

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 12

THE NORTH CAROLINA STATE BAR)
Plaintiff)

v.)

THOMAS L. NESBIT, ATTORNEY)
Defendant)

ORDER
OF DISCIPLINE

THIS MATTER was heard on May 14, 2010 before a hearing panel of the Disciplinary Hearing Commission composed of Donna R. Rascoe, Chair, Steven D. Michael and Michael J. Houser pursuant to 27 N.C.A.C. 1B §.0114 of the Rules and Regulations of the North Carolina State Bar. Defendant, Thomas L. Nesbit, was represented by Dudley A. Witt and David B. Freedman. Plaintiff was represented by Deputy Counsel Margaret Cloutier.

Based upon the record and the evidence introduced at the hearing, the hearing panel finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Thomas L. Nesbit (hereinafter "Nesbit" or "Defendant"), was admitted to the North Carolina State Bar on August 18, 1984 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 times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Mocksville, Davie County, North Carolina.

4. Defendant was the President of Fourth Street Property Management, Inc., a North Carolina Corporation (hereinafter "Fourth Street").

5. On March 1, 2005 Fourth Street purchased an office building located on North Main Street, Mocksville, North Carolina (hereinafter "the property").

6. The property was encumbered by a deed of trust securing a loan from SunTrust Bank to Fourth Street.

7. In July 2005 Fourth Street contracted to sell a portion of the property to Michael and Julie Parker free and clear of all liens and encumbrances.

8. The portion of the building and land sold to the Parkers became known as 136 North Main Street (hereinafter "the Parker property").

9. Defendant, his wife and the Parkers were friends at the time.

10. To help facilitate the sale of the property, the Parkers asked Lori Hamilton-DeWitt to act as settlement agent for the closing of the transaction.

11. The Parkers and Ms. Hamilton-DeWitt understood based on Defendant's statements to Mr. Parker that Defendant would be restructuring the Fourth Street loan with SunTrust and would use all or part of the sale proceeds to obtain a release of the Parker property from the SunTrust deed of trust.

12. On November 4, 2005 Defendant, as President of Fourth Street, signed a warranty deed conveying the property to Michael and Julie Parker.

13. On November 4, 2005 Defendant, as President of Fourth Street, signed a HUD-1 form detailing the financial aspects of the sale of the Parker property.

14. The HUD-1 form did not identify a payment of any portion of the closing proceeds to SunTrust Bank.

15. The HUD-1 form showed \$115,971.03 as cash to seller.

16. The closing took place on November 10, 2005. The settlement agent was Lori Hamilton-DeWitt. Defendant was not present at the closing.

17. From the closing funds provided on behalf of the Parkers, Ms. DeWitt prepared a check for \$115,971.03 made payable to Fourth Street representing the sales price less the seller's costs.

18. Immediately following the closing on November 10, 2005, Michael Parker delivered to Defendant the \$115,971.03 check.

19. Michael Parker and the settlement agent relied on Defendant to deliver some or all of the funds to SunTrust Bank in payment of Fourth Street's obligation to SunTrust in exchange for release of the Parker property from SunTrust's deed of trust.

20. Defendant knew Michael Parker and the settlement agent were relying on Defendant to deliver some or all of the funds to SunTrust Bank in payment of Fourth Street's obligation to SunTrust in exchange for release of the property from SunTrust's deed of trust.

21. Defendant did not deliver any funds to SunTrust Bank in payment of Fourth Street's obligations to SunTrust and did not obtain a release of the property from SunTrust's deed of trust.

22. After the closing, no funds were paid to SunTrust Bank and SunTrust Bank did not release the Parker property from its deed of trust.

23. Fourth Street did not convey the property to the Parkers free and clear of all liens and encumbrances.

24. On November 10, 2005 \$115,971.03 was deposited into Fourth Street's bank account.

25. After November 10, 2005 various disbursements were made from Fourth Street's bank account for the benefit of Fourth Street, Defendant's law firm or Defendant totaling \$115,971.03.

26. Defendant converted some or all of the \$115,971.03 to his own use and benefit.

27. During the year 2005 Defendant was experiencing difficult financial times, and his personal and business accounts reflect that by November 2005 he had limited funds available for routine expenses.

28. In October 2007, SunTrust initiated a foreclosure action against Fourth Street based on Fourth Street's failure to make payment on its loan secured by SunTrust's deed of trust. The Parkers were named as Defendants in the foreclosure action because the Parker property had not been released from SunTrust's deed of trust.

29. On February 13, 2008, Defendant entered into a Guaranty Agreement pursuant to which he agreed to reimburse Lawyers Title Insurance Corporation, who paid the SunTrust lien on the Parker property thereby putting BB&T, the Parker's lender, in a first lien position on the Parker property.

30. Defendant's obligation to Lawyers Title Insurance Corporation pursuant to the Guaranty Agreement has been paid in full.

31. On April 7, 2008 in the Superior Court of Davie County Defendant entered a guilty plea pursuant to *State v. Alford* and was convicted of the crime of Obtaining Property by False Pretenses, a felony, in violation of N.C.G.S. §14-100.

32. On May 1, 2008, Defendant entered into a Consent Order of Interim Suspension pending disposition of the disciplinary proceedings before the Disciplinary Hearing Commission.

33. After considering all of the evidence and testimony of all of the witnesses, the panel does not find the testimony of Mr. and Mrs. Nesbit to be credible.

Based upon the foregoing 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 the Defendant, Thomas L. Nesbit, and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) as follows:

a. by failing to pay to SunTrust any of the funds he knew were intended to satisfy the lien on the property, and by converting some or all of the funds to the use and benefit of himself, his family, his law firm and Fourth Street, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and

b. by his conviction of Obtaining Property by False Pretenses, a felony, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b)

3. Defendant's conviction of the felony of Obtaining Property by False Pretenses is a conviction of a criminal offense showing professional unfitness that constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(1).

Based upon the evidence presenting at the hearing, the hearing panel also finds by clear, cogent and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant presented a number of witnesses who testified that he was a person of good character and reputation in the legal community.

2. As a result of Defendant's conduct in this matter, Mr. and Mrs. Parker incurred expenses of \$4,000.00 in attorney's fees and \$321.00 in mediator's fees to have the foreclosure matter resolved.

3. Mr. and Mrs. Parker continue to be impacted by Defendant's conduct because the foreclosure continues to appear on their credit report.

4. Mr. and Mrs. Parker have also experienced emotional stress at home and in their church as a result of Defendant's conduct.

5. Mrs. Hamilton-DeWitt experienced significant emotional distress, including damage to her professional reputation, and she felt compelled to resign from her church because the Nesbits remained members of the same church.

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)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

(a) Defendant's dishonest or selfish motive;

(b) Defendant's cooperative attitude toward the proceedings;

(c) Defendant's refusal to acknowledge the wrongful nature of his conduct;

(d) Defendant's reputation for good character within the legal community; and

(e) Defendant's substantial experience in the practice of law.

2. The hearing panel has also 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 finds the following factors are applicable in this matter:

(a) The intent of Defendant to commit acts where the harm or potential harm was foreseeable;

(b) Circumstances reflecting Defendant's lack of honesty, trustworthiness or integrity;

(c) The negative impact of Defendant's action on the public's perception of the profession;

(d) The effect of Defendant's conduct on third parties; and

(e) Defendant's acts of dishonesty, misrepresentation, deceit or fabrication.

3. The hearing panel has also 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 finds the following factors are applicable in this matter:

(a) Defendant engaged in acts of dishonesty, misrepresentation, deceit or fabrication;

(b) Misappropriation or conversion of assets to which Defendant was not entitled; and

(c) Commission of a felony.

4. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, censure or suspension of Defendant's license would not be sufficient discipline because of the gravity of the actual harm Defendant's conduct caused to the public's perception of the legal profession, the administration of justice and the legal profession, and because of the gravity of the significant potential harm to potential clients, the

public, the administration of justice, and the legal profession if Defendant were permitted to continue practicing law.

5. The panel finds that discipline short of disbarment would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

(a) Defendant committed misdeeds involving violations of the public trust, including material misrepresentations and deceit;

(b) Misconduct involving misrepresentations and deceit are among the most serious that any attorney can commit. Such offenses demonstrate that Defendant is not trustworthy. The public should be able to assume that all lawyers are trustworthy; and

(c) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state.

6. Protection of the public, the legal professional and the administration of justice requires that Defendant not be permitted to resume the practice of law until he demonstrates the following:

(a) That he has reformed;

(b) That he understands his obligations to his clients, the public, the legal profession and the administration of justice; and

(c) 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.

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

ORDER OF DISCIPLINE

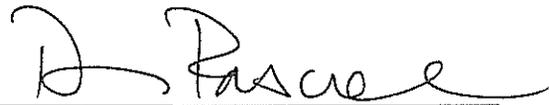
1. Defendant Thomas L. Nesbit is hereby DISBARRED from the practice of law, effective 30 days from the date of service of this order upon him.

2. Defendant shall surrender his law license and bar membership card within 30 days after service of this order upon him.

3. Defendant shall comply with all provisions of 27 N.C.A.C. 1B §.0124 of the North Carolina State Bar Discipline and Disability Rules as applicable.

4. Defendant is taxed with the costs of this action as assessed by the Secretary, including reasonable and necessary expenses for depositions taken by Plaintiff, which shall be paid within thirty days of service of the notice of costs upon Defendant.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other Panel members, this the 1st day of June, 2010.



Donna R. Rascoe, Chair
Disciplinary Hearing Panel