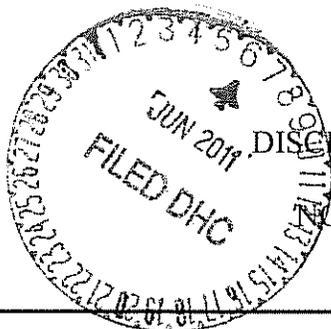


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 42

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
DAVID B. BAYARD, Attorney,)
Defendant)

CONSENT
ORDER OF DISCIPLINE

This matter was scheduled to be heard by a hearing panel of the Disciplinary Hearing Commission composed of M. Hood Ellis, Chair; William M. Claytor and Joe Castro. A. Root Edmonson represents the North Carolina State Bar. The Defendant, David B. Bayard, is represented by James K. Pendergrass, Jr. The Defendant admits that the evidence in the case supports the result agreed to by the parties. Based upon the consent of the parties, the panel finds the following facts were established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The 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. The defendant, David B. Bayard (hereinafter "Defendant"), was admitted to the North Carolina State Bar on August 18, 2000 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the time in 2002 relevant to this complaint, Defendant actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Cary, Wake County, North Carolina. However, Defendant has not practiced law since 2005.
4. In early 2002, Defendant met James Bullock (hereinafter "Bullock") who operated a real estate investment enterprise known as Jalen Investments.
5. Jalen Investments was an illegitimate real estate investment enterprise used as a front for an illegal mortgage fraud scheme. As a part of this scheme, Bullock would entice a builder with a large inventory of unsold homes to agree to sell a new home for a reduced price.

Bullock would then recruit an “investor” through Jalen Investments to buy that home at a significantly higher price. Rather than investing money in the purchase, the recruited “investor” would be paid to purchase the home by Jalen Investments. Bullock, through Jalen Investments, would then assist the “investor” in securing a loan on the property by providing false information to the lender, including but not necessarily limited to failing to disclose Bullock’s agreement with the builder for the lower sales price and failing to disclose the buyer’s lack of investment. The false information provided by Bullock induced the mortgage lender to make a loan it would not otherwise have made to the “investor.” Jalen Investments profited from the difference in the amount of the loan and the negotiated reduced sales price of the home.

6. Between February 2002 and May 2002, Defendant closed a number of transactions for Bullock in which Defendant prepared and transmitted HUD-1 settlement statements containing false information about the structure of the transactions, including false information about purported second mortgage payoffs and false information about the buyers’ investment of their own funds in the transactions. These transactions involved the following properties:

- (a) 110 Meadow Hills Drive in Four Oaks, NC
- (b) 115 Meadow Hills Drive in Four Oaks, NC
- (c) 165 Meadow Hills Drive in Four Oaks, NC
- (d) 103 Spring Branch Drive in Smithfield, NC

7. As required by § 3500.8 of the regulations implementing the Real Estate Settlement Procedures Act, 24 CFR 3500, et. seq., Defendant, as settlement agent for Bullock, had a duty to accurately state the actual receipts and disbursements for each transaction on the HUD-1 settlement statement for each closing he conducted.

8. Bullock’s Jalen Investments enterprise would not have operated successfully without the assistance of a closing attorney who would prepare and transmit HUD-1 settlement statements containing false information about the transactions.

9. By sending false information to lenders as described above, Defendant aided and abetted Bullock in obtaining property by false pretenses. The federal authorities have reviewed Defendant’s role in this offense and have chosen not to bring any charges.

BASED UPON the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before this panel of the Disciplinary Hearing Commission and the Disciplinary Hearing Commission and this panel have jurisdiction over Defendant and the subject matter.

2. Defendant's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time as follows:

- (a) By preparing and sending HUD-1 settlement statements to lenders containing false information about the receipts and disbursements in mortgage loan closings he conducted, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

Based upon the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the panel hereby finds the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Lending institutions are not normally thought of as vulnerable entities. Nevertheless, lenders rely upon a closing attorney to carry out the closing in an ethical, lawful, and proper manner. These institutions are particularly vulnerable to the conduct of attorneys that facilitate others in the circumvention of safeguards employed to avoid fraud.

2. Defendant's obligation as closing attorney was to produce an accurate HUD-1 Settlement Statement for each transaction and to ensure that funds were received and disbursed as represented to the lender on the HUD-1.

3. 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. Defendant's preparation and submission of HUD-1 Settlement Statements that he knew did not accurately show the receipt and disbursement of funds and Defendant's failure to receive and disburse funds as reflected on the HUD-1 Settlement Statements evaded the safeguards relied upon by the lenders.

4. Lenders are entitled to attorneys they can trust. Defendant, by aiding Bullock in his misconduct on more than one occasion, has shown himself to be untrustworthy. When an attorney violates that trust, it harms the public and the profession.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following:

CONCLUSIONS REGARDING DISCIPLINE

- 1. The hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w) (1), (2) and (3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

General Factors from 27 N.C.A.C. 1B §.0114(w) (3):

- a. Defendant has no prior disciplinary offense;
- b. Defendant engaged in a pattern of misconduct;
- c. Defendant engaged in multiple offenses; and
- d. Defendant's disciplinary proceeding was delayed through no fault of the Defendant.

Suspension and Disbarment Factors from 27 N.C.A.C. 1B §.0114(w) (1):

- a. Defendant committed acts where the harm or potential harm was foreseeable;
 - b. Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;
2. 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.
 3. The Hearing Panel has considered all lesser forms of sanctions available to it and finds that disbarment is the only appropriate discipline in this case, for the following reasons:
 - a. Defendant committed misdeeds involving moral turpitude and violations of the public trust, including misrepresentations and deceit. Misconduct involving misrepresentations and deceit are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients and third parties are entitled to have trustworthy attorneys;
 - b. The factors under Rule .0114(w)(2) that are established by the evidence in this case are of a nature that support imposition of disbarment as the appropriate discipline;
 - c. Entry of an order imposing lesser discipline than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant, would be inconsistent with discipline issued in prior cases involving similar misconduct, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar; and
 - d. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice

law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarment is the only discipline available that requires an attorney to make such a showing before he or she may be reinstated.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and Conclusions Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant, David B. Bayard, is hereby DISBARRED from the practice of law in North Carolina.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant
3. The costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs and fees within 90 days of service of the statement of costs upon him.

Signed by the undersigned Chair of the panel with the consent of the other members of the panel this the 3rd day of June 2011.



M. Hood Ellis, Chair
Hearing Panel

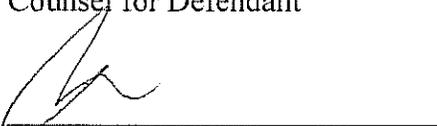
We Consent:



A. Root Edmonson
Deputy Counsel



James K. Pendergrass, Jr.
Counsel for Defendant



David B. Bayard
Defendant