

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS ROBERT WARD,
a Minnesota Attorney,
Registration No. 236561.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on September 24, 1993. Respondent currently practices law in St. Louis Park, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. From 1996 through 1999 respondent represented Colletta Sorrell in her capacity as personal representative of her mother's estate.
2. In 2001 respondent represented Colletta Sorrell in regards to a judgment obtained by the St. Paul Teachers' Retirement Fund Association against Sorrell .
3. In late 2001 the mortgage on real property owned by Colletta Sorrell and occupied by Phyllis Sorrell (Colletta Sorrell's sister), located at 2550 Orkla Drive, Golden Valley, MN (the Orkla Drive property), became delinquent and the mortgagor's assignee began threatening foreclosure proceedings.

4. In February 2002 Colletta Sorrell contacted respondent for assistance in responding to the threatened foreclosure proceedings.

5. Respondent had Phyllis and Colletta Sorrell execute a Business Agreement dated April 29. Although the Business Agreement recites that it is "made and entered into this 29th day of April," respondent's signature on the agreement was notarized as of February 30, 2002 [sic], Phyllis Sorrell's signature was notarized as of May 2, 2002, and it is not apparent from the document when Colletta Sorrell signed the agreement.

6. The Business Agreement included the following terms:

a. That respondent would obtain mortgage financing in an unspecified amount to purchase the property.

b. That the Sorrells would pay respondent \$15,000 as a management fee.

c. That the Sorrells would pay respondent \$5,000 in exchange for the right to repurchase the property and to maintain 25% equity in the property.

d. That the Sorrells would pay respondent \$500 per month as lease payments.

e. That respondent could place the property for sale if the Sorrells "default on the property and the Sorrell's waive any right to the equity in the subject property."

7. On March 25, 2002, respondent obtained a Title Insurance Commitment from Commonwealth Land Title Insurance Company providing for an Owner's Policy on the Orkla Drive property in the amount of \$150,000.

8. On April 26, 2002, respondent had Colletta Sorrell sign two Purchase Agreements regarding the Orkla Drive property. One of the purchase agreements called for a sale price of \$120,000 and the other called for a sale price of \$100,000. Both

purchase agreements falsely reflect a payment of earnest money in the amount of \$500. In fact, no earnest money was paid by respondent.

9. Prior to entering into the Business Agreement and Purchase Agreements with Colletta Sorrell, respondent did not notify her in writing that independent counsel should be considered.

10. Respondent did not obtain from Colletta Sorrell a consent to the transaction embodied in the Business Agreement and Purchase Agreements in a document separate from the transaction document.

11. The Business Agreement and Purchase Agreements did not fully disclose to Colletta Sorrell all of the terms of the transaction in a manner which could reasonably be understood by Sorrell.

12. The transaction embodied by the Business Agreement and Purchase Agreements and as it actually transpired was not fair and reasonable for the following reasons:

a. As more fully set forth below, the transaction resulted in Colletta Sorrell receiving only \$3,726 on the sale of the Orkla Drive property which, at the time of sale, was valued at \$150,000. After deduction of payments for satisfaction of the mortgage (\$53,303.76), and a judgment lien against property (\$14,000.00), and payment of closing costs payable by the seller (\$8,742.65), Sorrell had \$73,953.59 in equity in the Orkla Drive property ($\$150,000 - \$53,303.76 - \$14,000.00 - \$8,742.65 = \$73,953.59$). Respondent ultimately received \$33,327.72 from the transaction, after refinancing and selling the Orkla Drive property.

b. Respondent charged Colletta Sorrell \$15,000 to purchase the Orkla Drive property from her.

c. Although respondent nominally reserved to Colletta Sorrell a 25 percent equity interest in the property, he never properly documented that interest; the documentation of that interest he did provide (a \$45,000 note and

mortgage in favor of Colletta Sorrell) was ambiguous and contradictory (*see* ¶ 15, below); and respondent utilized the ambiguity in the terms of the Business Agreement to extinguish Sorrell's equity interest when a lease payment was made two days late in November 2002 (*see* ¶¶ 20 and 21, below).

13. On June 11, 2002, a closing was held regarding respondent's purchase of the Orkla Drive property. The U.S. Department of Housing & Urban Development Settlement Statement (HUD-1) provided at the closing and signed by respondent and, purportedly, by Colletta Sorrell, reflects the following terms:

- a. A contract sales price of \$150,000.
- b. A credit/debit of \$500 as and for deposit or earnest money.
- c. A credit/debit of \$45,000.00 entitled "for Second."
- d. Debits against the amount due to Colletta Sorrell for payment of the first mortgage (\$53,303.76); payment of \$8,742.65 in settlement charges, closing costs and county taxes; and a payment of \$14,000 characterized as "payoff of second mortgage to St. Paul Teachers" but which was, in fact, payment of a judgment lien.
- e. Cash due to seller in the amount of \$28,453.59.

14. The \$45,000 credit/debit "for Second" plus the \$500 earnest money and the \$28,453.59 cash due to seller represented Colletta Sorrell's equity in the Orkla Drive property.

15. The \$45,000 credit/debit designated as "for Second" reflected a June 5, 2002, Note and Mortgage from respondent to Colletta Sorrell in the amount of \$45,000. At the June 11, 2002, closing respondent had Colletta Sorrell execute a Satisfaction of Mortgage falsely reciting that the mortgage to Sorrell "is, with the indebtedness secured, fully paid and satisfied." In fact, respondent never made any payments on the \$45,000 note.

16. As noted above, respondent never paid the \$500 in earnest money.

17. Respondent never made any payments on the \$45,000 note, never recorded the mortgage running to Colletta Sorrell and utilized the satisfaction of the mortgage to Sorrell to facilitate a December 27, 2002, refinancing of the Orkla Drive property.

18. After the June 11, 2002, closing respondent took Colletta Sorrell to Wells Fargo Bank where she cashed the \$28,453.59 check representing the net proceeds from the sale of the Orkla Drive property. Respondent then had Sorrell use the proceeds to purchase the following cashier's checks:

- a. A check to respondent in the amount of \$700.59.
- b. A check to respondent in the amount of \$15,000.
- c. A check to CFM Mortgage in the amount of \$9,000.
- d. A check to Colletta Sorrell in the amount of \$3,726.

19. Respondent asserts that the \$9,000 check to CFM Mortgage represented Colletta Sorrell's obligation to pay closing costs. The Business Agreement does not require that the Sorrells pay respondent's closing costs but one of the two April 26, 2002, Purchase Agreements does provide that "Seller shall pay all closing costs of buyer related to this transaction." The June 11, 2002, HUD-1 reflects payment of settlement charges by respondent of only \$6,872.85.

20. On November 12, 2002, respondent wrote to Phyllis Sorrell. In that letter he stated, in part:

This letter is written following our teleconference of November 6, 2002 regarding the lease agreement referenced herein. As I mentioned to you, the agreement states very clearly that you will be in default of this agreement if that payment is not in my office within 5 days of the first day of the month. I did not receive that payment until the 7th of November and as such deem you to be in default under the agreement. This would effectively mean that you do not have the right to purchase the property nor do I have to continue the tenancy from this date forward. . . . At this time, I again deem the agreement to be void and no longer applicable.

21. The Business Agreement was ambiguous as to the terms of default regarding late payments, providing in part, that, "This agreement is in default when Sorrell's payments exceed 30 days late or at anytime when the payment is past due."

22. On December 27, 2002, respondent refinanced the Orkla Drive property, obtaining a mortgage loan in the amount of \$120,000. Respondent netted \$11,641.34 from the refinancing.

23. On March 11, 2004, respondent sold the Orkla Drive property to BLP Properties & Investments, Inc. Respondent received \$5,985.79 from that sale.

24. The net result of respondent's dealings with regard to the Orkla Drive property was that, from the \$73,953.59 in equity in the property as of June 11, 2002, Colletta Sorrell received only \$3,726.00 and respondent received \$33,327.72.

25. Respondent's conduct in entering into a business transaction with Colletta Sorrell that was not fair and reasonable, in failing to fully disclose all of the terms of the transaction in a manner that could be reasonably understood by Sorrell, in failing to obtain from Sorrell a consent to the transaction in a document separate from the transaction documents, in failing to notify Sorrell in writing prior to the execution of the Business Agreement and the Purchase Agreements that independent counsel should be considered, and in utilizing the unfair and ambiguous terms of the Business Agreement together with the improperly obtained June 11, 2002, Satisfaction of Mortgage to deprive Sorrell of her equity in the Orkla Drive property violated Rules 1.8(a) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

26. On August 8, 2005, respondent interviewed T.H. for a support staff position in his office. At the time of the interview T.H. was 20 years old and was interviewing for her first position after attending school at the Minneapolis Business College.

27. During the course of the interview respondent engaged in unwanted physical contact of a sexual nature with T.H.

28. Respondent was in a position of authority over T.H. and the unwanted physical contact constituted harassment of T.H.

29. Respondent's conduct in making unwanted physical contact of a sexual nature with T.H. violated Rule 8.4(g), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 18, 2006.



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