

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
ROBERT BAILEY SMITH, IV**

VSB DOCKET NO. 20-033-117568

CONSENT TO REVOCATION ORDER

On December 17, 2021, came Robert Bailey Smith, IV and presented to the Board an Affidavit Declaring Consent to Revocation (hereinafter "Affidavit") of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when a disciplinary complaint, Investigation or Proceeding is pending, the nature of which is specifically set forth in the attached Affidavit, Respondent acknowledges that the material facts contained in the pending disciplinary complaint, Investigation or Proceeding are true.

The Board having considered the Affidavit, and Bar Counsel having no objection, the Board accepts his Consent to Revocation.

Upon consideration whereof, it is therefore ordered that Robert Bailey Smith, IV's license to practice law in the courts of this Commonwealth be and the same hereby is revoked, and that the name of Robert Bailey Smith, IV be stricken from the Roll of Attorneys of this Commonwealth.

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 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 immediately and in no event later than 14 days of the effective date of the Revocation, and make such arrangements as are required herein as soon as is practicable and in no event later than

45 days of the effective date of the Revocation. The Respondent shall also furnish proof to the Clerk of the Disciplinary System of the Virginia State Bar within 60 days of the effective date of the Revocation that such notices have been timely given and such arrangements have been 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, he shall submit an affidavit to that effect within 60 days of the effective date of the Revocation to the Clerk of the Disciplinary System at the Virginia State Bar. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein. The burden of proof shall be on the Respondent to show compliance.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order by electronic, regular and certified mail, return receipt requested, to the Respondent, Robert Bailey Smith, IV at his address of record with the Virginia State Bar, being, 492 Hope Springs Lane, Manakin Sabot, VA 23103, and a copy sent by electronic mail to Paul D. Georgiadis, Counsel for Respondent, and to Renu M. Brennan, Bar Counsel.

Entered this 17th day of December, 2021

Virginia State Bar Disciplinary Board

By **Carolyn V. Grady**
Carolyn V. Grady
Chair

Digitally signed by Carolyn V. Grady
Date: 2021.12.17 10:35:39 -05'00'



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ROBERT BAILEY SMITH, IV

VS B Docket No. 20-033-117568

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Robert Bailey Smith, IV, after being duly sworn, states as follows:

1. That I, Robert Bailey Smith, IV, was licensed to practice law in the Commonwealth of Virginia on 04/26/1996;
2. That I, Robert Bailey Smith, IV, have taken Associate Status since 1998, have not practiced law since that time, and since that time I have not held myself out as a lawyer.
3. That I, Robert Bailey Smith, IV, submit this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13-28, effective December 17, 2021;
4. That my consent to revocation is freely and voluntarily rendered, that I am not being subjected to coercion or duress, and that I am fully aware of the implications of consenting to the revocation of my license to practice law in the Commonwealth of Virginia;
5. I am aware that there is currently pending a complaint and investigation into allegations of misconduct, the docket number for which is set forth above, and the specific nature of which is here set forth:

By Chapter 11 Plan confirmed November 2009 the LandAmerica Financial Group Liquidation Trust ("Trust") was created. The Plan established an Oversight Committee which consisted of LFG's two largest unsecured creditors.

In November 2009, the United States Bankruptcy Court for the Eastern District of Virginia (“Bankruptcy Court”) appointed Bruce H. Matson to serve as Trustee for the Trust. Matson retained, as the Trust’s financial advisor, the global business consulting firm (“Financial Advisor”) for which I was a Managing Director in the Richmond office. Another Managing Director and I were responsible for the Trust engagement.

The Chapter 11 Plan called for a six-year wind down period to follow the final distribution of creditors. In September 2015, Matson, the Financial Advisor, and I began to prepare for the final distribution and to determine how much money to reserve for the subsequent wind-down period.

On November 30, 2015, Matson mailed a letter and final report to the Oversight Committee proposing a 1.3% final distribution of total unsecured claims to creditors and a \$3.1M wind down budget.

The wind down budget quoted two principal costs for the wind down period: data retention and storage and professional fees. Per the wind down budget, Matson would be paid \$540,000 in fixed fees over the wind down period and his ongoing services included “Distribution of Remaining Funds, if any, to charity.”

After sending this letter, final report, and budget, to the Oversight Committee, at about 10:00 p.m. on November 30, 2015, Matson, as the Trustee, instructed me to draft additional language in the budget for which he claimed to have received Oversight Committee approval. This new language was inconsistent with draft pleadings and a draft decree.

The language drafted was to be inserted in the wind down budget’s “Statement of Significant Assumptions” and was as follows:

The LFG Trustee believes this Wind Down budget is reasonable and appropriate given the ongoing requirements to retain records, file tax returns, and respond to inquiries, among others, for six years after closure of the Trust. See below under “Data Retention Costs” and “Professional Fees” for a detailed list of ongoing services. Despite review and analysis by the financial advisor, costs could be more or could be less. If there are costs incurred (e.g., document retention or professional fees) in excess of amounts budgeted, the Liquidation Trustee and/or his professional will waive any unpaid fees to fund those Expenses. If there are residual funds remaining after six years, after the Payment of \$100,000 to a 501(c)(3) charitable organization(s), the Oversight Committee has approved the payment by the Liquidation Trustee of additional compensation to the Dissolution Trustee and Professionals in his discretion.

Because the new paragraph contradicted draft court filings, at 9:28 a.m. on December 1, 2015, I questioned Matson as to whether his attorneys would include similar language in the pleadings. I sent an email to Matson pointing out the discrepancy and asked, “you ok with that language?” Matson declined to change the pleadings.

By final decree entered in December 2015 (“Final Decree”), the Bankruptcy Court closed the LandAmerica cases, discharged Matson as Trustee, and approved the wind-down budget. Matson was appointed the wind-down trustee and continued to serve as a fiduciary of the trust funds. The wind-down process was scheduled to last from 2016 to 2021. The Final Decree also specifically prohibited Matson from disbursing trust funds to me or others until 2021.

Notwithstanding the Final Decree’s express prohibition on disbursement of funds until 2021, on January 9, 2019, after I had left the Financial Advisor, I received a wire transmission of \$1.5 million from the Trust. The money was wired from the Trust account to an account controlled by me. I transferred the money to personal accounts for the purpose of providing bonuses to financial professionals, including the Financial Advisor and myself.

In August 2019, an employee of the Financial Advisor discovered that there was no more money in the Trust account even though two years were left in the wind down period. The Financial Advisor advised Matson that it would notify the Bankruptcy Court.

On August 26, 2019, I filed a letter with the Bankruptcy Court that contained several inaccuracies, including a misrepresentation that indicated that the proceeds were held in a legal escrow when they were not.

I returned, with interest, the \$1.5 million that I had received and which I had transferred to my personal accounts.

6. I acknowledge that the material facts upon which the allegations of misconduct are predicated are true; and

7. I submit this Affidavit and consent to the revocation of my license to practice law in the Commonwealth of Virginia because I know that if the disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, I could not successfully defend them.

Executed and dated on December 13, 2021.

Robert Bailey Smith, IV
Robert Bailey Smith, IV
Respondent

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Richmond, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Robert Bailey Smith, IV on 12/13/21.

Lisa D. Lane
Notary Public

My Commission expires: 11/30/24.

Lisa D. Lane
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 301652
My Commission Expires 11/30/2024