

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

VIRGINIA STATE BAR EX REL  
THIRD DISTRICT, SECTION II COMMITTEE  
VSB Docket No. 20-032-116198

v.

Case No. CL20-1275

JOHN B. RUSSELL, JR.

**MEMORANDUM ORDER**

THIS MATTER came to be heard on September 14, 2020 and October 23, 2020, by a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Honorable Bryant L. Sugg, Judge of the Seventh Judicial Circuit (“Chief Judge”), the Honorable Bonnie L. Jones, Judge of the Eighth Judicial Circuit and The Honorable William R. Savage, III, Retired Judge of the Fifth Judicial Circuit (collectively “the Court”).

Assistant Bar Counsel Laura Ann Booberg represented the Virginia State Bar (“VSB”). John B. Russell, Jr., (“Respondent”) having received proper notice of the proceeding, appeared *pro se*.

The Chief Judge swore the court reporter and polled the members of the Court 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 Chief Judge, verified they had no such interests.

WHEREUPON, on September 17, 2020, a hearing was conducted upon the Rule to Show Cause issued against Respondent. The Rule directed Respondent to appear and to show cause

why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked or why he should not otherwise be sanctioned by reason of the allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Third District Committee, Section II of the VSB on February 18, 2020.

At a Pre-Hearing Conference Call on September 15, 2020, the Court received VSB Exhibits 1-15 without objection. Respondent indicated that he reserved the right to rely on the VSB's exhibits but did not file additional exhibits.

At the September 17, 2020 hearing, the parties presented opening statements. The Court then received the testimony of the following witnesses for the VSB: Eileen Slade, Respondent, Jonathan R. Hawkins, Sharon M. L. Hawkins, David M. Branch, Esq., and O. Michael Powell, after which the VSB rested.

At the conclusion of the VSB's case-in-chief, Respondent made a motion to strike, which, upon consideration of the evidence and argument of counsel, the Court denied in part and granted in part. The court denied the motion to strike the evidence as to Virginia Rules of Professional Conduct 1.1, 1.3(a), and 1.4(a). The court granted the motion to strike the evidence regarding Virginia Rule of Professional Conduct 8.4(b).

The Court then received the testimony of the following witness for Respondent: Respondent and John C. Warley, Esq., after which Respondent rested.

The Court then heard closing arguments and retired to deliberate.

Upon due deliberation and consideration of the exhibits, witness testimony, and argument of counsel, the Court found that the VSB proved by clear and convincing evidence the following material facts and violations of the Rules of Professional Conduct:

#### Findings of Fact

1. At all times relevant hereto, Respondent has been licensed to practice law in Virginia.
2. The Jonathan Hawkins Trust (“the Trust”) was formed as a part of Sharon Hawkins’ (“Sharon”) divorce from her husband, Johnny V. Hawkins (“Johnny”). Sharon and Johnny are the parents of Jonathan R. Hawkins (“Jonathan”), the Complainant in this matter.
3. During the divorce, Sharon was represented by John Warley (“Warley”). At that time, Sharon and Johnny jointly owned the marital home (“the Property”). The property is designated as Lot 10, Section 1, Rolling Hills Subdivision in Stafford County, Virginia.
4. On December 8, 2007, a Trust Agreement was executed by Respondent and Mary Hawkins, Johnny’s attorney-in-fact. The Trust Agreement established Respondent as Trustee of the Trust. In endorsing the Trust, Respondent stated the he was “willing to carry out the duties enumerated in [the] Agreement.” The Trust gave Respondent, acting in a fiduciary capacity, the power to sell or encumber the property. The Trust also provided that, “when the beneficiary attains the age of 25 years, the Trust named for such beneficiary shall terminate and all principal and undistributed income remaining in trust shall be distributed to the beneficiary.”
5. On January 25, 2008, a Deed of Bargain and Sale dated December 8, 2007 was recorded in the Stafford County Circuit Court. The deed provided that Johnny’s one-half interest in the Property was conveyed to Respondent as Trustee of the Trust. Sharon retained ownership in the other half of the property.
6. In February 2008, Sharon, Jonathan, and Warley met with Respondent at Respondent’s office in Richmond. At the meeting, Sharon was given a copy of the Trust dated December 8, 2007. Sharon had not seen the Trust prior to this meeting.
7. After the meeting, Sharon and Respondent exchanged detailed email communications concerning the Trust, and Respondent provided advice concerning its terms and funding. In a March 11, 2008 email, Respondent stated, “I have very specific legal and ethical responsibilities to make sure that after all expenses and costs are paid, Jonathan’s trust has in it as much money as possible.”
8. On October 27, 2018, Jonathan reached age 25. In September 2018, he sent Respondent two certified letters advising him of his current address so that Respondent could contact him to terminate the Trust.
9. Jonathan provided a recording of a voicemail message from Respondent’s assistant, Eileen Slade (“Slade”). In the message, Slade stated that the date was January 13, but did not specify the year. In the message, Slade acknowledged receiving a voicemail from Jonathan. She then relayed a message from Respondent stating that he was still the trustee, “because the trust still exists as a legal entity, but the trust was never funded and still carries significant liabilities.”

10. On June 12, 2019, after hearing nothing more from Respondent, Jonathan again wrote to Respondent, advising him that if he did not hear from Respondent regarding the Trust, he would file a bar complaint. On July 15, 2019, Jonathan filed the instant complaint.
11. Respondent told VSB Investigator O. Michael Powell (“Investigator Powell”) that Warley set up the trust and needed someone in Richmond to be the trustee. According to Respondent, he agreed to serve as trustee, but “it never came to pass and no work was ever done by me, nor were any fees paid.”
12. Respondent never talked to Jonathan or responded to his certified letters. He did not have a file containing the trust and might have purged it. After March 2018, Respondent did not monitor the trust or perform any work.
13. On September 30, 2019, Respondent sent Investigator Powell an email stating, “I have done a quitclaim deed on behalf of the trust and will send it to Hawkins.” Investigator Powell asked him to send him a copy and asked when it would be recorded. Investigator Powell did not hear back from Respondent.
14. On November 20, 2019, while Jonathan visited his office, Respondent prepared a Quit Claim Deed for the property and provided it to Jonathan.

#### Rule Violations

Based on the foregoing facts, the Court found that the VSB proved by clear and convincing evidence that Respondent violated the following Virginia Rules of Professional

Conduct:

#### RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

#### RULE 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.

### Sanctions Phase

Having found that Respondent violated the Virginia Rules of Professional Conduct identified above, the Court proceeded to the sanctions phase of the proceedings. At that point, Respondent moved to continue the remainder of the September 17, 2020 hearing to a later date and suggested that further proceedings could be conducted via teleconference. After deliberating, the Court ruled that, following the VSB's sanction presentation, the remainder of the hearing would be continued to a later date.

The VSB then introduced a Certification of Respondent's Disciplinary Record in Virginia, which was admitted without objection. The disciplinary record included a two-year suspension of the practice of law in Virginia, effective November 1, 2019, and a three-year suspension from the practice of law in Virginia effective August 28, 2020. The VSB called Investigator Powell to testify during the sanctions phase, and then rested.

The court set an administrative control date, no appearance required, of Thursday, September 24, 2020, for the judges of the panel to coordinate their available dates and for both bar counsel and Respondent to collect their available dates. The court then adjourned.

After the parties coordinated with the court on September 24, 2020, the remainder of the sanctions phase was scheduled to be conducted via telephone conference on October 23, 2020.

On October 23, 2020, the court resumed the sanctions phase via teleconference. Respondent introduced a letter dated October 22, 2020, from James E. Leffler, M.S., L.P.C. and testified on his own behalf. On rebuttal, the VSB called Respondent and recalled Investigator Powell to testify.

Counsel for the VSB and Respondent then presented argument regarding the sanction to be imposed on Respondent for the misconduct found, and the Court recessed to deliberate.

### Determination

After due deliberation and consideration of the evidence, including Respondent's disciplinary record, and the aggravating and mitigating factors and arguments of counsel, the Court reconvened to announce its unanimous decision that Respondent's license to practice law in Virginia should be revoked, effective immediately.

Accordingly, it is hereby ORDERED that Respondent's license to practice law in Virginia is revoked, effective October 23, 2020.

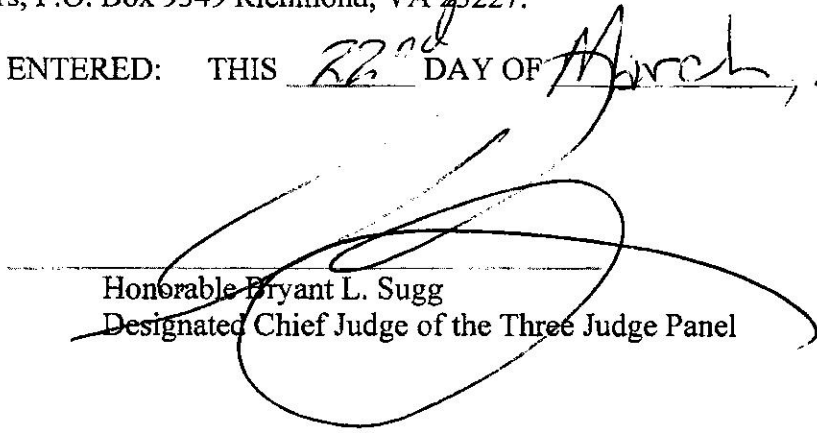
It is further ORDERED that Respondent shall comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall give written notice of the Revocation of Respondent's license to practice law in the Commonwealth of Virginia, to all clients 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 then in Respondent's care in conformity with the wishes of Respondent's clients. Respondent shall give such notice within 14 days of the effective date of the Revocation, and make such arrangements as are required herein within 45 days of the effective date of the Revocation. Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation 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 Revocation, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the VSB within 60 days of the effective date of the revocation. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the VSB Disciplinary Board.

It is further ORDERED that the Clerk shall send a copy teste of this Memorandum Order

to John B. Russell Jr., at 9017 Forest Hill Ave, Suite A, Bon Air, VA 23235, Respondent's last address of record with the Virginia State Bar and 3861 Reeds Landing Circle, Midlothian, VA 23113, an address known to be Respondent's home address; Laura Ann Booberg, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026; and to DaVida M. Davis, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

These proceedings were recorded by Jennifer Hairfied, Stenographer, Chandler and Halasz Stenographic Reporters, P.O. Box 9349 Richmond, VA 23227.

ENTERED: THIS 22<sup>nd</sup> DAY OF March, 2021



Honorable Bryant L. Sugg  
Designated Chief Judge of the Three Judge Panel

SEEN

VIRGINIA STATE BAR

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SEEN AND \_\_\_\_\_

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