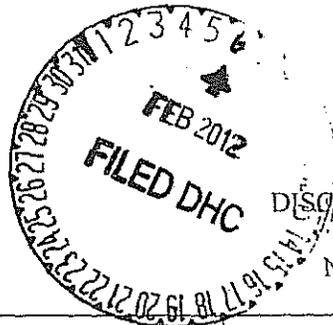


NORTH CAROLINA
WAKE COUNTY



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

CONSENT
ORDER

Defendant, Susan E. Hyatt ("Hyatt" or "Defendant") was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on December 8, 2008 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of C. Colon Willoughby, Jr., Chair, and members William M. Claytor and Michael J. Houser pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(x). Plaintiff was represented by Jennifer A. Porter. Defendant was represented by Dudley A. Witt. Based upon the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence the following:

FINDINGS OF FACT

1. On December 8, 2008, an Order of Discipline (hereinafter "the Order") was entered in this matter. The Order was served on Defendant on December 16, 2008.
2. The Order imposed a three year suspension stayed for three years. The stay of the suspension was conditioned upon compliance with the conditions stated in the Order.
3. The Order, at paragraph 2.a. on page 6, required Defendant to have her trust accounts audited within 90 days of service of the order and to provide the audit report to the State Bar within ten days of receipt. The 90 day deadline was March 16, 2009. On March 6, 2009, Defendant's CPA requested a 120 day extension. The State Bar informed Defendant's counsel that it was not willing to set an extended deadline and the CPA was instructed to provide what he had as soon as possible. Nothing was provided to the State Bar from the CPA until September 25, 2009, after the State Bar sent a letter to Defendant on August 24, 2009 calling her attention to this lack of compliance with the Order.
4. The Order, at paragraph 2.b. on page 6, required Defendant to meet the following condition throughout the stay of the suspension:

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.

5. Defendant failed to timely comply with this requirement for seven quarters during the stayed suspension, including the two quarters for which reports had come due immediately preceding the filing of this motion.

6. The documents Defendant has provided regarding her trust account evidence ongoing trust account violations, including as follows:

- a. One of the reports provided from Defendant's CPA on September 25, 2009 showed that Defendant's real estate trust account was short \$6,494.88 of the funds she should have been maintaining for clients and her general trust account was short \$1,410.63 of the funds she should have been maintaining for clients, in violation of Rule 1.15-2(a) and (m). It appears most of the overdisbursements resulting in the deficit were due to the employee misappropriation that predated the Order, but a \$300.00 deficit was caused by an improper disbursement from the trust account in a client matter on December 23, 2008.
- b. Comparison of the lists of client balances provided in the reconciliation reports shows that Defendant has held the same amount of money in trust for several clients for over two years with no disbursement for the client. Defendant failed to diligently complete these representations and disburse these client funds in violation of Rule 1.3 and Rule 1.15-2(m). Defendant also failed to provide these clients with the annual accounting required by Rule 1.15-3(e).
- c. At some point during the third quarter of 2011, Defendant deposited \$430.00 into the operating account that should have been deposited into the general trust account, resulting in a deficit in the funds she should have been maintaining for clients in that account in violation of Rule 1.15-2(a) and (m). Defendant was not conducting monthly reconciliations and did not realize this error until the CPA quarterly reconciliations were completed in November 2011. She did not deposit funds to rectify this deficiency until December 2, 2011, the date on which she provided the reconciliations for the second and third quarter of 2011 to the State Bar.
- d. Defendant allowed clients to pay her fees with credit cards. The credit card processing company deducted processing fees directly from Defendant's trust account. Defendant did not maintain sufficient funds in the trust account for these processing fees, resulting in a shortage in the trust account in violation of Rule 1.15-2(m). Defendant subsequently

reimbursed the trust account on a quarterly basis. Defendant was under the mistaken impression that the subsequent reimbursement was a permissible method for addressing the credit card transaction fees. When Defendant was made aware this was not a permissible arrangement, she appropriately changed her process.

7. Defendant's ongoing trust account issues violate the condition of the Order to not violate the Rules of Professional Conduct during the stay of the suspension (paragraph 2.k. pg 8).

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over the Defendant and over the subject matter of this proceeding.

2. Defendant failed to comply with the following conditions of the stay of her suspension contained in the Order:

- a. That she have a CPA audit her trust account within 90 days of service of the Order;
- b. That she have a CPA audit her trust account quarterly and provide the audit report to the State Bar by the deadlines set out therein; and
- c. That she not violate any of the Rules of Professional Conduct during the period of the stay.

3. The conduct at issue in the Order of Discipline entered in this case stemmed from Defendant's inattention to her trust account and her failure to fulfill her trust account obligations. The evidence shows that Defendant's attention to her trust account and her compliance with her trust account obligations is still deficient. This poses the same risk of significant potential harm as was posed by her original conduct. The trust a client places in an attorney to appropriately handle his or her entrusted funds should be inviolable and an attorney's failure to comply with the trust account requirements set out in Rule 1.15-2 and 1.15-3 to ensure appropriate handling of entrusted funds is unacceptable.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Additional Findings and Conclusion, the Hearing Panel enters the following:

ORDER

1. The stay of Defendant's three year suspension is lifted and the suspension is activated. Pursuant to Rule .0124(c) of the North Carolina State Bar Discipline and Disability Rules, this order and the three-year suspension imposed herein are effective 30 days after service of this order upon Defendant.

2. Defendant must comply with the obligations of a suspended attorney under Rule .0124 of the North Carolina State Bar Discipline and Disability Rules and the requirements of the Order of Discipline.

3. After serving six months of her activated suspension, Defendant may apply to have the remainder of the three year suspension stayed by petitioning for reinstatement to active status. In seeking reinstatement, Defendant must show by clear, cogent, and convincing evidence:

- a. That she has complied with the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules and the requirements for reinstatement contained in paragraph 4 and its subparagraphs on pages 8 and 9 of the Order of Discipline.
- b. That she has disbursed all funds held in trust, to the extent permitted by law. Defendant must provide trust account records and client records showing that all funds in any and all trust accounts have been disbursed. If funds must be escheated but this cannot be accomplished with the six month period, then documentation showing why escheatment is appropriate, any actions taken toward escheatment, and a timeline for when the process will be complete will suffice as to those funds. If funds cannot be disbursed due to a Medicaid, Medicare, or other valid and enforceable claim or lien, documentation of said claim or lien and of at least monthly efforts to resolve the claim or lien during the six month period will suffice for such funds. If funds cannot be disbursed for any other reason, Defendant shall provide the legal authority showing why the funds could not be disbursed and shall describe when and how the funds will be disbursed. Any and all actions necessary to disburse the funds shall be at Defendant's expense and shall not be charged to the clients.
- c. That she paid any costs and administrative fees of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs upon her.
- d. That she has been evaluated by a behavioral health provider and is in compliance with all treatment recommendations.

4. If Defendant is granted a stay of any portion of the activated three-year suspension, Defendant's active status shall be subject to, and contingent upon, compliance with the following conditions throughout the stayed suspension:

- a. Each month Defendant shall provide the State Bar with the three-way reconciliation of her trust account described in the State Bar Lawyer's Trust Account Handbook on pages 35-40. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in her trust account during that month, ledger for any personal funds

maintained in the trust account for bank or credit card fees, her trust account ledger, and the bank statement, cancelled checks, and deposit slips for each month. These documents are due on the 15th day of the following month – for example, the three-way reconciliation for the month of January is due on February 15:

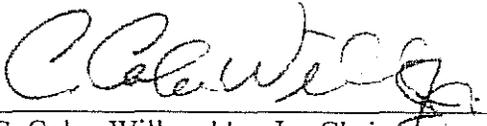
- b. Each quarter, Defendant shall have a CPA audit her trust account. This audit shall assess whether Defendant has in her trust account the client funds she should be maintaining for her clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the Accountant Checklist for Probation Cases provided by the State Bar to Defendant's counsel. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter -- for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30:
- c. If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action:
- d. Defendant shall provide the State Bar with any annual accountings provided to clients pursuant to Rule 1.15-3(e):
- e. Defendant will provide the State Bar with any additional records it requests within 10 days of the request:
- f. Defendant will provide the State Bar with written authorization for her behavioral health provider to communicate with the State Bar regarding her assessment and treatment, and will not revoke this authorization during the duration of the stay:
- g. Defendant will meet quarterly with her behavioral health provider, and will provide the State Bar with a report from the provider no later than 15 days after the end of each quarter (January 15, April 15, July 15, October 15):
- h. Defendant will comply with all treatment recommendations and requirements of her behavioral health provider:
- i. Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of her stay: and

j. Defendant shall not violate any of the laws of the State of North Carolina or of the United States during the period of the stay.

5. If Defendant is not granted a stay of any portion of the three-year activated suspension, then before Defendant may be reinstated to active status she must satisfy the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules and all requirements for reinstatement contained in paragraph 3 of this order.

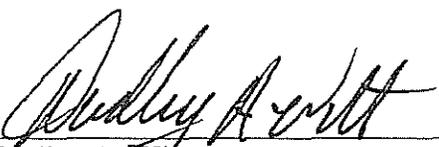
Signed by the undersigned Chair of the Disciplinary Hearing Panel with the consent of the other Hearing Panel members.

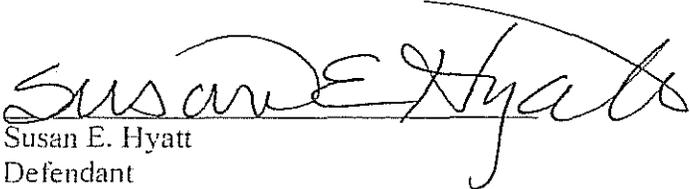
This the 6 day of February 2012


C. Colon Willoughby, Jr., Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Jennifer A. Porter
Deputy Counsel
Attorney for Plaintiff


Dudley A. Witt
Attorney for Defendant


Susan E. Hyatt
Defendant