

**THE PROTESTANT EPISCOPAL CHURCH
IN THE UNITED STATES OF AMERICA**

Before the Disciplinary Board for Bishops

Hearing Panel

**In the Matter of Rt. Rev. Samuel Johnson Howard
(Financial Matter)**

Statement of Alleged Offenses

The Church Attorney, pursuant to Title IV, Canon 13, Sec. 2 of the Canons of the Protestant Episcopal Church in the United States of America (referred to respectively in this Statement as the “Canons” and the “Church”), submits this Statement of Alleged Offenses.

Procedural History and Jurisdictional Matters

1. On October 19, 2023, the Intake Officer for the Disciplinary Board for Bishops (the “Board”) referred the matters addressed in this Statement to a Reference Panel composed of the Rt. Rev. J. Scott Mayer, Presiding Bishop-Designate; the Rt. Rev. Chilton Knudsen, President of the Disciplinary Board for Bishops; and the Rev. Barbara Kempf, Intake Officer for Bishops. The Rt. Rev. Nicholas Knisely succeeded Bishop Knudsen as President of the Board in Spring 2024, and as a consequence succeeded her as a member of the Reference Panel.

2. The Complainant is [REDACTED]

3. Upon consideration of the matters presented by the Intake Officer, the Reference Panel determined on November 9, 2023, to refer the allegations for investigation pursuant to Canon IV.11. *See* Canon IV.6.8(c) (option to refer to investigation). The Board thereafter engaged [REDACTED] (the “Investigator”) to conduct the investigation.

4. After consideration of the information provided by the Investigator, and after due deliberation, the Reference Panel referred the matter to this Hearing Panel on June 7, 2024. *See* Canon IV.11.3(e) (referral to Hearing Panel).

5. This Hearing Panel was appointed by the President of the Board to hear and adjudicate the matters set forth below, which fall within its jurisdiction pursuant to Canon IV.13.

6. This is an ecclesiastical matter under the exclusive jurisdiction of the Church. *See* Canon IV.19.1. By taking ordination vows and receiving Holy Orders, Respondent consented to subject himself to the jurisdiction of the Church with regard to the adjudication of alleged violations of the Canons. *Id.* Pursuant to the Canons, disciplinary cases involving bishops are investigated, adjudicated, or otherwise resolved by the Board. *See* Canon IV.17.3.a. The Hearing Panel in this matter is appointed to hear evidence and impose any remedy authorized by the Canons. *See* Canon IV.17.5.

Summary of Material Facts

7. The Rt. Rev. Samuel Johnson Howard (the “Respondent”) was elected Bishop Coadjutor of the Diocese of Florida (the “Diocese”) in May 2003 and was thereafter consecrated as the eighth Bishop Diocesan on January 29, 2004. He retired in Fall 2023.

8. During his tenure as Bishop Diocesan, Respondent exercised control over material financial matters involving both his personal interests and those of the Diocese, which on occasion were adverse. This was true in the case of certain arrangements between the Respondent and the Diocese whereby the Respondent received a financial benefit from the Diocese. In each of those situations, Respondent was under a duty to ensure that transactions

with the Diocese remained at arms' length, and that the financial interests of the Diocese were protected.

9. During his tenure as Bishop Diocesan, Respondent was under a duty, particularly on occasions when his financial interests were adverse to those of the Diocese, to operate with transparency, obtain required approvals from Diocesan lay authorities, and properly document the transactions and approvals.

Misuse of Discretionary Account

10. During his tenure as Bishop Diocesan, Respondent had access to and control over a discretionary fund. He was to apply monies in the discretionary fund to such human needs as he deemed pressing and worthy of the Church's assistance, in pursuance of the Church's mission.

11. In May and June 2019, Respondent arranged for three contractors to perform HVAC work and related improvements at his personal residence, located at [REDACTED] [REDACTED]. Invoices bearing dates in May or June 2019 were submitted by (a) Alan Duarte Handyman, LLC, directed to The Episcopal Diocese of Florida, ATTN: The Rt. Rev'd. S. Johnson Howard; (b) Chills on Wheels Heating & Air Contractors, Inc., directed to Marie Howard at the residential address; (c) Crews Electrical Contracting Inc., directed to The Episcopal Diocese of Florida.

12. According to the financial records of the Diocese, specifically the ledger detailing activity in the Bishop's Discretionary Fund, a total of at least \$17,913 was paid from the

Bishop's Discretionary Fund in 2019 to the three contractors identified in the paragraph above for work performed on the Respondent's personal residence.

13. Respondent was aware of the fact that his personal use of discretionary funds was improper. After receiving notice from the Intake Officer in October 2023 that the Reference Panel would be investigating the use of the discretionary fund, Respondent issued a check to the Diocese that apparently purports to reimburse the Diocese for the misused funds. This was done without any notice to the Reference Panel. The Investigator simply found in a group of documents provided by the Diocese a Deposit Confirmation dated February 6, 2024. That document showed a deposit into the Diocesan Checking Account of \$18,533 by check No 4837, payor Samuel Johnson Howard, bearing the note "Reimbursement." The "Deposit Name" field on the Wells Fargo Deposit Confirmation reads "Other – Bishop Howard discr. reimb."

Use of Foundation to Recharacterize Gift as Assessable Compensation

14. The Episcopal Foundation, Inc. ("Diocesan Foundation") is a Florida 501(c)(3) corporation that exists to serve the purposes stated in its organizational documents. In general, those purposes are to use its income and corpus to support the charitable and religious purposes of the Diocese, including: (1) the education, care, and maintenance of seminarians, (2) the acquisition of real estate for church purposes, and (3) the maintenance, expansion, and improvement of the Diocesan Conference Center. The Foundation may not distribute assets,

income, or profits to the benefit of any member, director, officer, or private individual, except for the payment of reasonable compensation for services rendered.

15. The Foundation had no members. The management of its affairs was vested in its Board of Directors. According to the Diocesan Foundation's Amended and Restated Articles of Incorporation dated March 1, 2012, Respondent was at that time a Member of the Board of Directors of the Diocesan Foundation.

16. On an unknown date prior to December 2013, an understanding was reached that a wealthy donor, who insisted on anonymity, would make a major gift to the Diocesan Foundation. The donor also agreed to make an annual gift of \$120,000 to Respondent, which was to be received in addition to Respondent's Diocesan compensation.

17. This financial arrangement is reflected indirectly in the minutes of a meeting of the Diocesan Foundation Board that occurred on December 12, 2013. The minutes of that meeting state that the Diocesan Foundation Board voted unanimously to approve an "expense of \$21,600 annually, to be contributed to Bishop Howard's pension account." This number is the mathematical result of multiplying \$120,000 by the 18% contribution to the Pension Fund that may be made on the basis of assessable compensation under Church Pension Group ("CPG") guidelines.

18. Diocesan records indicate that the Diocesan Foundation was characterized to CPG as an employer of Respondent, and that the Diocesan Foundation had an account with CPG, with

its own Client ID number, set up separately from the account of the Diocese. The Diocesan Foundation reported the annual \$120,000 gift as assessable compensation.

19. The arrangement by which an anonymously sourced gift of \$120,000 annually was passed through the Diocesan Foundation, paid to Respondent, and characterized to CPG as assessable compensation, began no later than the year 2014 and was terminated effective December 31, 2021. Over those eight years, the unidentified donor made payments to Respondent in the total amount of \$960,000.

20. Tax records provided by Respondent through counsel indicate that \$120,000 was also received by Respondent in the year 2022, raising the total, if the source of payment is the same, to \$1,080,000. This 2022 payment, and any payments occurring prior to 2014, are subject to further verification. All tax returns provided to date have been redacted to obscure information concerning the type and source of the \$120,000 in additional income received each year.

21. Available records indicate that the Diocesan Foundation kept its commitment to pay money annually into the Pension Fund based on the \$120,000 gift. Records showing all payments in their entirety are not available at the present date. However, if the Diocesan Foundation's commitment to pay \$21,600 each year to the Pension Fund was met, eight years of full payment would have resulted in a total of \$172,800 paid to CPG by the Diocesan Foundation, in addition to all Diocesan payments into the Pension Fund.

22. At all relevant times, Respondent was receiving annual compensation as an employee of the Diocese. The Diocese made payments to the Pension Fund on Respondent's behalf in amounts commensurate with the Respondent's Diocesan assessable compensation.

23. The effect of the arrangement to characterize the annual gift to Respondent as compensation from an employer, the Diocesan Foundation, was to artificially inflate the calculation of Respondent's total assessable compensation each year. For example, in the year 2019, Respondent's assessable compensation, which would have otherwise been based on total W-2 earnings of \$219,669.12 and other assessable benefits from the Diocese, was inflated by an additional \$120,000 when the gift was counted as assessable compensation from employment by the Diocesan Foundation.

24. Under the defined benefit plan administered by CPG, the benefit payable to Respondent after his retirement will be inflated as a consequence of counting the annual \$120,000 gifts as assessable compensation, as Respondent's retirement benefit will be based on his Highest Average Compensation during certain years.

Loan Forgiveness on Private Residence

25. Upon moving to Jacksonville, Florida, Respondent and his wife purchased a home on a parcel of land located at [REDACTED] (the "Property"). Publicly available information, which may not be complete, reports a purchase price

of \$850,000. Respondent and his wife acquired sole title to the Property as Grantees under a Warranty Deed made on May 14, 2004, and recorded on May 25, 2004.

26. Simultaneously with recordation of the Warranty Deed, a Purchase Money Balloon Mortgage deed was recorded, with a principal balance due at maturity of \$175,000.00. Respondent and his wife were the mortgagors and the Episcopal Church in the Diocese of Florida, Inc., that is, the Diocese, was the mortgagee. The mortgage secured the repayment to the Diocese of \$175,000.00 loaned to Respondent to help purchase the Property. By virtue of entering into this loan agreement, Respondent acquired a financial and legal interest directly adverse to that of the Diocese.

27. The purchase of the Property was also financed in significant part by a \$450,000 loan from EverBank, which recorded its May 14, 2004, mortgage on May 25, 2004.

28. Later in 2004, a Declaration of Trust was prepared that purported to give the Diocese a new form of interest in the Property in addition to the mortgage securing its loan described above in Paragraph 26. The September 21, 2004, Declaration of Trust (“Declaration of Trust”) states that Respondent and his wife, as Trustees, were granting an interest in the Property to the Diocese. The Declaration of Trust includes an acknowledgement by the Trustees (Respondent and his wife) (hereafter referred to collectively as “Respondent” in connection with the trust arrangement) of the sources of funds used to purchase the Property, specifically: (1) the loan from EverBank in the sum of \$450,000; (2) an unrecorded promissory note in favor of the

Diocese in the sum of \$100,000, dated May 14, 2004, (3) a purchase money balloon mortgage and note in favor of the Diocese in the sum of \$200,000, dated May 14, 2004, which funds had been advance by [REDACTED]; and (4) contributions by various parishioners of the Diocese in the sum of \$205,000.

29. The sum of the listed contributions to purchase of the Property, as stated in the Declaration of Trust, is \$955,000. The third listed item, the balloon mortgage and note in favor of the Diocese in the sum of \$200,000, is \$25,000 higher than the face amount of the balloon mortgage recorded on behalf of the Diocese and referenced in Paragraph 26 above.

30. The Declaration of Trust further states that Respondent is holding the Property in trust for the benefit of the Diocese. It purports to impose a trust on the Property that reflects the respective contributions of the Respondent and the Diocese to the purchase of the Property. It states that the Trustees at that time held 58% of the property in their individual capacities and 42% of the Property as Trustees for the benefit of the Diocese. It provided a formula to adjust the percentages in favor of the Trustees to the extent the Trustees made principal payments on the \$200,000 loan extended by the Diocese. It expressly contemplated the forgiveness of the Respondent's debt without specifying any ceiling on the amounts that might be forgiven in the future.

31. The Declaration of Trust provided that the Property would immediately be put up for sale at such time as the Respondent no longer held the position of Bishop Diocesan.

32. A Memorandum of Trust dated October 21, 2004, was recorded on November 29, 2004, reflecting the creation of a trust by the owners of the Property.

33. In subsequent years, other encumbrances were placed on the Property as a result of loan restructuring or borrowing against the value of the Property. In 2015 Wells Fargo became the primary lender on the Property, recording a mortgage for a loan amount of \$675,000 on January 12, 2015. In 2017 the Property was used to secure a revolving line of credit agreement dated August 1, 2017, with Ameris Bank, with a credit limit of \$108,000, for which a mortgage was recorded on August 9, 2017.

34. With regard to the interest of the Diocese in the Property, the relationships created by the loan agreement and the Declaration of Trust presented plain conflicts of interest. Respondent was a homeowner and borrower who owed the Diocese money. The Diocese was a lender with an obligation to collect that debt in full with interest. Respondent was the Ecclesiastical Authority of the Diocese, with a duty to protect that Diocesan financial and property interest. Respondent was also a trustee purportedly owing a fiduciary duty to the Diocese to protect its beneficial interest in the Property.

35. Respondent's conflicting duties and obligations, to himself and his wife on the one hand, and to the Diocese, on the other, made it imperative that there be no self-dealing or placing of personal interest above the financial interests of the Diocese, or any appearance of such activity.

36. The Finance Committee of the Diocese worked closely with the Respondent on financial matters of all kinds. It was a small group that operated with low transparency. Diocesan Council was periodically rebuffed in its efforts to obtain greater information about the Finance Committee and the financial operations of the Diocese.

37. On October 20, 2016, the Finance Committee signed a resolution concerning the Declaration of Trust that created the 2004 trust arrangement between Respondent and the Diocese. Citing Respondent's anticipated September 2023 retirement, the Resolution stated that the Diocese desired to reward Respondent for his past and future performance as Bishop of Florida. At the time, seven years of future performance by Respondent remained.

38. The Resolution authorized the Diocese to convey a percentage of its 42% interest in the Property to the Respondent annually, the intent being that Respondent would own 100% of the Property on his retirement.

39. The plan described in the resolution reflected several things. First, the 2004 Declaration of Trust recognized the potential for payments by Respondent that would reduce the principal amount owed to the Diocese, and over time would adjust the percentage of beneficial ownership in the Property in favor of Respondent. The fact that the ownership percentage as of October 2016 remained at 42% implies that there had been no reduction in the principal amount owed to the Diocese in twelve years. This may have been permissible given the balloon feature of the loan. It is not known if interest payments were current in October 2016, or if the loan was

in default at that time. In a letter dated November 17, 2016, the then Chancellor of the Diocese referred to the arrangement as a structured “settlement” between Respondent and the Diocese.

40. Second, the resolution referred to the fact that Respondent had been paying taxes, insurance, and maintenance costs on the Property. As a real property owner, Respondent bore those obligations as a matter of course; they were unrelated to getting credit for making payments to the Diocese as a lender. This language in the resolution misleadingly suggested that these routine expenses constituted an exchange for value between Respondent and the Diocese when in fact they were immaterial to any exchange of value and irrelevant to debt forgiveness.

41. Third, the resolution by implication and without any express reference eliminated the original requirement that the Property be sold upon the Respondent’s retirement, with the Diocese to enjoy the benefits of the sale in proportion to any remaining interest at the time of sale. The arrangement to forgive the debt not only deprived the Diocese of repayment on its loan, but of the potential financial benefit, if the debt had not been fully repaid at the time of the Respondent’s retirement, of a share of the appreciated value of the Property on its anticipated sale in Fall 2023.

42. The Declaration of Trust was modified to reflect the Finance Committee’s October 20, 2016, resolution on August 1, 2017. The Modification of Declaration of Trust attached the original Declaration of Trust and the October 2016 Finance Committee resolution, stating that in the event of conflict, the resolution would govern.

43. The Finance Committee revisited the forgiveness of the debt on the Property in 2021. It passed a resolution dated December 8, 2021. The December 2021 resolution referenced the earlier resolution of October 20, 2016. Enhancing the narrative started in 2016 and described above in Paragraph 40, it assigned a total value of \$593,000 to taxes, insurance, HOA dues, and maintenance paid by Respondent since the purchase of the Property in 2004. It claimed that the Diocese had been responsible all along, since 2004, for 42% of the repairs and maintenance on the Property.

44. The plain meaning of the December 8, 2021, resolution was that Respondent was owed money by the Diocese for years of routine repairs, maintenance, and taxes paid on the Property. However, from the time of purchase in 2004, Respondent held exclusive title to the Property with his wife. The Diocese was a secondary lender behind banks. In fact, the Diocese on June 23, 2009, had recorded a May 26, 2009, Quit Claim Deed making clear that it released all interests in and had no lien on the Property. Respondent would have incurred the listed expenses in order to maintain the home he owned and avoid default under his bank loan documents, even if the trust arrangement created in September 2004 had never existed. The Finance Committee resolutions of October 2016 and December 2021 cite no document in which the Diocese had agreed to accept responsibility for the payment of any expenses related to taxes, insurance, or maintenance on the Property.

45. The upshot of the resolutions of October 2016 and December 2021 was that, rather than being identified as a borrower accepting a benefit in the form of loan forgiveness, the Respondent was characterized as engaging in an exchange of value with the Diocese, or perhaps relieving the Diocese of obligations to him.

46. On December 13, 2021, Respondent executed another Quit-Claim Deed benefiting his personal financial interest and ensuring that the trust arrangement did not encumber the Property. In that document, the Respondent, as Trustee for the benefit of the Diocese, released himself and his wife from “all the right, title, interest, estate, claim, and demand, both at law and in equity,” held by the Trustee for the benefit of the Diocese.

Relevant Canonical Provisions

47. Canon IV.4.1.e. states that, “In exercising his or her ministry, a Member of the Clergy shall . . . safeguard the property and funds of the Church and Community.”

48. Canon IV.4.1.h.6 states that, “In exercising his or her ministry, a Member of the Clergy shall . . . refrain from . . . conduct involving dishonesty, fraud, deceit or misrepresentation.”

49. Canon IV.4.1.h.9 states that, “In exercising his or her ministry, a Member of the Clergy shall . . . refrain from . . . any Conduct Unbecoming a Member of the Clergy.”

50. Canon IV.2, the definitional provision in Title IV of the Canons, states that “Conduct Unbecoming a Member of the Clergy shall mean any disorder or neglect that

prejudices the reputation, good order and discipline of the Church, or any conduct of a nature to bring material discredit upon the Church or the Holy Orders conferred by the Church.”

Offenses Charged

51. Respondent’s misuse of funds in the Diocesan discretionary account, from the initial misapplication of the funds in June 2019 until February 2024 was a knowing and continuing deprivation of a monetary resource to be applied for Diocesan purposes, and a violation of Canon IV.4.1.e., in that Respondent failed to safeguard a fund committed to his personal oversight.

52. The continued failure to acknowledge the conversion and misapplication of monies from the discretionary fund from June 2019 through February 2024 was conduct involving dishonesty, in violation of Canon IV.1.h.6.

53. The taking of discretionary money for personal use in any amount is improper. The taking of discretionary fund money in significant sums with full knowledge of its intended uses reflects a fundamental conflict with the good order and discipline of the Church, brings material discredit upon the Church, and is Conduct Unbecoming a Member of the Clergy in violation of Canon IV.4.1.h.9.

54. The arrangement to treat a series of monetary gifts from an undisclosed donor as the fruits of employment by the Diocesan Foundation, and to characterize those gifts as assessable compensation for Pension Fund purposes, was a misrepresentation of the true nature

and character of the monies received by Respondent over a period of years, concluding no earlier than December 2021. This continuing course of conduct was a series of misrepresentations in violation of Canon IV.4.1.h.6.

55. The annual \$120,000 gift, in light of its materiality, raises perceptions of influence on Diocesan policy by a person who resists being identified. By treating the monies received as compensation from the Diocesan Foundation, the arrangement misleadingly suggested that the money was solely a function of work performed and value provided to the Diocesan Foundation by Respondent, and obscured the fact that it was a gift to Respondent from an individual, passed through the Diocesan Foundation. This arrangement prejudiced the good order and discipline of the Church, in that the potential damaging effects of such an arrangement on trust in the Ecclesiastical Authority of the Diocese were discounted or ignored, in violation of Canon IV.4.1.h.9.

56. The series of transactions by which a trust was created on the Property in September 2004, and thereafter periodically restructured by Respondent and the Finance Committee, concluding in December 2021, and leading in substance to the forgiveness of a loan under the guise of restructuring beneficial interests in a trust in an exchange for value, deprived the Diocese of the property interest it acquired when it loaned Respondent money to buy the Property in 2004. Respondent failed to safeguard the property of the Church, in the form of its right to collect payment from him, in violation of Canon IV.4.1.e.

57. The series of transactions by which a trust was created on the Property in September 2004, and thereafter periodically restructured by Respondent and the Finance Committee, concluding in December 2021, and leading in substance to the forgiveness of a loan under the guise of restructuring beneficial interests in a trust in an exchange for value, was not an honest representation of the true substance of the transaction, in violation of Canon IV.4.1.h.6.

58. The series of transactions by which a trust was created on the Property in September 2004, and then restructured by Respondent and the Finance Committee in a series of steps, concluding in December 2021, leading in substance to the forgiveness of a loan under the guise of restructuring beneficial interests in a trust in an exchange for value, reflected an elevation of Respondent's personal interests over his duty to protect the interests of the Diocese, a neglect of the interests of the Diocese that prejudiced the good order and discipline of the Church, in violation of Canon IV.4.1.h.9.

Wherefore, the Church Attorney respectfully requests that the Hearing Panel, after the taking of evidence, enter an Order imposing such Sentence upon the Respondent as it may determine is proper.

Dated: June 27, 2024

[signature appears on following Page 18]

Respectfully submitted,

Craig Thomas Merritt 

Craig Thomas Merritt
MerrittHill, PLLC
919 East Main Street
Suite 1000
Richmond, Virginia 23219
(804) 916-1600

Church Attorney