**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF**
**DANIEL FRANCIS IZZO**

**VSB DOCKET NO. 19-053-116012**

**AGREED DISPOSITION MEMORANDUM ORDER**
**ONE YEAR AND ONE DAY SUSPENSION WITH TERMS**

This matter was heard on Wednesday, April 08, 2020 by the Virginia State Bar Disciplinary Board (hereinafter "the 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 Six, §IV,¶13-6 (H) of the *Rules of the Supreme Court of Virginia.* The panel consisted of Sandra Havrilak, Chair, Thomas Scott Jr., Kamala Lannetti, Steven Novey and Nancy Bloom, lay member. The Virginia State Bar was represented by Elizabeth Shoenfeld, Senior Assistant Bar Counsel. Respondent Daniel Francis Izzo (hereinafter "Respondent") was present and was not represented by counsel. 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 Beverly Lukowsky, 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.

It appearing to the Board that the Agreed Disposition should be accepted after considering the Subcommittee Determination (Certification), Respondent's Answer, the Agreed Disposition, Respondent's Disciplinary Record, the arguments of counsel and Respondent, and after due deliberation.

Upon consideration whereof, it is therefore Ordered that the Disciplinary Board accepts the Agreed Disposition and the Respondent shall receive One Year and One Day Suspension With

Terms, as set forth in the Agreed Disposition, which is attached hereto and incorporated in this Memorandum Order.

It is further Ordered that the sanction is effective April 8, 2020.

It is further Ordered that the Respondent must comply with the requirements of Part Six, §IV, ¶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 or her license to practice law in the Commonwealth of Virginia, to all clients for whom he or she 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 or her care in conformity with the wishes of his or her 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 Revocation or Suspension, he or she 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 ¶ 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 Daniel Francis Izzo, 6800 Signature Circle, Alexandria, VA 22310, and a copy hand-delivered to

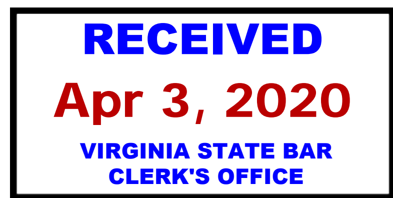
Elizabeth Shoenfeld, Senior Assistant Bar Counsel, Virginia State Bar, Suite 700, 1111 E. Main Street, Richmond, VA 23219.

Enter this Order this 8th day of April, 2020.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Sandra L. Havrilak Digitally signed by Sandra L. Havrilak DN: cn=Sandra L. Havrilak, o, ou, email=slhavrilak@havrilaklaw.com, c=US Date: 2020.04.08 16:17:06 -04'00'

Sandra L. Havrilak, Chair




VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DANIEL FRANCIS IZZO VSB Docket No. 19-053-116012

AGREED DISPOSITION
(ONE YEAR AND ONE DAY SUSPENSION WITH TERMS)

Pursuant to the Rules of Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel and Daniel Francis Izzo, Respondent, *pro se*, hereby enter into the following Agreed Disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent was a member in good standing of the Virginia State Bar.

2. On March 13, 2017, Respondent began working as an associate for the law firm of Dycio & Biggs. Respondent had been practicing law in Virginia for almost seven years at that time.

3. In January 2018, Kevin and Lauren Kiley (the "Kileys") hired Dycio & Biggs to file suit against Ronald Devine. The Kileys alleged that they had paid $500,000 to Mr. Devine to invest in real estate, but instead Mr. Devine had loaned the funds to his NASCAR-related company. Respondent was assigned to handle the case.

4. On or about April 4, 2018, Respondent filed a lawsuit on behalf of the Kileys against Mr. Devine in the Fairfax County Circuit Court. The lawsuit asserted fraud in the inducement and breach of oral contract, and also demanded an accounting. Mr. Devine was served with the lawsuit.

5. The Fairfax County Circuit Court scheduled the trial of the Kileys' lawsuit for February 4, 2019.

6. Although the Kileys were the plaintiffs in this civil action and bore the burden of proof, Respondent failed to request any discovery from Mr. Devine.

7. On January 25, 2019, which was 10 days before the scheduled trial, Respondent filed a motion to nonsuit the Kileys' case. Respondent did not tell the Kileys that he had filed

the motion. Respondent later admitted to the bar that he nonsuited the case because he was not prepared for trial.

8. The Fairfax County Circuit Court entered the nonsuit order on January 30, 2019. Respondent did not advise the the Kileys that their case had been nonsuited.

9. After the nonsuit order was entered, Respondent told the Kileys a series of lies about the status of their case, giving them the impression that their case was ongoing when in fact it was not.

10. On February 22, 2019, Mr. Kiley emailed Respondent:

> I last Emailed you this past Monday and before that a couple of weeks ago and received no reply. Last December you informed me that we had a trial date in February 2019 and to date no trial. I can't even get an email reply from you. What's going on? You know that we have paid you and we are paying a loan every month on a debt we should not owe. This is doing substantial damage to my family's well being and every day that goes by it gets worse. You have indicated a number of times that you would make an effort to get them to answer our requests. Have you made the effort? Have they answered? If not why, why haven't you updated me, and why are we not getting a summary judgement [sic]?

11. Respondent replied later that day. Respondent told Mr. Kiley that he had "moved for sanctions and summary judgment and am waiting for a ruling based on that." He claimed that these motions "had the effect of postponing the trial." Respondent went on to discuss how these developments affected the Kileys' case strategy.

12. Mr. Kiley replied to Respondent that day. He expressed frustration that Respondent was not keeping him updated, stating that "every delay has the affect [sic] of costing more and undermining our peace of mind. I shouldn't have to ask for information. Email is easy." Mr. Kiley asked for a specific timeframe for a resolution.

13. Respondent replied that "[w]e should have a ruling sometime next week and then trial would be set after that (if necessary). We would get a quick trial date as most of the 'process' is already completed."

14. On March 8, 2019, Mr. Kiley emailed Respondent to ask if there were any upcoming court dates or decisions he should know about. Respondent replied that he would set the matter for term day if a trial date was needed.

15. On March 26, 2019, Mr. Kiley emailed Respondent and asked what the judge had decided on the pending motions.

16. That same date, Respondent replied that the court "found that our accusations were sufficiently plead [sic] but declined to rule on the 'merits' of the case." Respondent said that the court had granted Respondent leave to seek additional discovery. Respondent concluded by stating that he had appeared in court on March 25 and requested a trial date of May 20-21.

17. On April 8, 2019, Mr. Kiley emailed Respondent to ask whether the court had given them the requested trial date. Respondent replied that he had not received an order from the court setting the date, but "the May dates were available and I requested them so unless something of an emergency nature comes in those should be the dates."

18. On May 2, 2019, Mr. Kiley emailed Respondent, stating that he "need[s] a fixed date for the trial." He asked Respondent to provide the trial date and any new information.

19. On May 3, 2019, Respondent told Mr. Kiley, "I haven't gotten a firm date from the court yet but I can go in for what's called calendar control next week and get a date set." Respondent asked Mr. Kiley to provide any dates that did not work for him. Respondent also told Mr. Kiley that he "may make an additional motion to resolve it (the case) without trial beforehand."

20. On May 9, 2019, Respondent told Mr. Kiley that the court had set the trial for June 17-18, 2019.

21. In or about April 2019, while Respondent was engaging in ongoing deception regarding the status of the Kileys' case, Mark Dycio, a partner in the firm, asked Respondent about a matter that Respondent was handling for Mr. Dycio's friend. Respondent told Mr. Dycio that he had filed a lawsuit, when in fact he had not. When Mr. Dycio learned that no lawsuit was filed, Respondent's employment with Dycio & Biggs was terminated. However, Respondent was given an additional 30 days to conclude his work with Dycio & Biggs. During his final 30 days with the law firm, Respondent continued to lie to the Kileys, as set forth above.

22. After Respondent was terminated, the firm reviewed Respondent's cases and discovered the misrepresentations he had made to the Kileys. The firm also discovered that Respondent had mishandled two additional matters.

23. First, Respondent had represented the plaintiffs in the matter of *Daebak Sisters, Inc., et al. v. United Merchant Services, Inc.*, pending in the Fairfax County General District Court. Respondent nonsuited the case without obtaining the clients' permission or advising that he had done so. Respondent later admitted to the bar that he nonsuited the case because he was unprepared for trial.

24. Second, in the matter of *Azim et al. v. Csoka et al.*, pending in Prince William County General District Court, Respondent represented John Csoka and his company, who lost the case at trial. Mr. Csoka expressed a desire to appeal, but Respondent never advised

him of the deadline to post an appeal bond. Respondent later claimed that the appeal was dismissed because Mr. Csoka did not respond to his communications regarding the appeal bond.

25. After his departure from Dycio & Biggs, Respondent paid the firm $65,000, which he understood the firm would use to rectify the consequences of his misconduct.

26. Respondent cooperated with the bar's investigation of this matter and he has taken responsibility for the misconduct alleged in the Subcommittee's Certification in this matter.

27. Respondent has represented that at the time the misconduct occurred, he was suffering from several health conditions, some of which were undiagnosed and untreated. After Respondent departed the Dycio & Biggs law firm, Respondent represented that he began intensive treatment for these conditions and his mental status has improved.

28. Respondent's treatment providers have represented to the bar that he has been compliant with his treatment and that, with continued treatment, they do not anticipate a recurrence of Respondent's misconduct.

## II. NATURE OF MISCONDUCT

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

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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. PROPOSED DISPOSITION

Accordingly, Senior Assistant Bar Counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of an One Year and One Day Suspension With Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. The Terms are as follows:

1. No later than seven days after the date this Agreed Disposition is approved, Respondent shall contact the Judges and Lawyers Assistance Program ("JLAP") to schedule an evaluation to be conducted by JLAP. Thereafter, Respondent shall fully participate in the evaluation conducted by JLAP and shall implement all of JLAP's recommendations.

2. Respondent shall enter into a written contract with JLAP for a minimum period of three (3) years and shall comply with the terms of such contract, including, inter alia, personally meeting with JLAP and its professionals, as directed.

3. Respondent authorizes JLAP to provide periodic reports to the Office of Bar Counsel stating whether Respondent is in compliance with JLAP's contract with Respondent. The Office of Bar Counsel shall be bound by JLAP's contract with Respondent with respect to confidentiality and disclosure of information.

4. If Respondent fails to comply with the terms and conditions herein ordered, the alternative sanction of an additional two-year suspension of his license to practice

law would then be imposed. Any additional suspension will not run concurrently with this suspension.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel

Daniel Francis Izzo, Respondent