

Brotherton, Justice:

FILED

DEC 09 1988

Committee on Legal Ethics of
The West Virginia State Bar

No. 18679

Truman L. Sayre, a member of
The West Virginia State Bar

This proceeding is before this Court on verified complaint of the Committee on Legal Ethics of the West Virginia State Bar against the respondent, Truman L. Sayre. On September 15, 1988, this Court ordered that a rule be issued, directing the respondent to show cause why an order should not be issued publicly reprimanding him in accordance with the findings of the Committee on Legal Ethics.

The respondent was retained by Springwood Homes, Inc. for the purpose of preparing documents related to the purchase of two lots of land (Lots 16 and 17) by Roy D. and Sandra K. Lucas, from the contractor, Springwood Homes, and for the construction of a home upon that land by Springwood Homes for the Lucases. In consideration for the two lots of land, the Lucases deeded to Springwood Homes a tract of land titled in the name of Alvin Lucas, consisting of approximately 1.3 acres, together with a \$4,000 promissory note and a cash payment of \$1,000. Springwood Homes executed a deed to the Lucases for Lots 16 and 17, on which Springwood Homes contracted with the Lucases to construct and install a modular home for the additional sum of \$68,000. That deed was lodged in escrow with the respondent. The \$4,000 note, made payable to Springwood Homes, was secured by an executed deed of trust on the two lots that the Lucases were purchasing from

Springwood Homes. The deed of trust was to be held in escrow with the other deeds pending completion and acceptance of the new home by the Lucases. The payment to Springwood Homes by the Lucases of the \$68,000 contract price for the construction of the modular home was to come from a lender under an existing loan commitment at the time the modular home was constructed and accepted by the Lucases.

The escrow agreement with the respondent was an oral agreement, but it was stipulated that the respondent was to hold the deeds and the deed of trust without recording the documents until construction was completed and permanent financing obtained. At that time, all instruments would be recorded in proper sequence for the \$68,000 permanent financing to be the first lien on Lots 16 and 17, with the improvements thereon, and the \$4,000 promissory note to be secured by a second deed of trust.

The respondent states that the deeds dated August 8, 1986, and the deed of trust dated August 27, 1986, were delivered to the respondent on August 27, 1986, to be held in escrow. However, he admits that on August 27, 1986, the deeds were mistakenly recorded in the County Clerk's office of Raleigh County, West Virginia.

By that date, it appears from the record that the construction of the home was substantially complete. A dispute then arose between Springwood Homes and the Lucases over a loan contingency provision in their contract and the quality of the work on the modular home. Additionally, Amtex Mortgage and

Investment Company repudiated its commitment to provide financing to the Lucases for the purchase of the modular home. Because of the unauthorized recordation of the deeds and deed of trust, which secured only a \$4,000 obligation of the Lucases to Springwood Homes, the Lucases were record owner of the building lots Nos. 16 and 17 and the home constructed by Springwood Homes, without an encumbrance securing that which was owed to Springwood Homes in addition to the \$4,000 note. Thus, Springwood Homes was deprived of record ownership of the building lots and the home before it was paid in full.

The respondent contends that, in an attempt to restore the parties to their respective positions prior to the mistaken recording of the deeds, he modified the recorded deed of trust, which secured the \$4,000 promissory note, to include a \$68,000 obligation to Springwood Homes in addition to the \$4,000 obligation which had been included when the deed of trust was executed. The respondent then had the amended deed of trust recorded a second time, including the altered description of the indebtedness secured, although the deed of trust had not been re-executed and notarized.

On December 14, 1986, at the request of Springwood Homes, the respondent published a notice of a trustee's sale scheduled for December 29, 1986. The Lucases then filed suit on December 22, 1986, seeking an injunction and money damages against Springwood Homes. On December 29, 1986, a hearing was held in the Circuit Court of Raleigh County. At that time, the court enjoined the trustee's sale and a preliminary injunction was entered by consent. The suit between the Lucases and

Springwood Homes was settled and dismissed. Springwood Homes agreed to convey the two lots and the modular home to the Lucases for the sum of \$52,500, surrendered the \$4,000 note and released the deed of trust.

The Lucases and Springwood Homes then filed separate suits against the respondent. The claims have since been settled. The respondent Sayre paid the Lucases damages in the amount of \$30,000. The claim of Springwood Homes against the respondent was settled for the amount of \$20,000.

Pursuant to a legal ethics charge, a hearing was held before the Committee on Legal Ethics of the West Virginia State Bar on June 11, 1988. The Committee charged the respondent with a violation of Disciplinary Rule 1-102(A)(3), (4), and (5) of the West Virginia Code of Professional Responsibility. The respondent, who stipulated the facts stated above, admitted that his understanding of the scope of his authority as escrow agent was in error and that the circumstances dictated the filing of a mechanic's lien. The Committee found that the respondent's reputation for character and integrity, as well as professional competence, was excellent. The Committee concluded that, while the respondent was not "an unfit or unsafe person to be entrusted with the duties of the legal profession," the unauthorized alteration by an attorney of a security instrument was more than an isolated error in judgment or malpractice in the ordinary sense of negligence. The Committee concluded that such an act could not be ignored and recommended that the respondent be publicly reprimanded for the misconduct.

We affirm the finding of the Committee on Legal Ethics. The Committee has proven its charges by full, clear and preponderating evidence. Committee on Legal Ethics v. Tatterson, ___ W.Va. ___, 319 S.E.2d 381 (1984). Even after viewing any conflict in the evidence in the respondent's favor, we do not believe that the respondent's actions should go unpunished. Committee on Legal Ethics v. Pietranton, 143 W.Va. 11, 26, 99 S.E.2d 15, 23 (1957).

The Disciplinary Rules of the West Virginia Code of Professional Responsibility provide the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syl. pt. 3, Tatterson, 319 S.E.2d at 382. Disciplinary Rule 1-102(A)(3), (4), and (5) provides that:

DR 1-102 - Misconduct - A. A lawyer shall not: . . . (3) Engage in illegal conduct involving moral turpitude. (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. (5) Engage in conduct that is prejudicial to the administration of justice.

It is clear that the respondent has violated Disciplinary Rule 1-102. Regardless of the respondent's contention that his action was based on a mistaken belief, his intentional act of altering a document involves fraud and deceit and cannot be condoned. We do note, however, that the respondent has admitted his error and presented evidence of his excellent personal and professional reputation. We do not believe that the Committee has proven that the respondent is an unfit person to be entrusted with the duties of a member of the legal profession or to exercise its privileges. Syl. pt. 1, In re Damron, 131 W.Va. 66, 45 S.E.2d 741 (1947), overruled on other grounds, State ex rel. Ginsberg v. West Virginia Civil Service Commission, ___ W.Va. ___, 294 S.E.2d 140 (1982).

It is, therefore, Adjudged and Ordered that a public reprimand be issued and that the respondent be required to pay the costs incidental to the investigation and the prosecution of this matter.

It is further Adjudged and Ordered that service of an attested copy of this order upon the respondent shall have the same force and effect as the service of a formal writ.