



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 27

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

HOLLY C. STEVENS, PAULINE E.
MAKIA, CARMEN J. BATTLE, and
JAMIE FAYE NEWSOM, Attorneys,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER OF
DISCIPLINE
AS TO
CARMEN J. BATTLE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, and members Harriett Smalls and Joe Castro, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Carmen J. Battle (“Battle”), was represented by Anthony E. Flanagan. Both Plaintiff and Defendant Battle stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Battle has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Battle freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

This order pertains only to the claims concerning Defendant Carmen J. Battle and resolves only those claims. The term “parties” in this order refers to the State Bar as Plaintiff and Carmen J. Battle as Defendant.

Based upon the pleadings in this matter, the parties’ stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters the following:

Findings of Fact

1. Plaintiff, the North Carolina 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 promulgated thereunder.

2. Defendant Carmen J. Battle (“Battle”) was admitted to the North Carolina State Bar in 1995, 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 Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Battle was engaged in the practice of law in Fayetteville, Cumberland County, North Carolina.

4. Battle was properly served with process, a hearing in this matter was set, and the matter came before the Hearing Panel with due notice to all parties.

5. In about January 2006, Battle was considering purchasing Holly Stevens' law practice.

6. Holly Stevens ("Stevens") was associated with Maurice Jenkins ("Jenkins"), who purported to be a real estate investor. Stevens frequently closed real estate transactions involving Jenkins and participated in purchasing and selling real property with Jenkins. Unbeknownst to Battle, Jenkins and Stevens engaged in fraudulent practices in these real estate transactions.

7. To show her interest in the purchase, Battle covered Stevens' cases and opened a trust account and an operating account for use in conducting real estate closings. In January 2006, Battle also provided her signature to Stevens' staff so the staff could order a signature stamp for use in real estate closings.

8. On February 1, 2006, Stevens and Battle were scheduled to sign the agreement for Battle to purchase Stevens' practice but did not do so. Negotiations continued for about a month afterwards but ultimately failed. By the end of May 2006 Battle had begun other employment in Raleigh and another attorney had purchased Stevens' law practice.

9. Between about February 2006 through about May 2006, Battle's trust account and operating account and Battle's signature stamp were used by the non-attorney assistants in Stevens' office to close real estate transactions under Battle's name, including those listed in Exhibit C to the complaint. The transactions listed in Exhibit C provide examples of the conduct described herein and are not an exclusive list of transactions in which this conduct occurred.

10. In these transactions, Battle did not supervise the non-attorney assistants in Stevens' office and did not supervise these real estate transactions in any way.

11. Battle failed to reconcile the trust account to which she had given Stevens' staff access. Battle also failed to ensure the entrusted funds from the lenders in the real estate transactions closed under her name were properly disbursed.

12. Battle's failure to supervise the staff and these closings enabled the staff to continue to assist Jenkins in his fraudulent practices, which included fraudulent flip transactions, disguising purchases as refinances, redirecting funds intended to pay prior mortgages to disbursements for Jenkins' benefit, and funds not collected from borrowers at closing which had been shown as paid on the HUD-1 Settlement Statements.

13. In the course of the closings identified in Exhibit C to the complaint, the non-attorney assistants prepared inaccurate HUD-1 Settlement Statements. They also prepared inaccurate preliminary opinions of title which gave false information about the record owner of the property. Battle, through her lack of participation in these closings, failed to ensure accurate HUD-1 Settlement Statements and preliminary opinions of title were prepared and submitted.

14. Battle, through her lack of participation in these closings, also failed to ensure compliance with lenders' closing instructions in these transactions done in her name.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

Conclusions Of Law

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Battle and the subject matter of this proceeding.
2. Battle's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - a) By failing to receive and disburse funds as represented on the HUD-1 Settlement Statements, Battle failed to appropriately maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m); and
 - b) By providing non-attorney assistants access to her trust account and her signature stamp for use in real estate transactions, failing to reconcile the trust account, and failing to participate in or supervise the real estate transactions, Battle failed to act with reasonable diligence in representing clients in violation of Rule 1.3, failed to reconcile her trust account quarterly in violation of Rule 1.15-3(d)(1), and failed to make reasonable efforts to ensure that the non-attorney assistants' conduct was compatible with her professional obligations in violation of Rule 5.3(b).

Upon the consent of the parties, the Hearing Panel also enters the following:

Findings Of Fact Regarding Discipline

1. The practice of law is restricted to attorneys because the advanced legal education and training received by attorneys is necessary to effectively identify applicable legal requirements and obligations, to identify legal issues, and to apply the law to each client's individual circumstance.
2. For an attorney to be able to supervise a non-attorney assistant's work, the attorney must first know the applicable legal authorities and requirements applicable to the work being done. An attorney must also be present and aware of the activities of the non-attorney assistants.

3. Attorneys hold positions of trust. Attorneys must guard the use of their names and law licenses. Battle failed to do so. Providing Stevens' staff with a signature stamp of her name along with access to her trust account and operating account without supervision created the opportunity for Stevens' staff to misuse her law license and her trust account as they did.

4. Battle intended that her signature stamp and trust account would be used for real estate transactions and was aware of their use in certain real estate transactions by Stevens' staff. Although Battle was not aware that the staff was using her name and trust account for the closings listed in Exhibit C to the complaint in this matter, she enabled the staff to engage in misconduct in these closings through her lack of supervision over both the staff and her trust account.

5. Banks are not normally thought of as vulnerable entities. Nevertheless, banks rely upon the closing attorney to carry out the closing in an ethical, lawful, and proper manner. These institutions are particularly vulnerable to conduct of attorneys that circumvents or facilitates others in the circumvention of safeguards employed to avoid fraud.

6. Accurate HUD-1 Settlement Statements are necessary for the system of finance in real estate to function. Lenders rely upon the HUD-1 Settlement Statements to accurately reflect the receipt and disbursement of funds in real estate closings. Lenders rely on the entries in line 303 of the HUD-1 Settlement Statements showing payment by the buyers/borrowers at closing to show the buyers/borrowers contributed their own money to the transaction. Lenders rely upon such personal contribution by the buyers/borrowers to reduce the risk of default on the loan by the buyers/borrowers.

7. Lenders provided closing instructions, compliance with which were a prerequisite to the lender making the loan to the borrower. Failure to comply with the closing instructions circumvented the lenders' attempt to ensure the loans at issue were ones it was willing to make. Additionally, the inaccurate preliminary opinions of title Battle's office provided to the title insurance companies in the fraudulent flip transactions resulted in false information on the title commitments that hid the first part of the transactions from the lenders.

8. Battle has no prior disciplinary record concerning her license to practice law.

9. When Battle first began talking with Stevens about purchasing Stevens' law practice, Battle had only recently finished intense treatment and surgery for breast cancer. During the time period at issue, Battle was still in recovery from this treatment. Battle was anxious about recurrence of the breast cancer. The recent bout with cancer and her anxiety about recurrence of the cancer weighed on her and distracted her from paying the attention she otherwise would have paid to events at Stevens' law firm.

10. At the time of the closings at issue in this matter, Battle was only in Fayetteville for a limited amount of time each day. She spent little time at the law office.

She was unaware that the non-attorney assistants were using her trust account, operating account, and signature stamp for the closings identified in Exhibit C.

11. Battle has expressed remorse for her conduct.

12. Battle did not engage in the conduct described in the Findings of Fact above with any dishonest or selfish motive.

13. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

Conclusions With Respect To Discipline

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- a) Defendant's actions potentially had a negative impact on the public's perception of the legal profession; and
- b) Defendant's actions impaired her clients' ability to achieve the goals of the representation.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- a) Defendant's lack of prior disciplinary offenses;
- b) Absence of a dishonest or selfish motive;
- c) Defendant engaged in multiple offenses;
- d) Defendant engaged in a pattern of misconduct;
- e) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;

- f) Defendant's remorse; and
- g) The vulnerability of Defendant's clients.

4. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Battle complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Battle's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

Order Of Discipline

1. Defendant, Carmen J. Battle, is hereby suspended from the practice of law for five years, effective 30 days from service of this order upon Battle.

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

- a. Does not engage in the practice of real property law, as defined in 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .2102.
- b. Annually submits a certification of the areas of law in which she practiced for the preceding 12 months. Said certifications are due no later than December 31 of each year of the stay;
- c. Each year of the stay, completes 12 hours of continuing legal education in addition to the hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. These 12 hours shall consist of substantive education courses in the areas of law in which Battle is then currently practicing or involved as a hearing officer, including any courses in administrative law, employment law,

evidence, or ethics in litigation. These additional hours must be completed within the applicable time period for completing the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518 each year of the stay and must be reported on the annual CLE report forms;

- d. Each year of the stay, completes a continuing legal education course focusing on managing a law office and/or supervising non-legal assistants. This course may be taken as part of the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. This course must be completed within the applicable time period for completing the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518 each year of the stay and must be reported on the annual CLE report forms;
- e. Within the 12 months immediately preceding expiration of the stay period, completes 6 hours of continuing legal education in real property law. These hours must be focused on general real property law or residential real property law, as defined in 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .2102. These hours may be taken as part of the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. These hours must be completed within the applicable time period for completing the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518 and must be reported on the applicable annual CLE report form.
- f. Timely submits her annual CLE report form to the CLE department of the North Carolina State Bar each year of the stay and contemporaneously sends a copy of the CLE report form to the Office of Counsel of the State Bar to document compliance with the above conditions of the stay. "Timely" means by the date specified by the CLE department as the date by which members must submit their annual report forms to avoid assessment of a \$75.00 late filing penalty. Battle must ensure the Office of Counsel receives a copy of her annual CLE report form no later than 15 days after it is due to the CLE department of the State Bar each year;
- g. Pays all Membership dues and Client Security Fund assessments and complies with all Continuing Legal Education requirements on a timely basis;
- h. If engaged in the representation of any clients during the stay, arranges for an active member of the North Carolina State Bar who is in good standing who practices law in the county in which Battle primarily practices and who has been approved by the North Carolina State Bar to serve as her practice monitor. The selected monitor must agree to

so serve and agree to meet with Battle monthly to review Battle's cases. Each month, the monitor must go over at least one case in detail in each area of law in which Battle is practicing, with discussion including but not limited to identification of applicable statutory and regulatory authorities, identification of potential legal issues, and plan of representation. Battle shall come prepared each month to discuss these topics in her cases with her practice monitor. The monitor must submit written quarterly reports of these meetings and discussions to the Office of Counsel of the State Bar, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15. This monitoring must occur for the duration of the stay of this suspension. Battle will pay the cost, if any, charged by the monitor. Battle must have made the arrangements for this monitoring attorney and supplied the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above no later than ninety (90) days from service of this Order;

- i. If engaged in the representation of any clients during the stay, meets once a month with her practice monitor, to whom she will report the status of all current client matters, cooperates with the monitor attorney, and provides any information the monitor attorney deems reasonably necessary. Battle shall be prepared to discuss identification of applicable statutory and regulatory authorities, identification of potential legal issues, and plan of representation for each client matter;
- j. If engaged in the representation of any clients during the stay, ensures the monitoring attorney sends a written report each quarter to the Office of Counsel of the State Bar as described above;
- k. If engaged in the representation of any clients during the stay, cooperates with the Office of Counsel and makes appropriate arrangements for an alternate monitoring attorney if needed during the stay of this suspension;
- l. Keeps her address of record with the North Carolina State Bar current, accepts all certified mail from the North Carolina State Bar, and responds to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- m. Does not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- n. Does not violate any laws of the State of North Carolina or of the United States during the period of the stay; and

- o. Pays all costs of this proceeding as assessed by the Secretary, including the costs allowed by statute for the taking of her deposition, within thirty (30) days after service of the notice of costs on her.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, the following conditions are placed upon Battle's reinstatement to active status. With any petition Battle files for reinstatement to active practice, Battle must demonstrate by clear, cogent, and convincing evidence that she complied with each of the following conditions:

- 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 N.C. State Bar Discipline & Disability Rules on a timely basis;
- c. Within the 12 months immediately preceding her application for reinstatement, completed 6 hours of continuing legal education in real property law. These hours must be focused on general real property law or residential real property law, as defined in 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .2102;
- d. Not have violated any of the Rules of Professional Conduct;
- e. Not have violated any laws of the State of North Carolina or of the United States;
- f. Paid all costs of this proceeding as assessed by the Secretary within thirty (30) days of service of the notice of costs upon her;

4. 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 undersigned Hearing Panel chair with the consent of the other Hearing Panel members.

This the 01 day of March 2011.



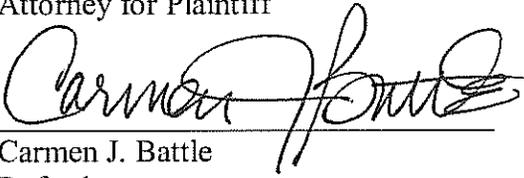
Sharon B. Alexander, Chair
Disciplinary Hearing Panel

Consent Order of Discipline concerning Carmen Battle
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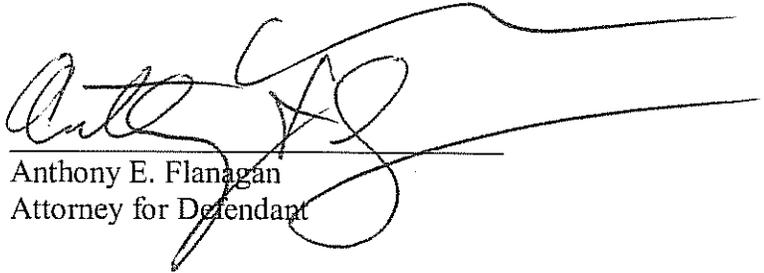
Agreed and consented to by:



Jennifer A. Porter
Attorney for Plaintiff



Carmen J. Battle
Defendant



Anthony E. Flanagan
Attorney for Defendant