

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
BRIAN WESLEY BARGER, JR.**

**VSB DOCKET NO. 19-032-114806**

**AGREED DISPOSITION MEMORANDUM ORDER  
90 DAY SUSPENSION WITH TERMS**

On Friday, May 14, 2021 this matter was heard, telephonically, by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by Part 6, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Thomas R. Scott, Jr., 2nd Vice Chair, Kamala H. Lannetti, Michael J. Sobey, Lisa A. Wilson, and Nancy L. Bloom, Lay Person. The Virginia State Bar was represented by Laura Ann Booberg, Assistant Bar Counsel. Brian Wesley Barger, Jr. was present and was represented by counsel Paul D. Georgiadis. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter, Lisa Wright, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

**WHEREFORE**, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, and Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary Board accepts the Agreed Disposition and the Respondent shall receive a 90 Day Suspension with Terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective May 14, 2021.

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by

certified mail of the Revocation or Suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

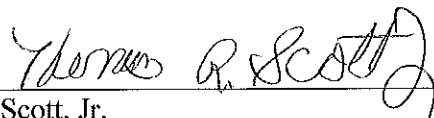
It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Revocation or Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

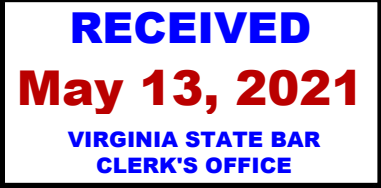
The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13-9.E. of the Rules.

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, at his last address of record with the Virginia State Bar at 4403 Stuart Ave., Richmond, VA 23221, and a copy by electronic mail to Paul D. Georgiadis, Respondent's counsel, and a copy by electronic mail to Laura Ann Booberg, Assistant Bar Counsel.

Enter this Order this 14th day of May, 2021

VIRGINIA STATE BAR DISCIPLINARY BOARD

  
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Thomas R. Scott, Jr.  
Second Vice Chair



VIRGINIA:

BEFORE THE DISCIPLINARY BOARD  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
BRIAN WESLEY BARGER, JR.

VS B Docket No. 19-032-114806

AMENDED AGREED DISPOSITION  
(90 DAY SUSPENSION WITH TERMS)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Laura Ann Booberg, Assistant Bar Counsel and Brian Wesley Barger, Jr., Respondent, and Paul D. Georgiadis, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar ("VSB") in 2007. At all relevant times, Respondent was a member of the VSB.
2. At all relevant times, Respondent was 50% owner of Restoration Builders, LLC (the "LLC"). Complainant Thomas Flanagan ("Flanagan") owned the other 50% of the LLC.
3. In December 2017, Respondent, with approval from Flanagan, prepared and filed Articles of Incorporation for the LLC with the State Corporation Commission.
4. In June 2018, the LLC obtained a Class A contractor's license. Both Barger and Flanagan signed the license ("the 2018 license").
5. Respondent and Flanagan's relationship devolved and the two began to fight over the LLC. Respondent alleges that the relationship devolved when Flanagan locked the Respondent away from the finances and assets of the LLC. According to Flanagan, on October 8, 2018, a discussion took place between him and Respondent in which Respondent threatened to "shut the company down."
6. Flanagan hired Charles Hundley, Esq. ("Hundley") to represent him and the LLC in a suit against Respondent. On October 16, 2018, Hundley filed a complaint in Henrico County Circuit Court<sup>1</sup>, alleging that Respondent had engaged in a plan or scheme to sabotage the business of the LLC and shut it down. Paul R. Mack, Esq. ("Mack") represented Respondent.

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<sup>1</sup> Restoration Builders, LLC and Thomas Flanagan v. Brian Wesley Barger, Jr. (Case No. CL18-5876).

7. On October 22, 2018, Respondent and Flanagan agreed to an Order entered by the Henrico County Circuit Court in which they both agreed to “diligently work in furtherance of [the LLC].” The Order itemized actions to be taken in furtherance of the LLC, such as the maintenance of files, financial records and personnel. The Order further directed Respondent and Flanagan to negotiate a separate agreement in good faith as soon as possible. Negotiations broke down quickly. Both Respondent and Flanagan contend that the other failed to abide by the Order.
8. On December 21, 2018, Judge Richard Wallerstein (“Judge Wallerstein”) granted Mack’s motion to withdraw and denied Respondent’s motion to substitute Jerrell Williams (“Williams”) as counsel for Respondent, thus leaving Respondent to represent himself *pro se*.
9. On January 24, 2019, Judge Wallerstein ordered that Williams could represent Respondent and an order was entered acknowledging Williams as counsel of record. In early 2019, Respondent was temporarily an attorney at Williams’ firm.
10. After previously advising Flanagan, via email to counsel Hundley, that if he were not granted equal access to the LLC, Barger would have no choice but to terminate the LLC’s Class A contractor’s license, Respondent terminated the Class A contractor’s license for the LLC on February 7, 2019. On the same day the license was terminated, Respondent advised Flanagan via email to his counsel Hundley of said license cancellation.
11. On February 8, 2019, Respondent announced to the LLC’s employees that he had terminated the LLC’s contractor’s license and that he would continue to perform the jobs that had been entered into by Flanagan in the name of BWB Construction, LLC (“BWB”). Respondent asked the LLC’s employees to continue to work on these projects. If this matter were to proceed to hearing, Respondent would testify that he believed that he had authorization from Hundley to reinstate the Class A contractor’s license. Hundley would testify that he did not give such authorization. Flanagan would testify that that neither he nor Hundley gave Respondent authorization to use Flanagan’s signature page from the 2018 license.
12. On February 11, 2019, Respondent re-filed the original application for a Class A contractor’s license for the LLC at the Department of Professional and Occupational Regulation (“DPOR”). Certain revisions were made. If this matter were to proceed to hearing, Respondent would testify that these were done at the direction of DPOR. DPOR accepted the application and granted the new license for the LLC. DPOR employees would testify that Barger did not inform them that he was in a civil dispute with Flanagan when he presented the new license with Flanagan’s 2018 signature. After the license for the LLC was issued, Williams advised Hundley via email that afternoon that the license for the business had been reinstated.
13. On February 12, 2019, Flanagan contacted DPOR and terminated the license that Barger had acquired for the LLC, stating that the application was submitted without his approval.

14. As part of the VSB investigation, VSB Investigator O. Michael Powell interviewed Eric L. Olson (“Olson”), the Executive Director of DPOR. Olson stated that the application filed by Respondent was no longer acceptable since Flanagan informed the DPOR that it was filed without his authorization.
15. According to Respondent, he felt that he and Flanagan were both in agreement that the license should be reinstated, and that his use of the original DPOR application for the LLC was authorized by Hundley as Flanagan’s and the LLC’s counsel, which both Flanagan and Hundley deny. In hindsight, Barger admits that had he called Hundley and informed him of DPOR’s requests, this situation may have been avoided.
16. On February 13, 2019, Respondent, represented by Williams and acting as his own co-counsel, filed an Emergency Motion for Sanctions and to Compel Compliance with the Court’s Temporary Order and for an Ex Parte Hearing (the “Emergency Motion”). Respondent was listed on the pleading as co-counsel and signed an affidavit in support of the Emergency Motion.
17. In the Emergency Motion, Respondent alleged that Flanagan violated the October 22, 2018 Order. Respondent told the court that, “Yesterday, February 12, 2019, Flanagan unilaterally shut the Company down.” In a footnote, he stated:

The original DPOR license for the Company was based upon Defendant’s contractor license. Defendant was the “designated employee.” But Defendant could not function as the designated employee due to Flanagan barring Defendant’s access to Company records, customer files, bank accounts and credit cards and preventing Defendant from supervising or working on customer jobs. Therefore, to avoid any liability related to the DPOR license, Defendant removed himself as the designated employee and thereby, terminate [sic] the Company’s DPOR license on February 7. But after gaining what Defendant thought was sufficient access to the Company, Defendant at Defendant’s own expense had the DPOR license reinstated on February 11.
18. The Emergency Motion further alleged that Flanagan had failed to pay a subcontractor, had removed tools and equipment from the LLC, had started a competing business, and had attempted to have vendors and subcontractors cease work for the LLC. Flanagan disputed these allegations, and Hundley filed a Response to the Emergency Motion, and Motion for Sanctions.
19. On February 21, 2019, a hearing was held on the Emergency Motion. By Order entered February 27, 2019, Judge Wallerstein denied the Emergency Motion and granted Plaintiffs’ Motion for Sanctions against Respondent. Judge Wallerstein found that Respondent had not been forthcoming with the court during his testimony and sanctioned Respondent \$2,250 in attorney’s fees. Respondent filed objections to this ruling. If this

matter were to proceed to hearing, Respondent would produce testimony that would show that the Respondent was the only one to provide the Court with sworn testimony.

20. In an April 19, 2019 hearing, Judge Wallerstein clarified his February 21, 2019 ruling, stating:

What I believe I found was that there was an application that Mr. Barger submitted in February of 2019 that had both his signature and Mr. Flanagan's signature dated January of 2018; that Mr. Barger had testified at the emergency hearing that was scheduled by the defendant, a part of which was for emergency relief or reinstatement of the Class A license; that, at the hearing, Mr. Barger had said that he changed some of the information on the original application, such as addresses, I believe, dates of license exams, so forth, inserted new pages or inserted additional information and reapplied and got the new license...The ink is different on page 2, so Mr. Barger slid in, added, took out the original second page and put in a new second page and used the signature of Mr. Flanagan and his signature of January 28, 2018, in February of 2019, and the parties were embroiled in litigation.

I further found – and the reason why we ended up with the sanctions the way the Court imposed them – was that the defendant filed for the emergency hearing, asking for the Court to compel Thomas Flanagan to cooperate with reinstating Restoration Builders' DPOR license that Mr. Flanagan unilaterally terminated.

I found in the hearing that it was Mr. Barger who terminated the license initially; that Mr. Barger then did what we just talked about, inserting a new second page, added new dates of exam dates, and then resubmitted it to DPOR and reinstated the license.

Then I believe that Mr. Flanagan and/or Restoration Builders found out about it, contacted DPOR, and said this was done without my permission. And then the license was terminated.

...I found that to be false, a false application. I then asked Mr. Hundley how much time he had in attorney's fees. Mr. Hundley indicated it was \$2,250...And yes because Mr.

Barger came to this Court on his emergency motion for the reinstatement of the very license that he terminated first and then improperly, in the Court's mind, reinstated, I found that to be sanctionable, and that's the reason why the Court sanctioned Mr. Barger \$2,250.

21. Respondent disagreed with Judge Wallerstein's ruling, and posted appeal bonds for the \$2,250 sanction of \$2,250 and \$500.00 with the intent to appeal. Respondent, in an effort to resolve this matter, has certified that he will not appeal Judge Wallerstein's ruling.
22. On May 24, 2019, Judge Wallerstein entered an order which, *inter alia*, amended the Court's February 27, 2019 order "to delay the payment due date for the \$2,250 sanctions imposed on the Defendant until a future date to be ordered by the Court..."
23. Accepting responsibility for said conduct, Respondent has foregone an appeal of the sanctions order.
24. Although Respondent has been licensed to practice law in the Commonwealth of Virginia since 2007, his sporadic practice history demonstrates inexperience in the practice of law. Respondent has no prior disciplinary record.

## II. NATURE OF MISCONDUCT

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

### RULE 3.1 Meritorious Claims And Contentions

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

## III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of 90 day suspension of Respondent's license to practice law in the Commonwealth of Virginia as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. Assistant Bar

Counsel and Respondent agree that the effective date for the sanction shall be the date of entry of the Disciplinary Board Order approving this Agreed Disposition. The terms with which Respondent must comply are as follows:

1. Respondent is placed on probation for a period of one (1) year commencing upon termination of the 90 day suspension of Respondent's license to practice law in the Commonwealth of Virginia agreed upon herein. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel, Supreme Court of Virginia, or similar tribunal in another jurisdiction shall conclusively be deemed to be a violation of this term.


Upon satisfactory proof that all terms and conditions have been met, this matter shall be closed.

If, however, any of the terms and conditions is not met by the deadlines imposed above, Respondent agrees that the Disciplinary Board shall impose a two year suspension pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O. In the event of the alternate term of a two year suspension being imposed, prior to having his license reinstated in Virginia, Respondent must comply with the requirements set forth in the Rules of Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-25.D.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules.



THE VIRGINIA STATE BAR

By:   
Laura Ann Booberg  
Assistant Bar Counsel

  
Brian Wesley Barger, Jr.  
Respondent

  
Paul D. Georgiadis, Esq.  
Respondent's Counsel