merger, and the excuses you have given Larry Artz are patently baseless and illogical. If BrandAid loses this business opportunity, you will both be sued by the shareholders. Time is running out. Govern yourself as you see fit." Respondent copied Mel Stewart and Howard Borenstein on the e-mail.

39. On or about May 8, 2003 Lawrence Artz drafted a Letter of Intent incorporating the Artz Proposal. On or about May 12, 2003, Respondent e-mailed a revised copy of the Letter of Intent to Stephen Hill, an attorney involved with Empire and SFG. One of the provisions of the Letter of Intent stated, "[i]n exchange for 23,500,000 of common stock, Cyberian shall tender forthwith certain of its assets, whose values is not less than $21,000,000 USD."

40. In early May 2003, Respondent, with the assistance of Mel Stewart and Howard Borenstein, solicited proxies from BrandAid stockholders. Respondent did not concurrently provide to the shareholders a proxy statement meeting SEC requirements, nor did he file a proxy statement with the SEC.

41. The proxies were drafted by Respondent and entitled "Power of Attorney and Revocable Proxy to Vote Shares of BrandAid Marketing Corporation." They purported to confer authority upon Respondent to act as the shareholders' attorney-in-fact and vote

the shares at his discretion. The proxies did not contain an acknowledgement by the shareholder of concurrent receipt of a definitive proxy statement.

42. On May 12, 2003, Respondent sent a letter to Sonya Salkin, United States Bankruptcy Trustee, stating that he represented "owners of 1,221,899 shares of BrandAid, each of whom has appointed me attorney-in-fact and proxy to vote their shares."

43. By May 23, 2003, Mel Stewart and Howard Borenstein had sent Respondent a substantial number of proxies from over 50 BrandAid shareholders, and on May 23, 2003, Respondent claimed to represent enough shareholders by proxy to hold a beneficial ownership in BrandAid within the meaning of SEC Rule 13d-3.

44. On May 23, 2003, the day the sale was set to close under the terms of the Addendum to the Subscription Agreement, Respondent sent Complainant a letter stating that he represented the majority of BrandAid shareholders and that the letter served as their written consent to the following actions: 1) termination of all directors of BrandAid, including Complainant; 2) appointment of new directors, (including Lawrence Artz and others who were also directors of Empire and SFG); 3) termination of all officers of BrandAid, including Complainant; 4) appointment of new officers, (including Lawrence Artz and others who were also officers of Empire and SFG); 5) termination of Complainant's employment with BrandAid; 6) approving the Letter of Intent for the Artz Proposal; 7) forbidding former officers and directors from conducting business on behalf of BrandAid; 8) demanding that all BrandAid books and records be delivered to the new Board of Directors; 9) closing BrandAid's Florida office; 10) granting power to the new Board to continue BrandAid's operations; and 11) granting the new Board express authority to replace BrandAid's existing auditors and retain counsel to pursue legal action

against Complainant and others for "securities fraud, claims for securities fraud, conspiracy, and gross negligence." Enclosed with this letter was the Letter of Intent outlining the Artz Proposal.

45. Between May 23-May 29, 2003 Respondent again solicited proxies from BrandAid shareholders. Unlike the earlier proxies, these proxies contained a shareholder acknowledgement of receipt of a definitive proxy statement.

46. On May 27, 2003, Respondent mailed a proxy statement to the SEC. The mailing was rejected by the SEC because it had not been filed electronically.

47. On May 29, 2003, Respondent sent Complainant a second written consent identical to the one he sent on May 23, 2003, which purported to confirm his actions of May 23, 2003.

48. On or about May 30, 2003, even though he had not received the purchase price in cleared funds as required by the Subscription Agreement and the Addendum thereto, Respondent delivered to Cyberian the original stock certificates he had been holding in escrow.

49. A Schedule 13D is an SEC required public disclosure form that is used to disclose that a person or entity has acquired beneficial ownership in a publicly-traded company. The SEC requires that the form be filed within 10 days of acquiring beneficial ownership, and that it contain certain information, such as the purpose of the acquisition and intentions of the owners who are filing, specifically including a discussion of any proposed changes to the control or management of the company.

50. Respondent electronically filed a Schedule 13D on June 13, 2003, more than 10 days after May 23, 2003, the day he claimed to have acquired a beneficial ownership in BrandAid and the day he voted the proxied shares by written consent.

51. The SEC requires the filing of Form 14A, commonly called a proxy statement, concurrently with any solicitation of proxies. The proxy statement is required to provide detailed written information regarding the purpose of the solicitation and the intentions of the person soliciting the vote. The SEC also requires that the proxy statement be furnished to the shareholders at the time their proxies are sought.

52. Respondent did not file a proxy statement with the SEC concurrently with his solicitation of proxies in May 2003, but instead filed it on June 13, 2003, weeks after he had solicited the proxies and purported to vote them by written consent to effect extraordinary corporate changes.

53. In addition to not filing a proxy statement with the SEC, Respondent did not provide a proxy statement to the shareholders from whom he solicited the proxies in early May 2003. As such, he did not disclose to them his intent to effect the following extraordinary corporate actions: 1) replacement of BrandAid's entire Board; 2) replacement of BrandAid's officers; or 3) approval of the Artz Proposal, which involved a merger and acceptance of Chinese real estate in lieu of cash as payment for shares of BrandAid.

54. The SEC requires that a proxy statement not be misleading or fail to disclose material facts.

55. The proxy statement filed by Respondent failed to disclose the following material facts: 1) that Chinese real estate had been substituted for cash as Cyberian's

payment for BrandAid shares; and 2) that Respondent's clients, Mel Stewart and Francis Weber, who had assisted Respondent with the proxy solicitation, stood to earn a significant finder's fee of over $1 million if the sale of BrandAid stock to Cyberian was consummated.

56. By letter dated June 3, 2003, on behalf of BrandAid, Peter Markus notified Respondent that Cyberian had breached the Subscription Agreement and demanded that Respondent return the 23,500,000 shares of BrandAid that Respondent was supposed to be holding in escrow.

57. On or about June 3, 2003, Complainant wrote and sent to Respondent two cease and desist letters stating that Respondent's actions violated the Securities and Exchange Act of 1934, as well as several SEC rules.

58. On or about June 4, 2003, Respondent advised Complainant that he would not return the shares and that his actions complied with Delaware law and SEC rules.

59. Thereafter, Complainant filed a report on form 8-K/A with the SEC publicly disclosing the Cyberian Subscription Agreement and what Complainant saw as Respondent's illegal takeover of BrandAid.

60. Thereafter, on June 13, 2003, Respondent filed the following with the SEC: a proxy statement, a Form 13D, an 8-K report announcing the filing of the proxy statement, and an 8-K report publishing a Virginia legal action filed against Complainant and Peter Markus.

61. As a result of Respondent's filings with the SEC, on June 16, 2003, prospective BrandAid investor Robert Farrill, who had previously agreed to invest $400,000 in BrandAid, withdrew his commitment to make that investment.

62. On June 17, 2003, Complainant filed another 8-K report with the SEC announcing that BrandAid was temporarily ceasing operations, citing the actions of Respondent and subsequent withdrawal of the $400,000 investment from Robert Farrrill.

63. On July 9, 2003, BrandAid sued Respondent and Cyberian in the United States District Court for the Southern District of New York.

64. On September 14, 2003, at a deposition taken in the case, Respondent returned the original BrandAid stock certificates to counsel for Complainant.

65. During the trial of the case, Respondent was questioned about the following language of the Letter of Intent: "[i]n exchange for 23,500,000 of common stock, Cyberian shall tender forthwith certain of its assets, whose values is not less than $21,000,000 USD." In response, Respondent testified that he "had no clue" what "assets were going to be tendered" by Cyberian to pay for the shares of BrandAid.

66. Respondent also testified that it was not until May 27, 2003, four days after he had voted in favor of the Artz Proposal, that he learned Cyberian had substituted Chinese real estate for cash as payment for BrandAid shares.

67. On August 31, 2005, United States District Court Judge William H. Pauley, III, sitting in the Southern District of New York, issued an opinion and order in the lawsuit filed by BrandAid against Respondent and Cyberian. The Court concluded that neither BrandAid nor Cyberian was entitled to recover from the other under the theory of *in pari delicto*, meaning in equal fault. The Court found BrandAid's fault to be that it did not adequately disclose to Cyberian its poor financial position or lawsuits pending against it.

68. Judge Pauley also found that "as a securities lawyer intricately involved in Cyberian's dealings with BrandAid," Respondent's testimony that he had no clue what assets were going to be tendered by Cyberian for BrandAid stock was not credible.

69. On August 31, 2006, the United States Circuit Court for the Second Circuit issued an opinion on BrandAid's appeal of the Judge Pauley's decision. The Second Circuit vacated and remanded the case on the basis that the doctrine of *in pari delicto* did not apply because BrandAid's "wrongdoing was far less culpable than [Cyberian's], and because, in any event, [BrandAid's] wrongdoing was not in any meaningful respect the cause of [Cyberian's] fraud and misconduct...."

70. On July 7, 2006, Respondent wrote a letter to the Virginia State Bar concerning the bar complaint filed by Complainant. In the letter, Respondent stated, "I did not agree to act as BrandAid's escrow agent for any reason."

V. ALLEGATIONS OF MISCONDUCT

Misrepresentations About Cyberian Funds and Sale Closing

71. Respondent made numerous misrepresentations to BrandAid that funds from Cyberian were imminently forthcoming or had already been wired to his account, as such:

- On November 11, 2002, Respondent forwarded to BrandAid a letter from Cyberian that stated the source of funds for purchasing BrandAid shares "is from investments and is currently placed in New York at one of the largest USA Banks." In fact, Cyberian later admitted that it did not have funds to purchase the shares and offered Chinese real estate as payment.

- Respondent sent an e-mail dated December 7, 2002 to Peter Markus that stated, "we are on schedule," and Cyberian "fully expects to meet the contractual deadline of the 13th. We look forward to closing next week." In fact, the closing did not occur on December 13, 2002, or any time afterwards.

- Respondent sent an e-mail dated December 20, 2002 to Peter Markus that stated his clients were "in the batter's box," and hoped to close before December 25, 2002. In fact, the closing did not occur by December 25, 2002 or any time afterwards.

- Respondent sent an e-mail dated January 8, 2003 to Peter Markus that stated, "we can arrange for funds to be delivered to Paul [Complainant] by Friday." In fact, no funds were sent to Complainant until January 16, 2003, when Respondent wired $106,593.80 to BrandAid, which constituted a partial payment of the bridge loan Respondent had arranged for BrandAid while BrandAid awaited the closing of the stock sale.

- Respondent sent e-mails dated January 13, 2003 to Complainant stating, "you are on the verge of receiving 6.5MM," and, "I confirm that I will have funds tomorrow to be wired to BrandAid." In fact, no funds were sent to Complainant until January 16, 2003, when Respondent wired $106,593.80 to BrandAid, which constituted a partial payment of the bridge loan Respondent had arranged for BrandAid while BrandAid awaited the closing of the stock sale.

- Respondent sent e-mails on January 14, 2003 to Complainant stating that the funds had been wired to his account and would be sent to BrandAid the next day. In fact, as of January 14, 2003, no funds, not even funds related to the bridge loan, had been wired into Respondent's account.

- Respondent sent e-mails on February 7, 2003 to Complainant stating that Steve Massey had "signed written contracts," and "I spoke with Steve Massey this afternoon. The contracts are signed. I will have the particulars of the contracts and funding tomorrow and will email then to Peter Markus." In fact, no written contracts or funds were ever produced.

By making these misrepresentations, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the his fitness to practice law and committed criminal or wrongful acts that reflect adversely on his honesty, trustworthiness or fitness to practice law in violation of Rule 8.4(b) and (c) of the Rules of Professional Conduct. *In the alternative,* Respondent's actions evince a lack of competence to represent his client in the area of corporate and securities law in violation of Rule 1.1 of the Rules of Professional Conduct.

Breach of Fiduciary Duty/Breach of Escrow

72. Respondent breached his fiduciary duties in connection with the escrow as follows:

- On April 16, 2003, Respondent purported to act on behalf of Cyberian as majority shareholder by issuing a written consent for an extraordinary corporate action (accepting the Artz Proposal). At this time, the Subscription Agreement was in force, Cyberian had not paid for the BrandAid shares, and Respondent was supposed to be holding the shares in escrow until paid for in cleared funds.

- On May 23, 2003 and again on May 29, 2003, Respondent purported to serve a written consent on behalf of BrandAid shareholders in favor of extraordinary corporate events (replacing the BrandAid management and approving the Artz Proposal). At this time, the Subscription Agreement was in force, Cyberian had not paid for the BrandAid shares, and Respondent was supposed to be holding the shares in escrow until paid for in cleared fund. Respondent purported to have authority to serve the written consent by virtue of holding proxies for a majority of BrandAid shareholders. However, Respondent did not comply with federal securities laws in obtaining or exercising the proxy votes.

- On or about May 30, 2003, Respondent delivered the shares of BrandAid to Cyberian without having first received payment in cleared funds pursuant to the Subscription Agreement and the Addendum to the Subscription Agreement.

In so doing, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the his fitness to practice law and committed criminal or wrongful acts that reflect adversely on his honesty, trustworthiness or fitness to practice law in violation of Rule 8.4(b) and (c) of the Rules of Professional Conduct. *In the alternative,* Respondent's actions evince a lack of competence to represent his client in the area of corporate and securities law in violation of Rule 1.1 of the Rules of Professional Conduct.

Violation of Federal Securities Laws

73. In both soliciting and exercising the proxies from BrandAid shareholders, Respondent violated federal securities laws as follows:

- Respondent solicited proxies from BrandAid shareholders without concurrently providing them with a proxy statement and without concurrently filing a proxy statement with the SEC.

- Respondent filed the proxy statement with the SEC after he had voted the proxy shares by written consent.

- On May 23, 2003 and again on May 29, 2003, Respondent voted the proxy shares by written consent without first disclosing to the SEC, the public, or the shareholders from whom he had obtained the proxies his intent to replace BrandAid's directors and officers, merge BrandAid with another company, and accept the Artz Proposal, all of which constitute extraordinary corporate events.

- The proxy statement filed by Respondent was misleading and failed to disclose the following material facts: 1) that Chinese real estate had been substituted for cash as Cyberian's payment for BrandAid shares; and 2) that Respondent's clients, Mel Stewart and Francis Weber, who had assisted Respondent with the proxy solicitation, stood to earn a significant finder's fee of over $1 million if the sale of BrandAid stock to Cyberian was consummated.

- Respondent did not file the Schedule 13D with the SEC until June 13, 2003, more than 10 days after May 23, 2003, the day he claimed to hold a beneficial ownership of BrandAid and the day he voted the proxy shares by written consent. This delay in filing is material because in the interim, Respondent voted the shares to effect extraordinary corporate changes.

In so doing, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the his fitness to practice law and committed criminal or wrongful acts that reflect adversely on his honesty, trustworthiness or fitness to practice law in violation of Rule 8.4(b) and (c) of the Rules of Professional Conduct. *In the alternative,* Respondent's actions evince a lack of competence to represent his client in the area of corporate and securities law and a lack of competence to

represent BrandAid shareholders as a lawyer who solicited and exercised their proxy votes in violation of Rule 1.1 of the Rules of Professional Conduct.

Assisting in Client's Criminal or Fraudulent Activity

74. Respondent assisted Cyberian in conduct he knew was criminal or fraudulent as follows:

- Respondent made repeated assurances to BrandAid that he had received, or soon would receive funds from Cyberian to pay for the BrandAid stock under the terms of the Subscription Agreement, when in fact he knew that Cyberian had not transmitted any funds.

- By breaching his fiduciary duties in connection with the escrowed BrandAid shares and by violating federal securities laws in connection with soliciting and exercising BrandAid proxy votes, Respondent assisted Cyberian in a cashless takeover of BrandAid.

In so doing, Respondent assisted a client in conduct that he knew was criminal or fraudulent in violation of Rule 1.2(c) of the Rules of Professional Conduct. *In the alternative,* Respondent's actions evince a lack of competence to represent his client in the area of corporate and securities law and a lack of competence to represent BrandAid shareholders as a lawyer who solicited and exercised their proxy votes in violation of Rule 1.1 of the Rules of Professional Conduct.

Failure to Return BrandAid Shares

75. Respondent failed to promptly deliver to BrandAid and/or Complainant the BrandAid share certificates in his possession, which BrandAid/Complainant was entitled to receive as follows:

- On June 3, 2003, on behalf of BrandAid, Peter Markus demanded the return of the original BrandAid stock certificates Respondent was holding in escrow. Respondent refused. Respondent had already delivered the certificates to Cyberian.

As such, Respondent failed to promptly deliver to BrandAid and/or Complainant the BrandAid share certificates in his possession, which BrandAid/Complainant was entitled to receive, a violation of Rule 1.15(c)(4) of the Rules of Professional Conduct. *In the alternative,* Respondent's actions evince a lack of competence to represent his client in the area of corporate and securities law and a lack of competence to represent BrandAid shareholders as a lawyer who solicited and exercised their proxy votes in violation of Rule 1.1 of the Rules of Professional Conduct.

Misrepresentation to Court

76. Respondent's testimony before the United States District Court for the Southern District of New York contained misrepresentations as follows:

- Respondent testified that he "had no clue" what "assets were going to be tendered" by Cyberian to pay for the shares of BrandAid, and that it was not until May 27, 2003 that he learned Cyberian was paying for the BrandAid shares with Chinese real estate instead of cash. Respondent gave this testimony despite 1) being included on e-mails on May 4-5, 2003 between Complainant, Peter Markus, and Lawrence Artz about the Artz Proposal; 2) e-mailing Peter Markus on May 5, 2003 and stating that there was no justification for BrandAid not to accept the Artz Proposal; and 3) on May 8, 2003, sending to attorney Stephen Hill a revised copy of the Letter of Intent, which described the Artz Proposal.

In so testifying, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the his fitness to practice law and committed criminal or wrongful acts that reflect adversely on his honesty, trustworthiness or fitness to practice law in violation of Rule 8.4(b) and (c) of the Rules of Professional Conduct. *In the alternative,* if Respondent's testimony was truthful, then he lacked the competence to represent his client in the area of corporate and securities law and lacked

the competence to represent BrandAid shareholders as a lawyer who solicited and exercised their proxy votes in violation of Rule 1.1 of the Rules of Professional Conduct.

Misrepresentation to the Virginia State Bar/Obstruction of a Lawful Investigation by a Disciplinary Authority

77. Respondent attempted to mislead the Bar about his role in the deal between Cyberian and BrandAid as follows:

- By letter dated July 7, 2006, Respondent advised the Bar that "I did not agree to act as BrandAid's escrow agent for any reason." Respondent made this statement despite 1) the December 9, 2002 letter from CSG transmitting the BrandAid stock certificate to Respondent and instructing him to hold it in trust; 2) the January 9, 2003 Finder's Fee agreement, drafted by Respondent, which provides that Respondent will hold the BrandAid stock certificates in accordance with the instructions given by CSG in the December 9, 2003 letter; 3) Respondent's letter to Hector Cruz, which he e-mailed to Complainant on January 13, 2003, in which he states that all BrandAid stock is being held by him in escrow until he receives the purchase price in cleared funds; and 4) the Addendum to the Subscription Agreement entered into on or about March 24, 2003, which provides that BrandAid stock will be held by Respondent in escrow until he receives payment from Cyberian in cleared funds.

As such, Respondent knowingly made a false statement of material fact and/or attempted to obstruct a lawful investigation by the Virginia State Bar in violation of Rule 8.1(a) and (d) of the Rules of Professional Conduct.

VI. CHARGES OF MISCONDUCT

The above facts and allegations of misconduct, if proven, constitute violations of the following Rules of Professional Conduct:

RULE 1.2 Scope of Representation

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

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 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

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

Alternatively, with the exception of the Rule 8.1(a) and (d) charge of misconduct, the above facts and allegations of misconduct, if proven, constitute violations of the following Rule 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.

VII. CERTIFICATION

The Subcommittee, on behalf of the Third District—Section III Committee, hereby certifies the Charges of Misconduct in the above referenced matter to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT—SECTION III SUBCOMMITTEE OF
THE VIRGINIA STATE BAR

By: _____
Cullen D. Seltzer, Esquire
Presiding Officer and
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that I have this 10th day of May, 2007 mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the Subcommittee Determination (Direct Certification) to Stephen Scott Biss, Esquire, at 2nd Floor, 1711 East Main Street, P.O. Box 592, Richmond, Virginia 23218 his address of record with the Virginia State Bar.

_____
Kathryn R. Montgomery
Assistant Bar Counsel

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

VIRGINIA STATE BAR, EX REL
THIRD DISTRICT COMMITTEE

Complainant

v. Case No. CL07-1846

STEVEN SCOTT BISS

Respondent.

MEMORANDUM ORDER
(SUSPENSION—ONE YEAR AND ONE DAY)

This matter came to be heard on October 14-17, 2008 before a three-judge panel duly appointed by the Supreme Court of Virginia pursuant to § 54.1-3935 of the Code of Virginia. The panel consisted of The Honorable Pamela S. Baskervill, Chief Judge Designate, The Honorable Von L. Piersall, Jr., Retired Judge, and The Honorable Joseph E. Spruill, Retired Judge. The Virginia State Bar was represented by Kathryn R. Montgomery, Assistant Bar Counsel. The respondent, Steven Scott Biss ("Respondent") was represented by John B. Russell, Jr. The proceedings were transcribed by Tracy J. Johnson, RPR, CCR of Chandler & Halasz, Certified Professional Reporters, telephone number 804-730-1222.

Judge Baskervill polled the members of the panel as to whether any knew of any personal or financial interest or bias that would preclude the member from fairly hearing the matter, to which inquiry each member of the panel responded in the negative.

The matter came before the Court on a Subcommittee determination from the Third District—Section III (Virginia State Bar docket number 05-033-0055) alleging

misconduct in violation of the following Rules of Professional Conduct: Rule 1.1—Competence, Rule 1.2(c)—Scope of Representation, Rule 1.15(c)(4)—Safekeeping Property, Rule 8.1(a) and (d)—Bar Admission and Disciplinary Matters, and Rule 8.4(b) and (c)—Misconduct.

Following the Court's denial of Respondent's motion to strike the bar's case, the parties stipulated to certain facts and rules violations. Upon the joint motion of the parties, the Court accepted the stipulation of facts and violations of rules. The Court notes that in consideration for the bar's stipulation, Respondent waived any appeal of any findings by this Court, including any sanction imposed upon him.

I. FINDINGS OF FACT AND RULE VIOLATIONS

Upon consideration of the testimony, documentary evidence, arguments of counsel, and stipulations of facts and rule violations, the Court found that the bar proved the following facts and rule violations by clear and convincing evidence:

1. In the fall of 2002, Respondent represented Cyberian Enterprises Limited ("Cyberian"), a Hong Kong company, in its efforts to purchase several million shares of stock in BrandAid Marketing Corporation ("BrandAid"), a Delaware corporation, through a Subscription Agreement. In conjunction with this representation, Respondent agreed to hold BrandAid shares in escrow until he received the purchase price from Cyberian.

2. Respondent subsequently made numerous representations to BrandAid that funds from Cyberian were imminently forthcoming.

3. In the spring of 2003, Cyberian disclosed to BrandAid that it did not have the funds to purchase BrandAid's shares and proposed that BrandAid merge with a Cyberian-

related company and accept Chinese real estate for its stock ("the Artz Proposal"). BrandAid did not act on the offer.

4. Respondent subsequently orchestrated a cashless takeover attempt of BrandAid. In May 2003, Respondent solicited proxies of BrandAid shareholders in violation of federal securities law and subsequently purported to vote those shares to replace BrandAid's management with Cyberian affiliates and approve Cyberian's proposal. Pursuant to this purported approval of the proposal, Respondent then transferred the escrowed BrandAid shares to Cyberian.

5. Respondent breached his fiduciary duties in connection with the escrow as follows:

- On May 23, 2003 and again on May 29, 2003, Respondent purported to serve a written consent on behalf of BrandAid shareholders in favor of extraordinary corporate events (replacing the BrandAid management and approving the Artz Proposal). At this time, the Subscription Agreement was in force, Cyberian had not paid for the BrandAid shares, and Respondent was supposed to be holding the shares in escrow until paid for. Respondent purported to have authority to serve the written consent by virtue of holding proxies for a majority of BrandAid shareholders. However, Respondent did not comply with federal securities laws in obtaining or exercising the proxy votes.

- On or about May 30, 2003, Respondent delivered the shares of BrandAid to Cyberian without having first received payment pursuant to the Subscription Agreement and the Addendum to the Subscription Agreement.

In so doing, Respondent committed deliberately wrongful acts that reflect adversely on his fitness to practice law in violation of Rule 8.4(b) of the Rules of Professional Conduct.

6. In both soliciting and exercising the proxies from BrandAid shareholders, Respondent violated federal securities laws as follows:

- Respondent solicited proxies from BrandAid shareholders without concurrently providing them with a proxy statement and without concurrently filing a proxy statement with the SEC.

- Respondent filed the proxy statement with the SEC after he had voted the proxy shares by written consent.

- On May 23, 2003, Respondent voted or attempted to vote the proxy shares by written consent without first disclosing to the SEC or the public his intent to replace BrandAid's directors and officers, merge BrandAid with another company, and accept the Artz Proposal, all of which constitute extraordinary corporate events.

- The proxy statement filed by Respondent failed to disclose that Respondent had reason to believe that his stockbroker clients, who had assisted him with the proxy solicitation, and their clients may have stood to earn a significant finder's fee if the sale of BrandAid stock to Cyberian was consummated.

- Respondent did not file the Schedule 13D with the SEC until June 13, 2003, more than 10 days after May 23, 2003, the day he claimed to hold a beneficial ownership of BrandAid and the day he voted or attempted to vote the proxy shares by written consent. This delay in filing is material because in the interim, Respondent voted or attempted to vote the shares to effect extraordinary corporate changes.

In so doing, Respondent demonstrated a lack of competence to represent his client in the area of corporate and securities law and a lack of competence to represent BrandAid shareholders as a lawyer who solicited and exercised their proxy votes in violation of Rule 1.1 of the Rules of Professional Conduct.

7. Respondent assisted Cyberian in conduct he should have known was criminal or fraudulent as follows:

- Respondent made repeated assurances to BrandAid that he soon would receive funds from Cyberian to pay for the BrandAid stock under the terms of the Subscription Agreement, when in fact he should have known that Cyberian would not be transmitting any funds.

- By breaching his fiduciary duties in connection with the escrowed BrandAid shares and by violating federal securities laws in connection

with soliciting and exercising BrandAid proxy votes, Respondent assisted Cyberian in a cashless takeover of BrandAid.

In so doing, Respondent assisted a client in conduct that he should have known was criminal or fraudulent in violation of Rule 1.2(c) of the Rules of Professional Conduct.

8. Respondent's testimony before the United States District Court for the Southern District of New York contained misrepresentations as follows:

- Respondent testified that he "had no clue" what "assets were going to be tendered" by Cyberian to pay for the shares of BrandAid, and that it was not until May 27, 2003 that he learned Cyberian was paying for the BrandAid shares with Chinese real estate instead of cash.

In so testifying, Respondent committed a deliberately wrongful act that reflects adversely on his fitness to practice law in violation of Rule 8.4(b) of the Rules of Professional Conduct.

II. SANCTION

The Court received evidence of mitigation and heard arguments of counsel regarding the appropriate sanction. The Court then deliberated and announced the sanction as a suspension of Respondent's license to practice law of one year and one day, the suspension to begin on January 1, 2009.

Accordingly, it is ORDERED that the law license of the respondent, Steven Scott Biss, be SUSPENDED for one year and one day effective January 1, 2009.

It is FURTHER ORDERED that Respondent shall comply with the requirements of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, of the Suspension of license to practice law in the Commonwealth of Virginia, to all clients for

whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters in Respondent's care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Suspension. Respondent shall also furnish proof to the bar within 60 days of the effective date of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters. If Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13(M) shall be determined by the Virginia State Bar Disciplinary Board, unless Respondent makes a timely request for hearing before a three-judge Circuit Court.

It is FURTHER ORDERED that the Clerk of the Disciplinary System shall comply with all requirements of Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court, as amended (the "Rules"), including but not limited to assessing costs pursuant to Paragraph 13(B)(8)(c) of the Rules and complying with the public notice requirements of Paragraph 13(B)(8)(d) of the Rules.

It is FURTHER ORDERED that the Clerk of the Circuit Court shall serve a copy teste of this Memorandum Order on the Respondent, at 36 Bear Alley, Suite 400, Petersburg, Virginia 23803, his last address of record with the Virginia State Bar, and shall mail a copy to counsel of record.

The Court HEREBY DISMISSES all other disciplinary rule violations charged but not found.

The Court notes that this Memorandum Order relates only to the misconduct charges brought against Respondent by the Virginia State Bar. The Court's decision and findings are not meant to resolve any issues in any other civil, criminal, or other matters.

ENTERED:

This 26th day of November 2008.

Chief Judge Designate

Judge

Judge

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
STEVEN SCOTT BISS

VSB Docket No. 09-032-078962

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On June 19, 2009, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Steven C. McCallum, chair presiding, Michelle C. Harman, and John B. Wake, Jr., lay member. Pursuant to Part Six, Section IV, Paragraph 13-15.B.3. of the Rules of the Supreme Court of Virginia, the Third District Subcommittee of the Virginia State Bar hereby serves upon Steven Scott Biss ("Respondent") the following Certification:

I. FINDINGS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia on September 30, 1991.
2. On November 26, 2008, a three-judge panel sitting in the Circuit Court for the County of Chesterfield entered a Memorandum Order suspending Respondent's license to practice law for one year and one day. The suspension was effective January 1, 2009. (VSB docket number 05-033-0055)
3. Respondent sent a letter dated December 9, 2008 to Mary J. Tomillon and John M. Tomillon stating that he represented Judy B. Guthrie in connection with her claims against them and their son relating to a crash that occurred on August 8, 2008.

Respondent asked the Tomillons to forward his letter to their insurer so that "we can begin a dialogue about settlement."

4. Despite his suspension effective January 1, 2009, Respondent continued to represent Ms. Guthrie in this matter throughout January and February, 2009.
5. On January 12, 2009, Respondent sent an e-mail to Gregg Williams, a claims adjuster at Virginia Farm Bureau (the Tomillons' insurer). Attached to the e-mail were Ms. Guthrie's medial reports, bills, and wage loss verification.
6. On January 21, 2009, Respondent sent a letter to Gregg Williams asking about the status of his evaluation of Ms. Guthrie's claim.
7. On February 17, 2009, Respondent engaged in an e-mail exchange with Gregg Williams concerning Ms. Guthrie's condition and the status of settlement.
8. Respondent never advised Farm Bureau that his license to practice law had been suspended on January 1, 2009.
9. By continuing to represent Judy Guthrie in negotiations with Farm Bureau, and by failing to disclose to Farm Bureau that his license to practice law had been suspended effective January 1, 2009, Respondent violated Rule 3.4(d) of the Rules of Professional Conduct.
10. By continuing to represent Judy Guthrie in negotiations with Farm Bureau, and by failing to disclose to Farm Bureau that his license to practice law had been suspended effective January 1, 2009, Respondent violated Rule 5.5(a)(1) of the Rules of Professional Conduct.
11. By continuing to represent Judy Guthrie in negotiations with Farm Bureau, and by failing to disclose to Farm Bureau that his license to practice law had been suspended

effective January 1, 2009, Respondent violated Rule 8.4 (c) of the Rules of Professional Conduct.

II. NATURE OF MISCONDUCT

Such conduct by Steven Scott Biss constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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.

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;

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. CERTIFICATION

Accordingly, it is the decision of the subcommittee to certify the above matter to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____
Steven C. McCallum
Chair

CERTIFICATE OF SERVICE

I certify that on June 30, 09, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Steven Scott Biss, Esquire, Respondent, at Suite 400, 36 Bear Alley, Petersburg, VA 23803, the Respondent's last address of record with the Virginia State Bar.

_____
Kathryn R. Montgomery

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
STEVEN SCOTT BISS VSB Docket No. 09-032-078962

ORDER OF SUSPENSION

This matter came on to be heard on September 25, 2009, before a panel of the Virginia State Bar Disciplinary Board (the "Board") comprised of William Ethan Glover, 1st Vice Chair; Pleasant S. Brodnax, III; Sandra L. Havrilak; David R. Schultz, and Dr. Theodore Smith, lay member, at the State Corporation Commission, courtroom A, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

The Virginia State Bar ("the Bar") was represented by Kathryn R. Montgomery, Assistant Bar Counsel ("Bar Counsel"). Steven Scott Biss (the "Respondent") appeared and was not represented by counsel. Tracy J. Johnson, Registered Professional Reporter of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, (804-730-1222), having been duly sworn by the Chair, reported the hearing.

The Chair inquired of the members of the panel whether any of them had any personal or financial interest or any bias which would preclude, or could be perceived to preclude, their hearing the matter fairly and impartially. Each member of the panel and the Chair answered the inquiry in the negative.

The matters came before the Board on the Certification by the Subcommittee of the Third District Committee of the Virginia State Bar. On June 19, 2009, the Subcommittee of the Third District Committee held a meeting and certified multiple

Charges of Misconduct against the Respondent to the Virginia State Bar Disciplinary Board. The Certification of these charges was sent to Respondent on June 30, 2009.

Bar Counsel and Respondent stated that they were prepared to proceed and waived the Chair's explanation of the hearing procedure.

The Certification alleged that Respondent engaged in the following acts of misconduct:

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.

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

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.

On July 21, 2009, Respondent filed his Answer and Response to Subcommittee Determination (Certificate) that included affirmative defenses. On September 14, 2009 Respondent filed his Special Pleas, Demurrers and Motion to Dismiss (hereinafter "Motion to Dismiss"). Bar Counsel filed her Opposition to Respondent's Special Pleas, Demurrers and Motion to Dismiss (hereinafter "Opposition") on September 24, 2009.

The Bar offered the Memorandum Order of November 26, 2008, that was received into evidence, without objection, as part of her Opposition. Respondent offered the Investigative Report of August 6, 2009; Bar Counsel's letter to the Clerk's Office dated April 27, 2009; and the case of Kentucky Bar Association v. Harris, 269 S.W.3d 414, (2008), which were received as part of his Motion to Dismiss, without objection.

On November 26, 2008, Respondent's license to practice law was suspended for a period of one (1) year and one (1) day effective January 1, 2009. (VSB Exhibit 2). Respondent's Motion to Dismiss was predicated on the adjudication of a show cause order that Bar Counsel filed against him and was resolved by the Virginia State Bar Disciplinary Board Summary Order on April 24, 2009. Prior to the pending certification against Respondent, Bar Counsel filed a Petition for Paragraph 13.M Show Cause Hearing pursuant to Part Six, Section IV, Paragraph 13.M (now 13-29) of the Rules of the Supreme Court of Virginia, as amended, alleging that Respondent had violated the Memorandum Order that suspended his license by failing to make appropriate arrangements for the disposition of matters that are in his care; continuing to act as an attorney despite his suspension; and, that his actions after January 1, 2009, constituted the unauthorized practice of law by an attorney whose license is suspended. A Rule to Show Cause was issued and a hearing was held before the Board on April 24, 2009. After a hearing, by Summary Order, the Board found that "no disciplinary rule violations have been proved by clear and convincing evidence." Additionally, by Memorandum Order dated May 4, 2009, the Board found by clear and convincing evidence that Respondent complied with Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, and the Rule to Show Cause was dismissed.

Subsequently, on June 19, 2009, a subcommittee of the Third District Committee issued a certification of Charges of Misconduct to the Board for hearing, specifically, whether Respondent committed misconduct by violating the following Rules of Professional Conduct: Rule 3:4(a), Rule 5.5(a)(1) and Rule 8:4(c).

In his Motion to Dismiss, and as argued to the Board, Respondent argued that the certification was barred by the doctrine of *res judicata* pursuant to Rule 1:6 of the Rules of the Supreme Court of Virginia. He further argued that the Summary Order entered on April 24, 2009, states that "no disciplinary rule violations have been proved by clear and convincing evidence, and accordingly, all charges of misconduct are hereby dismissed." No appeal was taken, therefore, the Order was final. Respondent argued that the present matters were barred by *res judicata* because they are based on the same facts, same parties and same cause of action as those litigated in the show cause proceeding.

Respondent also took the position that he had no legal or ethical duty to advise Farm Bureau that his license to practice law had been suspended effective January 1, 2009 and that because the suspension was a matter of public record, he could not hide it from anyone. Further, Respondent stated that he removed "Attorney at Law" from his letterhead.

Respondent also stated that he did not violate Rule 3:4(a) because the "proceeding" in which the Memorandum Order was entered was long over before the January/February 2009 time period and because he was not a "lawyer" when he emailed the Farm Bureau agent in January/February 2009. Respondent asserted that he did not violate Rule 5:5(a)(1) because he did not engage in the unauthorized practice of law and he did not advise and/or negotiate a claim for compensation.

Bar Counsel's Opposition and argument to the Board asserted that Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, does not allow motions practice, therefore, Respondent's Motion to Dismiss should be dismissed and denied; or, alternatively, that the doctrine of *res judicata* does not apply to attorney disciplinary proceedings. Bar Counsel also argued that even if the doctrine of *res judicata* did apply it is inapplicable to the present case because Bar Counsel could not have brought the current charges of misconduct in the previous Paragraph 13.M show cause proceedings and because the Board did not render a final judgment on the merits of any charges of misconduct alleged against Respondent. Bar Counsel conceded that the same facts that were relied upon in support of the Show Cause, were used to support the present disciplinary violations. In fact, the alleged Rule 3.4(d) violation is the same violation Respondent defended in the Show Cause proceeding as the 13(M) violation.

The Board also received the transcript of the April 24, 2009 hearing as part of Respondent's exhibits.

The Board recessed the proceedings to deliberate. After due deliberation, the Board unanimously found that the charges that Respondent violated Rules 3:4(a) and 5:5(a)(1) were barred by the Summary Order of April 24, 2009 and Order of May 4, 2009; therefore those charges were dismissed.

The Board also found that the allegation of Respondent's misconduct under Rule 8:4(c) was not barred by the Summary Order of April 24, 2009 or the Order of May 4, 2009, and a hearing was held on that remaining charge of misconduct.

The Bar's Exhibits 1 through 10 and Respondent's Exhibits 1-5 were admitted into evidence, without objection.

Joint Stipulations of Fact between the Bar and Respondent were received. (Bar Exhibit 9).

The Bar also submitted the *de bene esse* deposition of Gregory Williams dated September 14, 2009, without objection (Bar Exhibit 8) and rested. Mr. Williams is a field claim representative for the Virginia Farm Bureau Insurance Company and was assigned to the case of Judy Guthrie. According to Mr. Williams, he worked with Respondent from December 2008 through February 2009 on this case. Mr. Williams testified that during the time period, he believed Respondent was an attorney and he did not note the letterhead change until brought to his attention in the Show Cause hearing. According to Mr. Williams, Respondent never advised him of his change in status. The last contact he had with Respondent was February 17, 2009. Mr. Williams also testified he first learned of Respondent's suspension in March 2009 when he received notice from the law firm of Paris, Black and Brown advising that they were representing Mrs. Guthrie and enclosed a copy of the State Bar newsletter stating Respondent was suspended. Mr. Williams also testified that if he knew Respondent's law license was suspended, he would have made sure that the Guthries were present or gave permission to Respondent to handle the case. Mr. Williams was concerned whether or not the Guthries knew Respondent's law license was suspended because of "The legalities of this, you know, me discussing someone else's personal situation with somebody who is no longer an attorney but still representing himself as an attorney to settle this matter."

The Bar rested its case and Respondent moved to strike the Bar's case on the basis that they had presented no evidence of affirmative misrepresentation by the Respondent and that Respondent had no duty to advise a third party that he was

suspended from the practice of law. Respondent argued that his only duty was to not make an affirmative misrepresentation to third parties regarding his suspension, and renewed his motion based on the ground of *res judicata*. The Board denied Respondent's motion to strike.

Respondent presented his case. He called Joseph Guthrie to testify. Mr. Guthrie is a former client and the husband of Respondent's client, whom he allegedly represented after his license to practice law was suspended. Mr. Guthrie testified that Respondent represented him and his wife for over six to seven years and that he considered him a friend. Mr. Guthrie said he was aware of Respondent's suspension, as he testified at the disciplinary proceedings in November, 2008. Mr. Guthrie stated that Respondent never acted as an attorney for him and his wife beyond December 31, 2008 and that he was only acting as their agent. Respondent repeatedly advised them that he could not give legal advice and did not charge him for the services provided. Mr. Guthrie affirmed his statements in Respondent's Exhibit 4. Mr. Guthrie testified that Respondent never gave advice on settlement of the case. Mr. Guthrie could not explain why Mr. Williams called his wife "Mr. Biss' client." Mr. Guthrie further testified that after February 17, 2009, his wife hired an attorney to represent her in her claim.

Respondent also testified and presented evidence on his own behalf. Respondent testified that he was forty-four (44) years old and was licensed to practice law in 1991. Since 2000, he was a sole practitioner and earned multiple multi-million dollar jury awards. He stated he had an entirely "unblemished record" until 2002-2003 when he committed "serious errors of judgment" that lead to his suspension in 2008.

Respondent testified that he fully complied with the Order of Suspension. He maintained that the Guthries were not his clients; and, after January 1, 2009, he was acting as a mere agent. Respondent testified that after January 1, 2009, he changed his letterhead, eliminated any reference to being an attorney and called Judy Guthrie "my principal." (Bar Exhibit 5).

Respondent reluctantly acknowledged that he never informed Mr. Williams that his license was suspended, nor did he correct the error of Mr. Williams when he called Mrs. Guthrie his client. (Bar Exhibit 6). Rather, Respondent believed by removing "Attorney at Law" from his letterhead and calling Mrs. Guthrie his principal, was sufficient. In fact, Respondent testified that Mr. Williams could have found out himself that he was suspended, as he heard about Respondent's suspension from a third party. Respondent acknowledged that in 2008, he was Mrs. Guthrie's lawyer for twenty-two (22) days and in 2009 his change to non-lawyer/agent would be invisible to Mr. Williams. He assumed Mr. Williams would figure it out.

Respondent also testified that although he could have told Mr. Williams that he was not an attorney, there was no way that he could have hidden the fact that he was suspended from the practice of law. He also testified that while he does not believe that he had a duty to notify the insurance company regarding his suspension, he recognizes that he should have done things differently and perhaps not have done any work on behalf of the Guthrie family.

Based on the Stipulations of Fact, the Bar's Exhibits, Respondent's Exhibits, the testimony presented, and the argument of counsel and Mr. Biss, the Board finds as follows:

I. FINDINGS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia on September 30, 1991.

2. On November 26, 2008, a three-judge panel sitting in the Circuit Court for the County of Chesterfield entered a Memorandum Order suspending Respondent's license to practice law for one year and one day. The suspension was effective January 1, 2009. (VSB docket number 05-033-0055). (Bar Exhibit 2).

3. On December 9, 2008, Respondent sent a letter to Mary J. Tomillon and John M. Tomillon stating that he represented Judy B. Guthrie in connection with her claims against them and their son relating to a crash that occurred on August 8, 2008. Respondent asked the Tomillons to forward his letter to their insurer so that "we can begin a dialogue about settlement." (Bar Exhibit 3).

4. Despite his suspension effective January 1, 2009, Respondent continued to represent Mrs. Guthrie in this matter throughout January and February, 2009.

5. On January 12, 2009, Respondent sent an e-mail to Gregg Williams, a claims adjuster at Virginia Farm Bureau (the Tomillons' insurer). Attached to the e-mail with Mrs. Guthrie's medial reports, bills, and wage loss verification. (Bar Exhibit 4).

6. On January 21, 2009, Respondent sent a letter to Gregg Williams asking about the status of his evaluation of Mrs. Guthrie's claim. The letter did not identify Respondent as an attorney at law; and, referred to Mrs. Guthrie as "my principal" not my client. (Bar Exhibit 5).

7. On February 17, 2009, Respondent engaged in an e-mail exchange with Gregg Williams concerning Mrs. Guthrie's condition and the status of settlement. At no

time did Respondent correct Mr. Williams' statement that Mrs. Guthrie was his client. (Bar Exhibit 6).

8. Respondent never advised Mr. Williams that his license to practice law had been suspended on January 1, 2009.

9. By continuing to represent Judy Guthrie in negotiations with Farm Bureau, and by failing to disclose to Farm Bureau that his license to practice law had been suspended effective January 1, 2009, Respondent violated Rule 8.4 (c) of the Rules of Professional Conduct.

II. MISCONDUCT

The Certification asserts such conduct by Steven S. Biss constitutes misconduct in violation of the following provision of the Rules 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 lawyer's fitness to practice law;

III. DISPOSITION

Upon consideration of the foregoing, that based on the Stipulations of Fact, the Exhibits received into evidence from the Bar and Respondent, upon the testimony presented, and the argument of counsel and Respondent, the Board recessed to deliberate. After due deliberation, the Board recommended and stated it findings that the Bar had proved by clear and convincing evidence a violation of Rule 8.4 (c) of the Rules of Professional Conduct as charged in the Certification.

IV. SANCTION

The Board called for evidence in aggravation or in mitigation of the misconduct found. The Bar presented the Certification of Respondent's disciplinary record that consisted of a One Year and One Day Suspension effective January 1, 2009 issued in an attorney disciplinary proceeding.

Respondent presented testimony on his own behalf and the testimony of Joseph Guthrie and Elliot Purcell Park who testified as to their views of Respondent as an attorney and person.

Mr. Guthrie testified that Respondent was actively representing him on at least four (4) matters prior to December 31, 2008. That Respondent's suspension has been devastating to him. He testified that Respondent never made a false statement and never held himself out as a lawyer subsequent to December 31, 2008.

Mr. Park is an attorney in Virginia and has known Respondent for nineteen (19) years. Since January 1, 2009, Respondent has worked for Mr. Park on a daily basis as a paralegal. While Mr. Park knew Respondent was suspended, he purposely remained ignorant of the facts and charges. According to Mr. Park, Respondent is a brilliant attorney and he clearly understands that he is not a lawyer and not allowed to provide legal advice. According to Mr. Park, Respondent is known for his truthfulness and veracity.

Respondent also testified on his own behalf. Respondent testified that other than the current suspension, he had an unblemished disciplinary record. That the current complaint was from Bar Counsel and not a member of the public. That he took affirmative steps to change his letterhead and to call Mrs. Guthrie his principal. He

maintained that he did not take any affirmative action to correct the impression of Mr. Williams that he was still a licensed attorney. Respondent also acknowledges that it was hard to just stop being an attorney and that he should have been more forthright about his status.

Bar Counsel and Respondent presented argument.

The Board recessed to deliberate what sanction to impose upon its finding of misconduct. After due deliberation in closed session, the Board reconvened in open session. The Chair announced the Board's unanimous decision that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended for thirty (30) days to commence at the end of his current suspension.

It is therefore ORDERED that the license of the Respondent Steven Scott Biss, to practice law in the Commonwealth of Virginia be and the same hereby is suspended for a period of thirty (30) days, effective January 1, 2010.

It is further ORDERED that Respondent must comply with the requirements of Part 6, § IV, ¶ 13 M. of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the 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 client. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, 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 day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 M. shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part 6, § IV, ¶ 13.B.8.c. 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 mail an attested copy of this Order to Respondent at his address of record with the Virginia State Bar, being Steven Scott Biss at 36 Bear Alley, Suite 400, Petersburg, Virginia 23805 by certified mail, return receipt requested, and by regular mail to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

Enter this Order this 3rd day of November, 2009.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____

William E. Glover, 1st Vice Chair

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF STEVEN SCOTT BISS

VSB Docket No. 07-033-070921

SUBCOMMITTEE DETERMINATION (CERTIFICATION)

On January 19, 2010, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Margaret E. McDermid (Lay Member), Thomas O. Bondurant, Esquire, and William S. Francis, Jr., Esquire, Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13-15.B.3. of the Rules of the Virginia Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Steven Scott Biss, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Complainant Edward H. Shield is a business owner engaged in, among other things, providing financing to small businesses.

3. One of Shield's companies, United Leasing (ULC) took over a refuse company (Garcia) that could not pay about $3 million in debt service to ULC.

4. Shield created United Refuse, LLC (UR), as the new owner of Garcia and installed one of his employees, James Lehner, as manager.

5. Lehner desired to assume control of UR, and had Shield's counsel prepare a management agreement transferring control of UR to Mr. and Mrs. Lehner.

6. Lehner felt that he could finance and pay off the $3 million in unpaid leases owed to ULC.

7. Shield, however, felt that Lehner did not have the means to do so.

8. A dispute developed and Lehner tried to assert ownership of UR against ULC and Mr. Shield. Litigation followed in the Hanover County Circuit Court, the Richmond Circuit Court, and the U.S. Bankruptcy Court. Biss represented Lehner and UR in the circuit court matters and in the appeal of the bankruptcy matter.

9. To protect UR's assets from Lehner, Shield and ULC obtained an *ex parte* injunction in the Hanover Circuit Court freezing the UR bank accounts.

10. Biss defended Lehner and UR in the matter and succeeded in having the injunction dissolved.

11. Shield also obtained a garnishment in the Hanover County Circuit Court against the UR bank accounts. Biss, however, succeeded in having the garnishment lifted as well.

12. In February 2004, simultaneous with Shield's filing suit in Hanover, Biss, on behalf of Lehner and UR, filed suit against ULC and Shield in the Richmond Circuit Court seeking declaratory judgment to determine the ownership of UR.

13. The only named plaintiff in this action, brought by Biss, was UR.

14. Biss alleged bad faith on the part of ULC and Shield - that the Lehners had arranged financing to pay off the leases owed to ULC, but that they could not do so because Shield would not provide a payoff figure. UR, through Biss, sought a declaration that certain notes owed to ULC/Shield had been paid, and a declaration of the amount owed on the remaining notes.

15. Among the allegations in the suit was that UR had provided confidential information to Shield that he wrongfully utilized to UR's detriment.

16. In April 2004, Lehner filed for bankruptcy protection. As a result, both the Hanover and Richmond Circuit Court cases became dormant pending resolution of the bankruptcy.

17. Ultimately, the bankruptcy court held against the Lehners, dismissed them as parties, ruled that UR belonged to ULC, and held that the Lehners owed ULC $54,000.

18. Biss appealed the adverse bankruptcy decision for the Lehners. Since the Lehners had been dismissed as parties, he filed the appeal in the name of UR. In July 2006 he filed a plan of reorganization on behalf of UR, but ultimately did not prevail on appeal.

19. In January 2006, Biss filed suit on behalf of the Lehner Family Business Trust (LFBT) against ULC, Shield and other named defendants.

20. The suit sought to assert claims against ULC that had been assigned to LFBT by Garcia, the original failed refuse company. Garcia assigned these claims to LBFT in January 2006.

21. The theory of the case was that Shield and ULC collected an excessive amount of money from Garcia, resulting in claims that Garcia assigned to LBFT.

22. Although he served as counsel for UR in the 2004 suits and on appeal in the bankruptcy matter, in this case Biss alleged that UR was "a dummy company, organized by ULC to perpetrate fraud, gain an unfair advantage, and commit injustice," and that UR was ULC and Shield's "agent and stooge."

23. The defendants moved to disqualify Biss as counsel in the matter on the basis that Biss was taking a position contrary to his position in the 2004 suit and to the detriment of his former client, UR, in a substantially related matter.

24. The Circuit Court for the City of Richmond granted the motion, stating that in this case and the previous 2004 case, "There is a common thread of facts and issues which are identical or essentially the same," and that "there is the high likelihood that Biss acquired information about United Refuse (UR) during his prior representation that would assist him in the course of this litigation because he argued a directly contrary position in the previous case."

25. Following this development, Biss' clients nonsuited the matter.

26. Despite his disqualification from the Richmond case, Biss continued to represent the Lehners in the revived Hanover County suit brought against them by ULC. ULC moved to disqualify Biss on the similar grounds as in the Richmond suit and prevailed again.

27. In granting the motion to disqualify Biss, the Hanover County Circuit Court stated that, "The Lehners now employ Mr. Biss, who was once counsel for United Refuse (UR). United Refuse is a former client of Mr. Biss, whose best interests may run contrary to the Lehners'."

28. The Court found that Mr. Biss represented the Lehners against a former client, UR, in a substantially related matter, citing Rule 1.9 of the Rules of Professional Conduct. Rule 1.9 provides that a lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client.

29. The Court also noted that the Lehners had quitclaimed all of their interests in UR to ULC, and that UR had become a wholly owned subsidiary of ULC, the party adverse to Biss and his clients in the matter.

30. In neither the Hanover nor the Richmond cases did Biss have the consent of UR or its owners to proceed in these adversary actions.

31. In May 2007, Biss filed suit again for LBFT against ULC and Shield in the Richmond Circuit Court. This time the suit alleged breach of contract and conversion of personal property belonging to Garcia, the original failed refuse company.

32. Fourteen months later, after a series of motions, UR petitioned to intervene in the case and counsel moved to disqualify Biss again.

33. The motion to disqualify alleged that although UR was not a named defendant in the case, the factual allegations were against both ULC and UR, and that the allegations contradicted Biss' previous positions.

34. The Circuit Court for the City of Richmond denied the motion, stating that it would have entertained a mistrial if Biss had tried to bring UR into the suit. It also said that the defense should have made the motion much sooner.

35. On this occasion, Biss and LFBT prevailed against Shield and ULC, and won a jury verdict in excess of one million dollars.

II. NATURE OF MISCONDUCT

Such conduct by Steven Scott Biss constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.9 Conflict of Interest: Former Client

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to or gained in the course of the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

III. CERTIFICATION

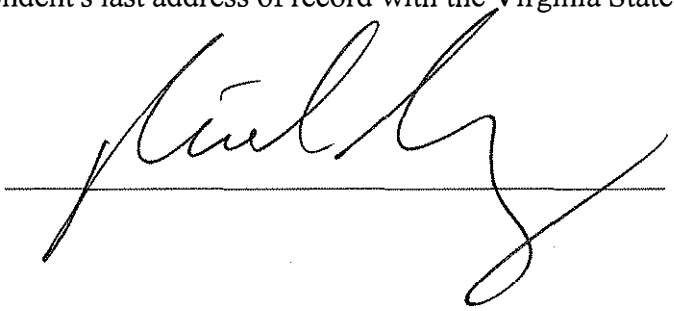
Accordingly, it is the decision of the subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 
William S. Francis, Jr., Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on the 7th day of April, 2010, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Steven Scott Biss, Esquire, Respondent, *pro se*, at Suite 102, 300 West Main Street, Charlottesville, VA 22902, the Respondent's last address of record with the Virginia State Bar.



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
STEVEN SCOTT BISS

VSB DOCKET NO. 05-033-0055

ORDER

It appearing to the Board that the license of Steven Scott Biss to practice law within the Commonwealth of Virginia was suspended for one year and one day effective January 1, 2009; and

It further appearing that the Clerk of the Disciplinary System has confirmed with appropriate parties that the Respondent is in fact in compliance with the requirements of Rules of Court, Part Six, Section IV, Paragraph 13-25 H.;

It is hereby ORDERED that the disciplinary suspension in this matter is hereby terminated effective April 12, 2010.

It is further ORDERED that an attested copy of this Order be mailed by Certified Mail, Return Receipt Requested, to the Respondent, Steven Scott Biss, at his address of record with the Virginia State Bar, Suite 102, 300 West Main Street, Charlottesville, VA 22903 and to John B. Russell, Jr., Respondent's Counsel, and to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 14th DAY OF April, 2010

FOR THE VIRGINIA STATE BAR DISCIPLINARY BOARD

Barbara S. Lanier

Barbara Sayers Lanier
Clerk of the Disciplinary System

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF STEVEN SCOTT BISS
VSB Docket No. 07-033-070921

MEMORANDUM ORDER

This matter came on to be heard on October 18, 2010, by the Disciplinary Board of the Virginia State Bar (the Board) by telephone conference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Steven A. Wannall (lay member), John S. Barr, Timothy J. Coyle, Samuel R. Walker and William E. Glover, Chair, presiding (the Panel).

Edward L. Davis, Bar Counsel, appeared as counsel for the Virginia State Bar, and the Respondent, Steven Scott Biss, appeared pro se.

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.

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 accepted the Agreed Disposition unanimously.

I. FINDINGS OF FACT

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

1. During all times relevant hereto, the Respondent, Steven Scott Biss, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Complainant Edward H. Shield is a business owner engaged in, among other things, providing financing to small businesses.

3. One of Shield's companies, United Leasing (ULC) took over a refuse company (Garcia).

4. Shield created United Refuse, LLC (UR) to manage Garcia.

5. One of Shield's employees, James Lehner, managed UR.

6. A dispute developed and Lehner tried to assert ownership of UR against ULC and Mr. Shield. Litigation followed in the Hanover County Circuit Court, the Richmond Circuit Court, and the U.S. Bankruptcy Court. Biss represented Lehner and UR in the circuit court matters and in the appeal of the bankruptcy matter.

7. Shield obtained an ex parte injunction in the Hanover Circuit Court freezing UR's assets.

8. Biss defended Lehner and UR in the matter and succeeded in having the injunction dissolved.

9. Shield also obtained a garnishment in the Hanover County Circuit Court against the UR bank accounts. Biss, however, succeeded in having the garnishment lifted as well.

10. In February 2004, simultaneous with Shield's filing suit in Hanover, Biss, on behalf of Lehner and UR, filed suit against ULC and Shield in the Richmond Circuit Court seeking declaratory judgment to determine the ownership of UR.

11. The only named plaintiff in this action, brought by Biss, was UR.

12. Biss alleged bad faith on the part of ULC and Shield - that the Lehners had arranged financing to pay off the leases owed to ULC, but that they could not do so because Shield would not provide a payoff figure. UR, through Biss, sought a declaration that certain notes owed to ULC/Shield had been paid, and a declaration of the amount owed on the remaining notes.

13. In April 2004, United Refuse filed for bankruptcy protection. The Richmond and Hanover cases were stayed as a result of the bankruptcy filing.

14. On March 14, 2005, the United States Bankruptcy Court decided that the Lehners held bare legal title to United Refuse for the benefit of United Leasing. The Court ordered the Lehners to quitclaim their interest to United Leasing, which they did.

15. Biss appealed the adverse bankruptcy decision for the Lehners. Since the Lehners had been dismissed as parties, he filed the appeal in the name of UR. The appeal was unsuccessful.

16. In January 2006, Biss filed suit on behalf of the Lehner Family Business Trust (LFBT) against ULC, Shield and other named defendants.

17. The suit sought to assert claims against ULC that had been assigned to LFBT by Garcia, the original failed refuse company. Garcia assigned these claims to LBFT in January 2006.

18. The theory of the case was that Shield and ULC collected an excessive amount of money from Garcia, resulting in claims that Garcia assigned to LBFT.

19. Although he served as counsel for UR in the 2004 suits and on appeal in the bankruptcy matter, in this case Biss alleged that UR was "a dummy company, organized by ULC to perpetrate fraud, gain an unfair advantage, and commit injustice," and that UR was ULC and Shield's "agent and stooge."

20. The defendants moved to disqualify Biss as counsel in the matter on the basis that Biss was taking a position contrary to his position in the 2004 suit and to the detriment of his former client, UR, in a substantially related matter.

21. The Circuit Court for the City of Richmond granted the motion, stating that in this case and the previous 2004 case, "There is a common thread of facts and issues which are identical or essentially the same," and that "there is the high likelihood that Biss acquired information about United Refuse (UR) during his prior representation that would assist him in the course of this litigation because he argued a directly contrary position in the previous case."

22. Following this development, Biss' clients nonsuited the matter.

23. Despite his disqualification from the Richmond case, Biss continued to represent the Lehners in the revived Hanover County suit brought against them by ULC. ULC moved to disqualify Biss on the similar grounds as in the Richmond suit and prevailed again.

24. In granting the motion to disqualify Biss, the Hanover County Circuit Court stated that, "The Lehners now employ Mr. Biss, who was once counsel for United Refuse (UR). United Refuse is a former client of Mr. Biss, whose best interests may run contrary to the Lehners'."

25. The Court found that Mr. Biss represented the Lehners against a former client, UR, in a substantially related matter, citing Rule 1.9 of the Rules of Professional Conduct. Rule 1.9 provides that a lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client.

26. The Court also noted that the Lehners had quitclaimed all of their interests in UR to ULC, and that UR had become a wholly owned subsidiary of ULC, the party adverse to Biss and his clients in the matter.

27. In neither the Hanover nor the Richmond cases did Biss have the consent of UR or its owners to proceed in these adversary actions.

28. In May 2007, Biss filed suit again for LBFT against ULC and Shield in the Richmond Circuit Court. This time the suit alleged breach of contract and conversion of personal property belonging to Garcia, the original failed refuse company.

29. Fourteen months later, after a series of motions, UR petitioned to intervene in the case and counsel moved to disqualify Biss again.

30. The motion to disqualify alleged that although UR was not a named defendant in the case, the factual allegations were against both ULC and UR, and that the allegations contradicted Biss' previous positions.

31. The Circuit Court for the City of Richmond denied the motion, stating that it would have entertained a mistrial if Biss had tried to bring UR into the suit. It also said that the defense should have made the motion much sooner. Shield made no motion for mistrial because Biss followed the Circuit Court admonition concerning United Refuse.

32. On this occasion, the LFBT won a jury verdict against Shield and ULC which was affirmed by the Richmond Circuit Court and further affirmed on appeal by the Supreme Court of Virginia.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that certain conduct by Steven Scott Biss constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.9 Conflict of Interest: Former Client

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board ORDERS that the Respondent, Steven Scott Biss, receive a Public Reprimand for his Misconduct and the Respondent is hereby Reprimanded effective October 18, 2010.

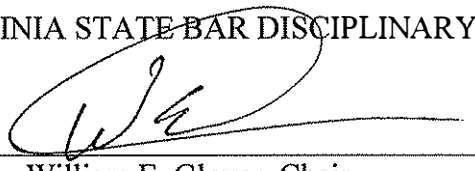
It is further ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this order by certified mail to Steven Scott Biss at his last address of record with the Virginia State Bar, and hand delivered to Edward L. Davis, Bar Counsel, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

Valerie L.S. May, RPR, Chandler & Halasz Court, P.O. Box 9349, Richmond, Virginia 23227 (804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: October 19, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 

William E. Glover, Chair

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Steven Scott Biss

VSB Docket No. 21-070-122445

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On March 8, 2022, a meeting was held in this matter before a duly convened Seventh District Subcommittee consisting of Joseph Daniel Platania, Chair Presiding; Seth James Ragosta, Member; and Kimberly Gregg, Lay Member. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand Without Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, and Steven Scott Biss, Respondent, *pro se*.

WHEREFORE, the Seventh District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand without Terms:

I. FINDINGS OF FACT

1. Respondent Steven Scott Biss ("Respondent") was licensed to practice law in Virginia in 1991. At all relevant times, Respondent was a member of the Virginia State Bar.

2. Respondent represented Complainant Benjamin Garrison in a lawsuit against the Anti-Defamation League ("ADL"). Garrison alleged that the ADL had defamed him in statements related to Garrison's work as a cartoonist.

3. On July 17, 2019, Garrison and Respondent signed an engagement agreement. The agreement stated that Respondent would charge a flat fee of $10,000, plus a contingency fee of 20% of any settlement or verdict. The agreement did not identify an hourly rate, nor did it identify any benchmarks at which Respondent would earn all or part of the flat fee.

4. Respondent deposited Garrison's $10,000 flat fee into his trust account on July 23, 2019, and then disbursed it to himself on September 12, 2019. Respondent asserts and the bar does not dispute that when Respondent transferred the funds from his trust account, he had performed enough work to have earned the fee if he was working an hourly basis. However, because the fee was described as a flat fee, it was not deemed earned until the representation concluded.

5. Beginning on October 5, 2019, Respondent assured Garrison and his wife that he would have a draft of the complaint ready within a short timeframe, but Respondent did not comply with the time expectations he set regarding the completion and filing of the complaint. For example:

- On October 5, 2019, Respondent said he was preparing the complaint and would have it ready for review in a few days.
- On November 23, 2019, Respondent said that he was "chipping away at the Complaint" and "It will be done the first week of December for sure."
- On December 14, 2019, Respondent said that he would have the complaint ready for review and filing on December 23.
- On December 30, 2019, in response to several follow-ups from Garrison's wife, Respondent said he would be working on the case and "we are close."
- On January 25, 2020, Respondent provided a draft of the complaint. Garrison responded the same day and said it looked "perfect."
- On February 22, 2020, in response to concerns that the complaint had not yet been filed, Respondent said that he was looking into a venue issue but "I expect this coming week we will be able to finalize the pleading, and file."
- On March 23, 2020, Respondent said that he was very sick, but would be able to file the complaint even though the court buildings were closed.
- On May 9, 2020, Respondent said that he would file the complaint the following week.
- On May 19, 2021, Respondent said that he was still thinking about venue and would file the complaint in the beginning of June.
- On June 3, 2020, Respondent said he was still researching where to file the complaint.
- On June 21, 2020, Respondent said he would file the complaint by the end of the month.

- Respondent filed the complaint on July 10, 2020.

6. Respondent filed the complaint before the one-year statute of limitations expired. However, Respondent was aware that Garrison believed that his reputation was continuing to suffer because he had not acted in response to the ADL's statements.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand Without Terms and Steven Scott Biss is hereby so reprimanded. 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.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: _____
Joseph Daniel Platania
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on March 8, 2022, a true and complete copy of the Subcommittee Determination (Public Reprimand Without Terms) was sent by certified mail to Steven Scott Biss, Respondent, at 300 W. Main Street, Suite 102, Charlottesville, Virginia 22903, Respondent's last address of record with the Virginia State Bar.

Elizabeth K. Shoenfeld
Senior Assistant Bar Counsel

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
STEVEN SCOTT BISS

VSB Docket No. 21-070-122445

AGREED DISPOSITION
PUBLIC REPRIMAND WITHOUT TERMS

Pursuant to the Rules of Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, and Steven Scott Biss, Respondent, *pro se*, enter into the following agreed disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. Respondent Steven Scott Biss ("Respondent") was licensed to practice law in Virginia in 1991. At all relevant times, Respondent was a member of the Virginia State Bar.

2. Respondent represented Complainant Benjamin Garrison in a lawsuit against the Anti-Defamation League ("ADL"). Garrison alleged that the ADL had defamed him in statements related to Garrison's work as a cartoonist.

3. On July 17, 2019, Garrison and Respondent signed an engagement agreement. The agreement stated that Respondent would charge a flat fee of $10,000, plus a contingency fee of 20% of any settlement or verdict. The agreement did not identify an hourly rate, nor did it identify any benchmarks at which Respondent would earn all or part of the flat fee.

4. Respondent deposited Garrison's $10,000 flat fee into his trust account on July 23, 2019, and then disbursed it to himself on September 12, 2019. Respondent asserts and the bar does not dispute that when Respondent transferred the funds from his trust account, he had performed enough work to have earned the fee if he was working an hourly basis. However, because the fee was described as a flat fee, it was not deemed earned until the representation concluded.

5. Beginning on October 5, 2019, Respondent assured Garrison and his wife that he would have a draft of the complaint ready within a short timeframe, but Respondent did not comply with the time expectations he set regarding the completion and filing of the complaint. For example:

- On October 5, 2019, Respondent said he was preparing the complaint and would have it ready for review in a few days.

- On November 23, 2019, Respondent said that he was "chipping away at the Complaint" and "It will be done the first week of December for sure."

- On December 14, 2019, Respondent said that he would have the complaint ready for review and filing on December 23.

- On December 30, 2019, in response to several follow-ups from Garrison's wife, Respondent said he would be working on the case and "we are close."

- On January 25, 2020, Respondent provided a draft of the complaint. Garrison responded the same day and said it looked "perfect."

- On February 22, 2020, in response to concerns that the complaint had not yet been filed, Respondent said that he was looking into a venue issue but "I expect this coming week we will be able to finalize the pleading, and file."

- On March 23, 2020, Respondent said that he was very sick, but would be able to file the complaint even though the court buildings were closed.

- On May 9, 2020, Respondent said that he would file the complaint the following week.

- On May 19, 2021, Respondent said that he was still thinking about venue and would file the complaint in the beginning of June.

- On June 3, 2020, Respondent said he was still researching where to file the complaint.

- On June 21, 2020, Respondent said he would file the complaint by the end of the month.

- Respondent filed the complaint on July 10, 2020.

6. Respondent filed the complaint before the one-year statute of limitations expired. However, Respondent was aware that Garrison believed that his reputation was continuing to suffer because he had not acted in response to the ADL's statements.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

III. PROPOSED DISPOSITION

Accordingly, bar counsel and Respondent tender to a subcommittee of the Seventh District Committee for its approval the agreed disposition of a Public Reprimand without Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Seventh District Committee.

If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess costs.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR

Elizabeth K. Shoenfeld
Senior Assistant Bar Counsel

Steven Scott Biss, Esquire
Respondent