

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No.1741 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 60 DB 2011
v.	:	
	:	Attorney Registration No. 55623
THOMAS H. BAKER,	:	
Respondent	:	(Bucks County)

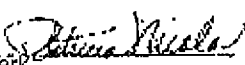
ORDER

PER CURIAM:

AND NOW, this 25th day of August, 2011, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated May 19, 2011, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Thomas H. Baker is suspended on consent from the Bar of this Commonwealth for a period of four years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola
As of 8/25/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 60 DB 2011
Petitioner	:	
	:	
v.	:	Attorney Registration No. 55623
	:	
THOMAS H. BAKER	:	
Respondent	:	(Bucks County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members David A. Nasatir, R. Burke McLemore, Jr., and Stephan K. Todd, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on April 18, 2011.

The Panel approves the Joint Petition consenting to a four year suspension and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.



David A. Nasatir, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: May 19, 2011

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 60 DB 2011
Petitioner	:	
	:	
v.	:	
	:	Attorney Reg. No. 55623
THOMAS H. BAKER,	:	
Respondent	:	(Bucks County)

**JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215 (d)**

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Ramona Mariani, Disciplinary Counsel, and Respondent, Thomas Baker, Esquire (hereinafter, "Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Disciplinary Board Office of Chief Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

FILED

APR 18 2011

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

2. Respondent, Thomas Baker, was born on September 26, 1955, and was admitted to practice law in the Commonwealth on November 6, 1989. Respondent is on active status and maintains his office at P. O. Box 716, Langhorne, PA. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit A.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

4. In the fall of 2009 ODC received four complaints filed against Respondent from three financial institutions and one individual: Commonwealth Land Title Ins. Co., Fidelity National Title Ins. Co., Everbank, and Dolly Jones.

5. All complaints arise from Respondent's misconduct over a protracted period of time in connection with his operation of several businesses through which Respondent acted as a title agent and conducted real estate closings, primarily on residential real estate.

6. Thomas H Baker, P.C. t/a Lawyers Land Services ("Lawyers Land"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and maintained an address at 1210 Northbrook Corporate Center, Suite 275, Trevoise, PA 19053.

7. Respondent was the president and sole shareholder of Lawyers Land and the person responsible for its operation.

8. At least 80% of the business of Lawyers Land involved loan closings on behalf of lenders and the issuance of title insurance as an authorized agent for a title company.

9. In connection with its business, Lawyers Land conducted real estate closings; including receipt of all of the monies in connection with the closing, the disbursement of those funds, recording documents, and issuing a title insurance policy.

10. Funds received in connection with real estate closings were deposited to Respondent's escrow account at Wachovia bank.

11. As a settlement trust account, the Wachovia account was supposed to be a "zero balance account," meaning that funds received for a specific transaction should never be disbursed to cover another transaction.

12. Pursuant to 40 P.S. §910-26.1 an agent for a title insurance company is required to:

- a. Render accounts to the title insurer detailing all transactions and remitting all funds and policies due under the contract to the title insurer on a specified basis. 40 P.S. §910-26.1(4); and
- b. Collect and hold in a fiduciary capacity for the account of a title insurer all funds due the title insurer in a bank or other financial institution insured by an agency of the Federal Government. Each such account shall be used for all payments on behalf of the title insurer with whom a title agency contract exists. 40 P.S. §910-26.1(5).

13. For a number of years Lawyers Land acted as title agent for Old Republic National Title Insurance Company ("Old Republic").

14. On July 19, 2006, Respondent signed a "Mutual Termination Agreement" with Old Republic.

15. Respondent's relationship with Old Republic terminated because of an enormous shortfall in his escrow account which he had been unable to remedy.

16. On August 25, 2000, Respondent signed a confession of judgment note with Old Republic in which he acknowledged that he owed Old Republic \$770,000.00 as a result of the shortfall in his escrow account.

17. Because a settlement trust account such as Respondent's Wachovia Account is a zero balance account, no legitimate justification exists for the account to have *any* shortfall.

18. The effect of the ongoing shortfall was that Respondent continually used monies coming in from new settlements to pay the commitments due to previous settlements.

19. Nonetheless, for the next six years Old Republic retained Respondent as an Agent, which we believe was done in order to provide him with the opportunity to make good on the shortfall.

20. After the termination of the relationship with Old Republic, Respondent and Lawyers Land, through employees under Respondent's supervision, continued to conduct title insurance business using forms and documents of an underwriter with whom Respondent had no agency relationship.

21. Specifically, between July 19, 2006, the time Respondent signed the termination agreement with Old Republic, and March 30, 2007, the time Respondent entered into a Title Insurance Agency Agreement with Commonwealth Land Title Insurance Company ("Commonwealth"), neither Respondent, Lawyer's Land Services or Thomas Baker, PC were authorized to issue title insurance in connection with real estate closings.

22. Nonetheless, Respondent, both individually and through Lawyer's Land and Thomas Baker, PC, continued to act as a settlement agent at closings and issued title insurance commitments

from Fidelity National Title Insurance Company (“Fidelity”) without authorization to do so from Fidelity.

23. The commitments Respondent prepared and provided at real estate closings are not considered binding commitments by Fidelity for which Fidelity would be obligated to issue title insurance at the time the documents were properly recorded.

24. In some instances where a transaction preceded the date of Respondent’s agency relationship with Commonwealth, Respondent recorded the mortgage after the date his agency began and attempted to issue title policies through Commonwealth in connection with the transaction.

25. Respondent should have known that Commonwealth would not honor policies issued after he had become an authorized agent for transactions that actually took place prior to his becoming an authorized agent.

26. The ODC has evidence to establish that Respondent failed to remit any premium to Commonwealth and some premiums to Fidelity for payment of title insurance, although Respondent collected funds at each settlement for the purpose of paying for title insurance.

27. ODC is aware of at least 15 separate instances involving the improper issuance of title insurance.

28. Respondent obtained access to the Fidelity documents through his relationship with Professional Abstract, which was an authorized agent of Fidelity.

29. Respondent states that Fidelity knew that Professional Abstract had employed Respondent as a title agent and was operating under his title license.

30. Nonetheless, Respondent acknowledges that Lawyers Land Services was not an authorized agent of Fidelity and that he was approved only as a licensed agent for Professional Abstract; and that in those instances where title insurance was issued by Respondent and/or his employees by Lawyers Land rather than by Professional Abstract, the title insurance was improperly issued and he knew or should have known that Fidelity would not honor the policies.

31. On or about March 26, 2007, Respondent submitted an application to Commonwealth on behalf of Lawyers Land seeking appointment as a policy issuing agent for Commonwealth.

32. In the application, Respondent falsely stated that Lawyers Land was currently an agent for Old Republic.

33. In the application Respondent falsely represented that he was performing 3-way monthly reconciliations of his escrow account.

34. In the application Respondent falsely represented that he personally was involved in reviewing balances and bank statements.

35. In fact, unbeknownst to Commonwealth, Respondent's relationship with Old Republic had terminated over nine months ago.

36. Respondent failed to disclose the existence of the shortfall in his escrow account to Commonwealth at the time he entered into the agency relationship.

37. In addition, he failed to disclose to Commonwealth the fact that Lawyers Land (a/k/a Thomas Baker P.C.) had continued to conduct title insurance business even when it had no authority to do so, as described in the preceding paragraphs.

38. Respondent failed to disclose to Commonwealth the fact that he and Lawyers Land had, in some instances, purportedly issued title policies on behalf of Commonwealth in connection with transactions that closed before he became an authorized Commonwealth agent.

39. For example, Lawyers Land acted as settlement agent in connection with a real estate closing on August 31, 2006, on a property located at 1635 E. Worrell Street, Philadelphia, PA.

40. Initially, in Schedule A of the settlement documents, Respondent identified the title company as Fidelity.

41. Respondent failed to remit any title insurance premium payment to Fidelity.

42. Respondent failed to promptly record the mortgage.

43. Instead, Respondent recorded the mortgage on May 9, 2007, and, at that time, in a newly prepared Schedule A, purported to issue title insurance from Commonwealth.

44. Respondent was not authorized to issue a Commonwealth policy in connection with that transaction.

45. On or about March 30, 2007, Respondent, Lawyers Land and Commonwealth entered into a Title Insurance Agency Agreement (the "Agency Agreement") whereby Lawyers Land was designated and appointed as a non-exclusive policy issuing agent for Commonwealth in Pennsylvania.

46. Respondent executed the Agency Agreement in his capacity as officer and owner of Lawyers Land.

47. On January 8, 2008, Lawyers Land filed a voluntary Chapter 7 petition in bankruptcy in the United States Bankruptcy Court for the Eastern District of Pennsylvania, docketed at No. 08-10214.

48. In the petition, Lawyers Land alleged that it had assets of less than \$50,000.00 and liabilities ranging between \$1 million to \$10 million.

49. On January 11, 2008, Lawyers Land withdrew the petition.

50. As a result of the bankruptcy filing, on January 9, 2008, Commonwealth forwarded to Lawyers Land a notice of immediate termination of the Agency Agreement.

51. Based on that termination, Lawyers Land had no authority to conduct any further business on behalf of Commonwealth.

52. On or about January 9, 2008, Commonwealth was contacted by a third party indicating that a check in the sum of \$87,058.43 provided by Lawyers Land to the seller in a transaction involving the property located at 144 East Coulter Street, Philadelphia, PA was returned for insufficient funds.

53. The return of that check resulted in a claim being submitted to Commonwealth by the buyer of the property.

54. The realtor's commission check in the sum of \$5,400.07 was also returned for insufficient funds.

55. As part of its investigation resulting from the termination of the Agency Agreement, Commonwealth learned of additional transactions in which Lawyers Land issued checks to third

parties for which there were not sufficient monies in the bank account on which the checks were written.

56. In fact, Linda Becker, a settlement officer of Lawyers Land provided a list to Commonwealth advising it of four transactions in which claims had been made against Lawyers Land as a result of checks being returned for insufficient funds.

57. By January of 2008, Commonwealth concluded, based on its investigation, that Respondent had a deficiency of at least \$439,079.64 in his settlement trust account.

58. On or around February 28, 2007, Respondent acted as the settlement agent in connection with Ms. Dolly Jones's refinancing of her property.

59. The ODC can establish that Respondent failed to disclose to Ms. Jones or the lender, Indy Mac Bank, FSB, that he was not, at the time, authorized to issue any title insurance in connection with the transaction.

60. As part of the transaction, Respondent was responsible for disbursing funds, including a bill due to the Water Revenue Bureau which had been negotiated to \$2,730.47.

61. Despite the fact that Respondent received sufficient funds to pay this bill, the check was not negotiated, and Respondent did not promptly reissue a check to pay this bill when the matter was brought to his attention.

62. Respondent later paid the bill after Ms. Jones filed a complaint with Office of Disciplinary Counsel and the Pennsylvania Lawyers Fund for Client Security.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

63. Respondent violated the following RPCs and Pa.R.D.E.s:

- A. **RPC 7.1[effective 1-1-05]**, which states that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- B. **RPC 8.4(c)**, which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

**SPECIFIC RECOMMENDATION FOR DISCIPLINE
OF A FOUR YEAR LICENSE SUSPENSION**

This case involves the mishandling of funds that occurred over eleven years ago, and Respondent's failed efforts to repay the monies. Respondent contends that he did not personally benefit from the shortfall, and by way of explanation, has stated that the shortfall in funds was due to improper accounting procedures and employee theft.¹ However, Respondent has produced no evidence to ODC tending to substantiate that explanation. No one, including Respondent, has ever been charged with theft of the funds. ODC's investigation has revealed that Old Republic's method of handling the shortfall may have been common practice for some title insurance companies in the industry. By terminating Respondent's relationship without making any criminal report or taking overt civil action, Old Republic facilitated Respondent's ability to achieve an agency relationship

¹ This case falls within exception (b)(1) to the Board's "Stale matters" rule. *See* D.Bd.R. 85.10, providing, in relevant part, that "The Office of Disciplinary Counsel . . . shall not entertain any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint, except . . . in cases involving theft or misappropriation..."

with another Title Company. This in turn enabled the transfer of the remaining shortfall to the unwitting Commonwealth. After Commonwealth discovered the shortfall, Commonwealth sued Respondent in the Bucks County Court of Common Pleas. *See Commonwealth Land Title Insurance Co. v. Thomas H. Baker, P.C.*, No. 08-00628-28. In January of 2010, Respondent stipulated to a judgment of 570,000.00 in favor of Commonwealth against both he and Lawyers Land. Respondent has not paid any money toward satisfying that judgment.

The ODC has determined that Respondent made misrepresentations to Commonwealth in connection with his agency application in 2007. Furthermore, Respondent and/or employees acting under his operation and control improperly purported to issue title insurance at a time when they were not authorized to do so by any title company. Respondent has suggested that this was error rather than any effort to defraud. According to Respondent, as he was an authorized Agent for Professional Abstract he and his employees could properly issue the Fidelity policies. That might be correct had the policies been issued by Professional Abstract. However, there are several cases where the documentation reflects that the party purporting to issue the title insurance is Respondent, his employees, and/or his companies.

Respondent can produce some evidence in mitigation. Respondent has no prior record of discipline and has cooperated with ODC's investigation. In April of 2001 Respondent was struck and severely injured by an automobile. A portion of his leg was severed. Respondent suffered significant bone loss and multiple operations in an effort to retain the limb (that effort was successful). Respondent was confined to a wheel chair for two years, and thereafter, a walker, a leg brace, and finally a cane. During this time, Respondent was unable to work and lost much of his

business, which impeded his ability to earn money and meet his financial obligations and debts. Presently, Respondent walks with a limp, and his physician relates that he continues to suffer chronic pain as well as chronic infection at the wound site. His physician also reports that during his recuperative process Respondent has suffered excruciating pain and depression. Respondent continues to receive medical treatment for ongoing depression. Respondent contends that the medical evidence produced to date rises to the level of *Braun* mitigation and also that such evidence would be admissible in the mitigation phase of any hearing. ODC disputes that claim for several reasons, including the fact that Respondent's medical conditions arose after the initial shortfall in his escrow account occurred.

Respondent acknowledges that he engaged in misconduct. Respondent's actions while in a fiduciary role and while responsible for fiduciary funds. This is the type of misconduct for which the Disciplinary Board and the Pennsylvania Supreme Court generally impose significant sanctions.

In *ODC v. Jay Marc Berger*, 159 DB 2008 (2009), Mr. Berger embezzled over 4 million dollars from clients of his title company. Eventually, the United State Attorney criminally prosecuted Berger resulting in a prison term of over 6 years. Mr. Berger was disbarred on consent. In *ODC v. Glenn Randall*, 129 DB 2010 (2010), Mr. Randall, like Respondent, was sued civilly due to shortfalls in his escrow account. Mr. Randall introduced some evidence to support his claim that the shortages resulted from employee negligence and defalcation. The primary basis for Randall's discipline involved misrepresentations and material omissions made in applications for insurance for several title companies he owned. Mr. Randall received a three-year license suspension. Here, Respondent has not been criminally prosecuted and there is no indication that he will be criminally

prosecuted.² Considering all of the facts and circumstances, including Respondent's age and health, it is respectfully suggested that a four-year license suspension is of sufficient duration to protect the public. In the event that Respondent wishes to resume the practice of law, he will be required to petition for reinstatement and prove that he is fit for readmittance.


WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:

- a. Approve this Petition; and
- b. File a recommendation for a four-year license suspension and this Petition with the Supreme Court of Pennsylvania.

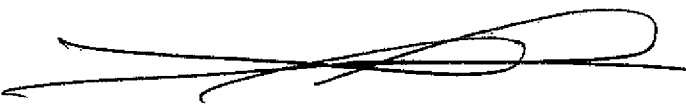
Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION,
Attorney Reg. No. 20955,
Chief Disciplinary Counsel

4/15/11
Date


By: 
RAMONA MARIANI,
Disciplinary Counsel
Attorney Registration Number 78466
District II Office
Suite 170, 820 Adams Avenue
Trooper, PA 19403
(610) 650-8210

4-5-11
Date


THOMAS H. BAKER, ESQUIRE
Respondent

² In the event Respondent is criminally prosecuted for actions arising from his operation of Lawyers Land, it is understood that any guilty plea or criminal conviction may be a basis for separate and additional discipline.

4/11/11
Date

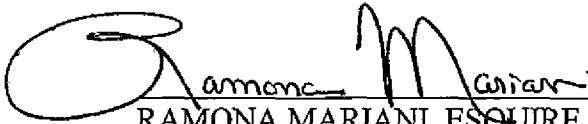


MATTHEW H. HAVERSTICK, ESQUIRE
Respondent's Counsel


VERIFICATION

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Pursuant to P.A.R.D.E. 215(d)* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

4/15/11
Date


RAMONA MARIANI, ESQUIRE
Disciplinary Counsel

Date


THOMAS H. BAKER, ESQUIRE
Respondent

4/11/11
Date


MATTHEW H. HAVERSTICK, ESQUIRE
Respondent's Counsel

**BEFORE THE DISCIPLINARY BOARD OF THE
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OFFICE OF DISCIPLINARY COUNSEL,	:	No. DB 2011
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	:	Attorney Reg. No. 55623
THOMAS H. BAKER,	:	
Respondent	:	(Bucks County)

AFFIDAVIT OF THOMAS H. BAKER

Thomas H. Baker hereby tenders this affidavit in support of the Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), and further states as follows:

1. He freely and voluntarily consents to the proposed discipline; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted and followed the advice of counsel in connection with the decision to consent to discipline.

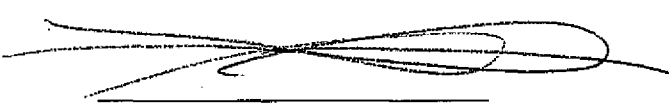
2. He is aware that there is presently pending an investigation into or proceeding involving allegations that he has been guilty of misconduct as set forth in the Petition;

3. He acknowledges that the material facts set forth in the Petition are true.

4. He consents because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding,

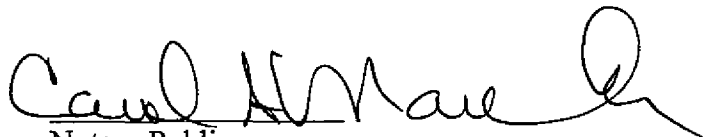
he could not successfully defend against them.

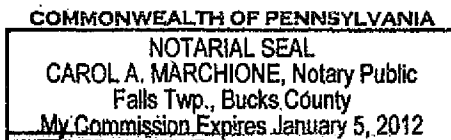
Signed this ^{1st} day of April, 2011.



Thomas H. Baker, Esquire
Attorney Reg. No. 55623

Sworn to and subscribed
Before me this ¹ day
of April 2011



Notary Public

**BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL : No. DB 2011

Petitioner :

v. :

: Attorney Reg. No. 55623

THOMAS H. BAKER, :

Respondent : (Bucks County)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first class mail the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

By First Class Mail:

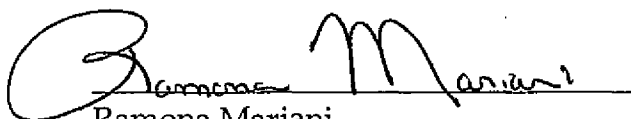
Respondent's Counsel:

Lorie K. Dakessian, Esquire
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and

Matthew H. Haverstick, Esquire
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April 15, 2011



Ramona Mariani
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