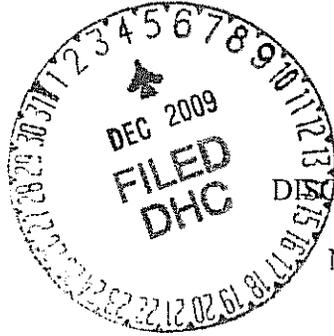


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 2

The North Carolina State Bar,)
Plaintiff,)
v.)
Terry B. Richardson,)
Defendant.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
OF DISCIPLINE**

This matter came on to be heard and was heard before a Hearing Committee of the Disciplinary Hearing Commission composed of the Chair, Sharon B. Alexander, Robert F. Siler, and Donald G. Willhoit on October 2, 22 and 23, 2009. The Plaintiff was represented by William N. Farrell, Deputy Counsel. Defendant was represented by W. Terry Sherrill and participated *pro se* as well. Based upon the testimony presented and the evidence admitted at the hearing, and the admissions in the answer to the complaint, the Hearing Committee hereby finds by clear, cogent and convincing evidence 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, Terry B. Richardson (hereinafter "Defendant or "Richardson"), was admitted to the North Carolina State Bar on 22 August 1981, 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 State of North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods relevant hereto, Defendant was actively engaged in the private practice of law in Wilmington, North Carolina.

4. On or about September 18, 2002, Leroy F. Hill, Jr. (hereinafter "Hill") retained Defendant to represent Hill in a lawsuit, New Hanover County File No. 02 CVS 1945, that had been filed against Hill.

5. The lawsuit was an action for specific performance seeking to compel Hill to convey marketable title to a piece of real property pursuant to a sales contract in which Hill agreed to sell the property for \$60,000.00.

6. On September 18, 2002 Hill signed a contingent fee agreement pursuant to which he agreed to pay one-third of the value of the subject property to Defendant for representation in 02CVS1945.

7. The lawsuit, File No. 02 CVS 1945, was dismissed on December 8, 2003, pursuant to a settlement agreement and release of claims.

8. On or about December 30, 2003, Hill accepted an offer to purchase the subject property from Eldridge C. Grady and wife, Joyce H. Grady, (hereinafter "the Gradys") for a sales price of \$180,000.00.

9. Pursuant to the Gradys' offer to purchase, \$2,500.00 earnest money was to be held in escrow by Defendant and disbursed only at closing or otherwise in accordance with the terms of the purchase agreement.

10. Defendant received \$2,500.00 from the Gradys and deposited the money into his trust account on or about January 5, 2004.

11. The \$2,500.00 earnest money was to be held in trust by Defendant for the benefit of the Gradys.
12. Defendant and Hill orally agreed that Defendant would receive one-half of the sales price of \$180,000.00. The one-half of the sales price was for the representation of Hill in 02 CVS 1945 and the additional service of finding a buyer for the subject property. This agreement was not reduced to writing.
13. Hill told Defendant he was desperate for money and asked Defendant to pay him one-half of the earnest money deposit that Defendant received from the Gradys.
14. Defendant disbursed \$1,250.00 to Hill, which was one-half of the Gradys' earnest money, by trust account check number 8021 dated January 5, 2004. Defendant also disbursed \$1,250.00 to himself by trust account check number 8020 dated January 5, 2004, which was the other half of the Grady's earnest money. Defendant had no authority to disburse these funds from the escrow on January 5, 2004, as none of the conditions to disburse these funds had been satisfied.
15. The anticipated sale of the subject property to the Gradys did not occur.
16. The Gradys' attorney advised them not to close upon the offer to purchase for the reason that title to said property was not marketable or insurable.
17. The Gradys' attorney demanded a refund of the earnest money paid to Defendant.
18. Defendant returned \$2,500.00 to the Gradys as a return of the earnest money held pursuant to the December 30, 2003 offer to purchase. This money was paid from Defendant's trust account by check number 8016 dated January 8, 2004. Defendant intended this check to constitute the return of the earnest money.

19. At the time Defendant refunded the Gradys' earnest money he had already previously disbursed the earnest money to himself and Hill. Defendant did not replenish the trust account before issuing the refund check.
20. The funds used to reimburse the Gradys were the entrusted funds of other clients or third parties who had funds in Defendant's general trust account.
21. On occasion Defendant failed to maintain bank deposit slips for his trust account listing the name of the client or other person to whom the funds belonged.
22. Defendant regularly failed to indicate on his trust account checks from which client balance the checks were drawn.
23. Defendant did not always maintain ledgers showing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and showing the current balance of funds held in the trust account for each person or entity.
24. Defendant failed to reconcile the total of the individual client balances of his general trust account with the current bank balance for the trust account as a whole, on at least a quarterly basis.

Based upon the foregoing Findings of Fact, the Hearing Committee hereby enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the committee has jurisdiction over Defendant and the subject matter of this proceeding.
2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. General Statute § 84-28(b)(2) in that the conduct violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a. By disbursing the Gradys' earnest money of \$2,500.00 to Hill and himself, Defendant failed to identify, hold and maintain the entrusted property of the Gradys in violation of Rule 1.15-2(a) of the Rules of Professional Conduct.
- b. By failing to maintain bank receipts or deposit slips listing the source of all funds deposited in the trust account and failing to name the client to whom the funds belong, defendant failed to maintain records in violation of Rule 1.15-3(a)(1) of the Rules of Professional Conduct.
- c. By failing to maintain a ledger containing a record of receipts and disbursements and showing client balances of funds held for clients in the trust account, defendant failed to maintain a ledger in violation of Rule 1.15-3(a)(5) of the Rules of Professional Conduct.
- d. By failing to reconcile his trust accounts at least quarterly, Defendant failed to total and reconcile those accounts with the current bank balance each quarter in violation of Rule 1.15-3(c) of the Rules of Professional Conduct.
- e. By using entrusted funds to refund the Gradys' earnest money, defendant used entrusted funds to the benefit of himself and Hill, who were not the legal or beneficial owner of the property in violation of 1.15-2(j) of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence and arguments presented at the hearing concerning appropriate discipline, the Hearing Committee hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS REGARDING DISCIPLINE

1. Defendant committed multiple violations of the Rules of Professional Conduct governing entrusted funds.
2. Defendant falsely testified that he had submitted all his trust account records to the Bar as requested.
3. Defendant was deceptive in his responses to the Bar when he was specifically asked if he deposited personal funds to cover the refund check to the Gradys.
4. Defendant was deceptive in his responses to the Bar in not advising the Bar that he that he had disbursed one-half of the Grady earnest money to himself when he was asked to explain the circumstances in covering the \$1,250.00 deficit in his trust account by writing the check to Hill out of the Grady's earnest money.
5. Defendant was deceptive in his responses to the Bar when he was asked to explain his alleged ownership of a portion of the Asa Richardson Heirs fund contained in his trust account.
6. Defendant failed to create a ledger card for the Gradys showing that he held \$2,500.00 in trust for them.
7. Defendant failed to maintain an accurate ledger showing the current balance for the Asa Richardson Heirs fund in his trust account.
8. Defendant did not keep an accurate and current record of disbursements from the Asa Richardson Heirs fund in his trust account.
9. Defendant failed to acknowledge his misconduct in the mismanagement of the Grady's earnest money which he held in trust for them. This mismanagement is incontrovertible based on defendant's trust records, his responses to the Bar, and his testimony given under oath in various actions.

10. Defendant showed a complete lack of appreciation for his fiduciary obligations to the Gradys and the management of their funds which he held in trust.

11. Money received by a lawyer in a fiduciary capacity should never be used for personal purposes. Defendant used the Grady's money for personal purposes and refunded this money from other funds in his trust account.

12. Defendant testified at an earlier proceeding regarding how he covered the Grady's refund, that "[it] was trust account funds. I just figured that so long as I reimbursed the trust account, that it would be all right".

13. Defendant testified at the present proceeding that when he wrote the Grady's refund check that he knew he was good for it and he took a chance.

14. This testimony demonstrates, at worst, intentional disregard of his fiduciary obligations and or at best, a failure to appreciate his fiduciary obligations as an attorney.

15. Defendant refused to acknowledge the wrongful nature of his mismanagement of the Grady's money.

16. Defendant has not been previously disciplined by the North Carolina State Bar.

17. Defendant has good character and reputation.

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

CONCLUSIONS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
 - a. His conduct constituted multiple violations of the rules governing entrusted funds;
 - b. Submission of false evidence, false statements or other deceptive practices during the disciplinary process;

- c. The refusal to acknowledge the wrongful nature of his misconduct; and
 - d. His substantial experience in the practice of law.
2. Defendant's misconduct is mitigated by the following factors:
 - a. The absence of a prior disciplinary record; and
 - b. His good character or reputation.
3. The aggravating factors outweigh the mitigating factors.
4. Defendant created a substantial risk of significant harm to the Gradys by his premature disbursement of the Gradys' earnest money to himself and Hill without regard to his fiduciary duty to the Gradys.
5. Defendant created a substantial risk of significant harm to other clients for whom he held entrusted funds when he refunded the earnest money to the Gradys from the trust account using funds of other clients or third parties.
6. Defendant's failure to keep required trust account records as required by the Rules of Professional Conduct created the potential risk of significant harm to his clients and persons who had entrusted funds in his trust account.
7. Defendant's disregard of his fiduciary obligations pertaining to monies entrusted to him by clients or by family members, or others, created the risk of potential significant harm to the public and the profession.
8. Defendant's failure to keep required trust account records as required by the Rules of Professional Conduct created the potential for significant harm to the Asa Richardson heirs.
9. Defendant's mismanagement in the handling of the Gradys' earnest money put entrusted funds at risk. Defendant's inability to account for all funds entrusted to him at all times impairs

the ability of his clients or persons to entrust him with their money and their affairs. Once known to the public, such conduct harms the profession as a whole.

10. The Hearing Committee has considered all disciplinary options and finds that censure, reprimand or admonition would not be sufficient discipline to protect the public because of the substantial risk of significant harm to the Gradys, the Asa Richardson heirs funds and the legal profession caused by Defendant's conduct, and the threat of potential significant harm stemming from his continuing failure to appreciate his fiduciary obligations as an attorney who handles entrusted funds.

11. The Hearing Committee considered all lesser options and finds that discipline short of suspension would not sufficiently protect the public for the following reasons:

- a. Defendant's refusal to appreciate the significance of the wrongful nature of his misconduct regarding the mishandling of the Gradys' earnest money;
- b. In light of Defendant's refusal to appreciate the wrongful nature of his conduct (except for his failure to keep trust records and failure to reconcile his trust account), the only discipline, which will serve to deter Defendant from future misconduct of this kind, is suspension of his license to practice law for a time;
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses that Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State;
- d. A suspension is the only discipline that can be stayed on conditions whereby the attorney can be monitored to assure that he has taken appropriate corrective action

to assure that his future clients and the public are not exposed to the significant risks exhibited by Defendant's conduct.

12. The Hearing Committee therefore concludes that the only sanction in this case that can adequately protect the public is a suspension of Defendant's license for a period of time that is stayed only upon Defendant's continuous compliance with conditions intended to protect clients and the public from the risk of significant harm shown by the Defendant's conduct in this instance.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Terry B. Richardson, is hereby suspended from the date of the service of this Order upon him to and through December 31, 2011. The period of suspension is hereby stayed to and through December 31, 2011 upon the following conditions:

- a. During the period of stayed suspension Defendant will retain the services of accountant Janice Fonville Stokes or another accountant satisfactory to the State Bar to conduct a quarterly review of the status of any accounts into which client or fiduciary funds have been deposited by Defendant. Each quarter Defendant will deliver to the Office of Counsel a quarterly report prepared and signed by the Accountant certifying that Defendant has reconciled each account with the bank balance, that he has maintained client ledgers identifying all funds in each account, and that Defendant is otherwise meeting all requirements of Rule 1.15 of the Rules of Professional Conduct;

- b. Defendant is to submit such quarterly reports by each April 15, July 15, October 15, and January 15 during the period of stay, and shall provide the certified public accountant the necessary information to satisfactorily prepare such quarterly reports. Defendant will be solely responsible for all costs associated with the monitoring of his trust account(s);
- c. On or before December 31, 2009, Defendant shall demonstrate, to the satisfaction of the Office of Counsel of the North Carolina State Bar, that Defendant has reimbursed from his own funds all amounts that are due to the Asa Richardson Heirs fund;
- d. On or before December 31, 2009, Defendant shall demonstrate, to the satisfaction of the Office of Counsel of the North Carolina State Bar, that Defendant has identified all clients with funds remaining in his attorney trust account and who are entitled to have the funds that remain in that trust account. Once those clients are identified, Defendant shall properly disburse the identified funds as appropriate;
- e. Defendant will complete an accounting course, either a continuing legal education course teaching attorney trust accounting practices or other accounting course with an emphasis on management of attorney trust accounts and/or fiduciary funds approved in advance by the Office of Counsel. Defendant will complete this course by June 30, 2010, and will provide the Office of Counsel proof of completion within ten days of completion of the course;
- f. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

- g. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days;
- h. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
- i. Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

2. If Defendant fails to comply with any one or more of the provisions of Paragraph 1 above at any point during the period the suspension is stayed, the stay of the suspension of his law license may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline and Disability Rules.

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, the DHC may enter an order providing for such conditions as it deems appropriate and/or necessary for reinstatement of Defendant's law license. Furthermore, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

- a. Has accounted for and disbursed all funds in his trust account properly and otherwise satisfied the requirements enumerated in paragraph 1 (a), (c), (d), and (e);
- b. Submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order suspending his law license;

- c. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order suspending his law license;
 - d. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar.
4. Defendant is taxed with the costs of this action as assessed by the Secretary which shall be paid within thirty days of service of the notice of costs upon the Defendant.

Signed by the undersigned Chair with full knowledge and consent of the other members of the Hearing Committee.

This is the 30 day of November, 2009.



Sharon B. Alexander, Chair
Disciplinary Hearing Committee