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NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 08 DHC 16
THE NORTH CAROLINA STATE BAR, Plaintiff v. SUSAN E. HYATT, Attorney, Defendant	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONSENT ORDER OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, and members J. Michael Booe and Michael J. Houser. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Dudley A. Witt represented the Defendant, Susan E. Hyatt. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Susan E. Hyatt ("Hyatt"), was admitted to the North Carolina State Bar in 1992, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Hyatt was engaged in the practice of law in the State of North Carolina and maintained a law office in Fayetteville, Cumberland County, North Carolina.

4. Hyatt was properly served with process, a hearing in this matter was set, and the matter comes before the hearing committee with due notice to all parties.

5. In the course of Hyatt's practice of law, she maintained a trust account for client funds at First Citizens Bank under the name of Susan E. Hyatt, PA, account number ending in the digits 3803.

6. Hyatt hired Judith Wood ("Wood") as a paralegal in or about April 2005. Wood worked from a location away from Hyatt's office.

7. Hyatt delegated all aspects of the real estate closings performed by her law firm to Wood, including but not limited to contacts with lenders, HUD-1 Settlement Statement preparation, deposits and disbursements to and from the trust account, and reconciling the trust account.

8. Although Hyatt delegated these duties to Wood and allowed her to work from a location away from her office, Hyatt remained responsible under Rules 1.15-2, 1.15-3(d), and 5.3(b) of the North Carolina Revised Rules of Professional Conduct to protect client funds, to maintain client ledgers for each client with funds in her trust account, to reconcile her trust account quarterly, and to supervise her assistants and have sufficient measures in place to ensure their conduct complied with the Revised Rules of Professional Conduct.

9. While conducting the real estate closings for Hyatt, Wood engaged in fraudulent conduct. In at least seven (7) real estate closings, Wood falsified or altered certified checks to make it appear the borrower brought the money listed on the HUD-1 Settlement Statement to the closing when in fact the borrower had not. Wood provided copies of one or more altered certified checks to the lender to mislead the lender regarding satisfaction of a lender's requirement. Although the falsified certified checks were shown to the lender, they were not deposited into Hyatt's trust account or used to fund the disbursements listed on the HUD-1 Settlement Statement. Wood re-used the same set of altered checks in this manner in multiple real estate transactions.

10. Hyatt was not aware that funds shown on HUD-1 Settlement Statements was not actually being received and disbursed by her firm in closings.

11. Hyatt failed to supervise Wood and Wood's conduct in the real estate closings conducted by Wood for Hyatt.

12. Hyatt did not personally conduct quarterly reconciliations of her trust account between April 2005 and August 2006.

13. Hyatt did not ensure Wood conducted accurate quarterly reconciliations of Hyatt's trust account between April 2005 and August 2006.

14. Hyatt did not personally maintain ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and held in trust along with a current client balance per client from April 2005 through August 2006.

15. Hyatt did not ensure Wood maintained accurate ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and held in trust along with a current client balance per client from April 2005 through August 2006.

16. After discovering Wood's fraudulent conduct, Hyatt was assisted by Wood's sister, Sharon Plachinski ("Plachinski"), an employee of Hyatt's firm, in the process of identifying files that might have involved Wood's fraudulent conduct. Plachinski also assisted Hyatt with handling other matters related to her real estate practice.

17. Hyatt delegated all aspects of the real estate closings performed by her law firm to Plachinski, including but not limited to contacts with lenders, HUD-1 Settlement Statement preparation, deposits and disbursements to and from the trust account, and reconciling the trust account.

18. Although Hyatt delegated these duties to Plachinski, Hyatt remained responsible under Rules 1.15-2, 1.15-3(d), and 5.3(b) of the North Carolina Revised Rules of Professional Conduct to protect client funds, to maintain client ledgers for each client with funds in her trust account, to reconcile her trust account quarterly, and to supervise her assistants and have sufficient measures in place to ensure their conduct complied with the Revised Rules of Professional Conduct.

19. Between about November 2006 through February 2007, Plachinski misappropriated funds from Hyatt's trust account. In several instances, the payee name was altered from the original legitimate payee to Plachinski on checks issued from Hyatt's trust account. These checks were negotiated by Plachinski.

20. Hyatt was not aware that Plachinski was converting to herself funds from the trust account or that Plachinski was otherwise misappropriating funds from Hyatt's trust account.

21. Hyatt failed to supervise Plachinski's access and use of Hyatt's trust account.

22. Hyatt did not personally conduct quarterly reconciliations of her trust account between August 2006 and April 2008.

23. Hyatt did not ensure Plachinski conducted accurate quarterly reconciliations of Hyatt's trust account between August 2006 and April 2008.

24. Hyatt did not personally maintain ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and held in trust along with a current client balance per client from August 2006 through April 2008.

25. Hyatt did not ensure Plachinski maintained accurate ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom

funds were received and held in trust along with a current client balance per client from August 2006 through April 2008.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Susan E. Hyat, and the subject matter.

2. Hyatt's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

a. By failing to personally conduct quarterly reconciliations of her trust account and/or by failing to ensure staff to whom she delegated the duty of conducting quarterly reconciliations did so accurately, Hyatt failed to fulfill her duty to conduct quarterly reconciliations of her trust account in violation of Rule 1.15-3;

b. By failing to personally maintain ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and held in trust along with the current client balance per client and/or by failing to ensure staff to whom she delegated the duty of maintaining such client ledgers did so accurately, Hyatt failed to fulfill her duty to maintain a record of receipts and disbursements per client with a current client balance for the funds in her trust account in violation of Rule 1.15-3;

c. By delegating all tasks for real estate closings to Wood and failing to provide the supervision necessary to prevent Wood from engaging in mortgage fraud in real estate transactions closed by her firm, Hyatt failed to make reasonable efforts to ensure that the nonlawyer's conduct was compatible with the professional obligations of Hyatt in violation of Rule 5.3; and

d. By delegating bookkeeping and check writing authority for her trust account to Plachinski and failing to provide the supervision necessary to prevent Plachinski from embezzling client funds. Hyatt failed to make reasonable efforts to ensure that the nonlawyer's conduct was compatible with the professional obligations of Hyatt's in violation of Rule 5.3.

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Hyatt's misconduct is aggravated by the following factors:

   a. Multiple offenses: and

   b. Substantial experience in the practice of law.

2. Hyatt's misconduct is mitigated by the following factors:

   a. Absence of a prior disciplinary record:

   b. Absence of a dishonest or selfish motive:

   c. Remorse:

   d. Timely good faith efforts to make restitution or rectify consequences of misconduct, including notifying the District Attorney's Office of Plachinski's conduct: and

   e. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings.

3. The mitigating factors outweigh the aggravating factors.

4. Hyatt derived no personal benefit from the misconduct of Wood and Plachinski and expended substantial personal funds to ensure all client funds were replaced and to remedy other financial harm caused by Plachinski's actions.

5. Hyatt's failure to properly supervise Plachinski and to ensure her clients' funds were being properly protected enabled Plachinski to commit the embezzlement of client funds described herein. Although no client disbursement was disallowed for insufficient funds during this timeframe due to the timing of disbursements and the usage of funds that were in the trust account, this happenstance does not cure the harm caused by Hyatt's failure to supervise Plachinski and failure to protect her clients' funds.

6. Hyatt's failure to supervise her non-attorney assistant and failure to protect client funds posed a significant threat of harm to her clients and, if repeated, poses significant potential harm to future clients and the reputation of the profession.

7. Based upon the foregoing facts, entry of an order of discipline with a significant suspension of Hyatt's law license that is stayed only as long as Hyatt complies with reasonable conditions is necessary to protect the public.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the Defendant, Susan E. Hyatt, is hereby suspended for three (3) years, effective 30 days from service of this order upon Hyatt.

2. The three-year suspension is stayed for a period of three years as long as Hyatt complies, and continues to comply during the period of the stay, with the following conditions:

a. Hyatt, at her own expense, will have any and all account(s) into which she has deposited client funds (hereinafter "trust account(s)") audited by a Certified Public Accountant (CPA) within ninety (90) days of service of this order. Hyatt will provide the CPA's audit report to the State Bar within ten days of receipt. Hyatt will remedy any deficiencies identified in the CPA's audit and will bring her trust account(s) into compliance with the Revised Rules of Professional Conduct within thirty days of receipt of the audit report. Hyatt will submit proof of any remedial action to the State Bar and to the CPA no later than fifteen days after receipt of the CPA's report. If remedial action was required, the CPA will prepare a final audit report certifying that Hyatt's trust account(s) is/are in compliance with the Revised Rules of Professional Conduct without qualification or reservation to the Office of Counsel of the State Bar no later than thirty days after receipt of the remedial information from Hyatt. All evaluations, reports, and services of the CPA will be at Hyatt's expense;

b. Hyatt will have a CPA audit her trust account(s) on a quarterly basis. This audit will occur no later than twenty-five (25) days after the last day of each quarter (April 25, July 25, October 25, and January 25) and the CPA will submit the audit report to Hyatt and the Office of Counsel no later than fifteen (15) days after conducting the audit. All evaluations, reports, and services of the CPA will be at Hyatt's expense;

c. Hyatt will complete an accounting course, either a continuing legal education course teaching trust account accounting practices or other accounting course with an emphasis on trust accounts and/or fiduciary funds approved in advance by the Office of Counsel of the State Bar. Hyatt will complete this course within six months of service of this order upon her. Hyatt will provide the Office of

Counsel of the State Bar with proof of completion of this course within ten days of completion.

d. For the quarter following completion of this accounting course, Hyatt will personally and without the assistance any other person:

   i. For each and every client for whom funds are held in the trust account(s) at any time during the quarter, maintain a client ledger containing a record of receipts and disbursements for each client that shows the current balance of funds held in the trust account for each such person or entity;

   ii. Maintain these client ledgers on an ongoing basis, updating each ledger contemporaneously with receipt or disbursement of trust account funds;

   iii. Reconcile her trust account(s), totaling the individual client balances shown on the above described ledgers and reconciling that balance with the current bank balance for the trust account(s) as a whole on a monthly basis.

e. Hyatt will provide copies of these client ledgers, her monthly reconciliations of her trust account(s), and the corresponding bank statements to the CPA conducting the audit of her trust account for that quarter and to the State Bar Office of Counsel, such documents being due 15 days after the end of that quarter;

f. For the quarter in which Hyatt performs the activities required in subsection d of this paragraph 2, the CPA will examine the ledgers and reconciliations created and/or maintained by Hyatt during that quarter, in addition to performing an independent audit of the trust account(s). If the CPA finds any deficiencies in Hyatt's recordkeeping or maintenance of the trust account(s), the CPA will issue a report describing the deficiencies. This report will be provided to Hyatt and the Office of Counsel of the State Bar in addition to the report of the CPA's independent audit of the trust account(s) no later than 15 days after completion of the audit and review. All evaluations, reports, and services of the CPA will be at Hyatt's expense;

g. If the CPA finds any deficiencies in Hyatt's recordkeeping or maintenance of her trust account(s), Hyatt will:

   i. Correct any deficiencies within ten days of receipt of the CPA's report and provide documentation to the Office of Counsel of the State Bar of the corrective action within ten days of accomplishing it; and

   ii. Personally create and/or maintain the records described in subparagraph d of paragraph 2 for the subsequent quarter and

fulfill the requirements of subparagraphs e. f. and this subparagraph g of paragraph 2 for such quarter, until the CPA finds no deficiencies in Hyatt's recordkeeping or maintenance of her trust account(s).

h. The personal recordkeeping by Hyatt described above can be in addition to any accounting or recordkeeping system Hyatt has instituted in her office but must occur independently and without the assistance of others. This personal recordkeeping requirement in no way excuses Hyatt from compliance with Rule 1.15 prior to taking the accounting course described above;

i. Hyatt will be the only signatory on her trust account(s) and operating account(s). Hyatt will provide documentation showing she is the sole signatory on these accounts no later than thirty (30) days from the effective date of this order. Hyatt must sign all instruments disbursing funds from or depositing funds into her trust and operating account(s);

j. Hyatt will complete a law office management course within one year of service of this order upon her. Such course can be a session that is part of a bigger continuing legal education course or can be an independent course. The law office management course or session shall be approved in advance by the Office of Counsel of the State Bar;

k. Hyatt will not violate any of the Revised Rules of Professional Conduct in effect during the period of the stay;

l. Hyatt will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and

m. Hyatt will pay all costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on her.

3. If Hyatt fails to comply with any one or more conditions stated in paragraph 2 above at any point during the period of time the suspension is stayed, the stay of the suspension of her law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

4. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order providing for such conditions it deems necessary for reinstatement of Hyatt's license at the end of the three-year suspension. Furthermore, Hyatt will have complied with each of the following conditions precedent to reinstatement:

a. Submitted her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating her suspension:

b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis: and

c. Taken the accounting and law office management courses described in paragraph 2 above.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members, this the 8th day of December, 2008.

T. Richard Kane
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:

Jennifer A. Porter
Deputy Counsel
Attorney for Plaintiff

Dudley A. Witt
Attorney for Defendant

Susan E. Hyatt
Defendant