



NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 4

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
RANDOLPH C. ROMEO, Attorney,)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Theodore C. Edwards II, Chair, Robert F. Siler, and Donald G. Willhoit. Carmen H. Bannon represented The North Carolina State Bar. Alan M. Schneider represented Defendant. Defendant has agreed to waive a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant also stipulates that, by consenting to the entry of this order, he waives his right to appeal or challenge in any way the sufficiency of the findings in this consent order.

Based on the consent of the parties, the Hearing Panel hereby 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, Randolph C. Romeo (hereinafter "Romeo" or "Defendant"), was admitted to the North Carolina State Bar in 1976 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 period from 2001 through 2008, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Hendersonville, Henderson County, North Carolina.

4. During the period from 2001 through 2008, Romeo had a high-volume real estate practice and maintained an attorney trust account through which millions of dollars in entrusted funds flowed nearly every month. Unless otherwise specified, the findings of fact in the paragraphs below are also applicable to the period from 2001 through 2008.

5. Romeo maintained his attorney trust account at Macon Bank. He did not file with Macon Bank a written directive requiring the bank to report to the State Bar if an item drawn on the trust account was presented against insufficient funds. (Reports of this kind to the State Bar are hereafter referred to as "NSF notices").

6. In December 2001, Romeo issued a trust account check for \$2,827.20 for costs and fees that had been assessed to the executrix of the Estate of Thomas L. Anderson ("the executrix"). Although Romeo had represented the executrix in her administration of the estate, there were no funds in Romeo's trust account held on her behalf at the time he issued the \$2,827.20 check.

7. The \$2,827.20 Romeo disbursed from his trust account in December 2001 belonged to his other clients. The beneficial owners of the entrusted funds in Romeo's trust account in December 2001 did not authorize Romeo to use their funds for the purpose of making payments on behalf of the executrix.

8. In real estate transactions for which Romeo served as closing attorney, he represented the buyer and the lender unless he affirmatively notified either or both of those parties that he did not intend to represent them.

9. Romeo was the closing attorney for a 3 February 2004 transaction in which Robert Ward refinanced his home loan. The HUD-1 Settlement Statement reflected that disbursements totaling \$8,326.98 would be made to the Clerk of Superior Court to satisfy three outstanding judgments. The HUD-1 also reflected that Ward would receive \$58,249.02 in loan proceeds.

10. On or about the date of Ward's closing, Romeo made the disbursements to Ward and to the Clerk of Superior Court as set forth on the HUD-1. Approximately ten days later, on 12 February 2004, Romeo disbursed an additional \$8,326.98 from his trust account to Ward. At the time of the 12 February 2004 disbursement to Ward, Romeo had only \$2,000.00 remaining in his trust account for Ward's benefit.

11. \$6,326.98 of the \$8,326.98 Romeo disbursed from his trust account to Ward on 12 February 2004 belonged to Romeo's other clients. The beneficial owners of the entrusted funds in Romeo's trust account in February 2004 did not authorize Romeo to use their funds for the benefit of Ward.

12. In some of the real estate transactions in which Romeo served as the closing attorney, Romeo did not ensure that the HUD-1 Settlement Statement accurately

reflected the receipts and disbursements for the transaction. Lenders rely on HUD-1 Statements for accurate information about the transactions they are funding.

13. Romeo was the closing attorney for a 22 December 2006 transaction in which Thomas Clark refinanced his home loan. The HUD-1 Settlement Statement reflected that Clark would bring \$14,802.23 to closing, and would not receive any disbursements.

14. Several weeks after the closing, Romeo disbursed \$4,442.31 to Clark from his trust account. Approximately six weeks later, on 21 February 2007, Romeo disbursed an additional \$3,011.09 from his trust account to Clark. At the time of the 21 February 2007 disbursement to Clark, Romeo had only \$20.00 remaining in his trust account for Clark's benefit.

15. \$2,991.09 of the \$3,011.09 Romeo disbursed from his trust account to Clark on 21 February 2007 belonged to Romeo's other clients. The beneficial owners of the entrusted funds in Romeo's trust account in February 2007 did not authorize Romeo to use their funds for the benefit of Clark.

16. Romeo was the closing attorney for a September 2006 transaction in which Milton and Justine Seim purchased property from Carriage Park Associates, LLC, a developer ("the Seim-Carriage transaction"). Romeo regularly conducted closings for lots sold by Carriage Park, and Carriage Park paid Romeo's \$600 fee for the Seim transaction.

17. The lot Carriage Park sold to the Seims was encumbered by a deed of trust on the entire tract of land that was being developed. In order to transfer clear title to a lot within the development, Carriage Park had to submit a release payment to the lender who held the deed of trust on the entire tract. The lender would then execute document releasing that specific lot from the deed of trust.

18. Romeo received \$216,364.38 from the Seims and disbursed proceeds to Carriage Park on or about 26 September 2006, the day of closing. Although Romeo would normally have sent the necessary release payment on the day of closing, he held the release payment until January 2007 at the request of Carriage Park.

19. Romeo did not file the deed from Carriage Park to the Seims until 14 December 2006, at which time he had not submitted the payment necessary to release the Seims' lot from the deed of trust.

20. In multiple real estate transactions for which he served as the closing attorney, Romeo did not ensure that all anticipated deposits for the transactions had been received before he made disbursements.

21. On multiple occasions, Romeo did not actually receive loan proceeds, earnest money, or other deposits he should have received for a closing. These

outstanding deposits, which included \$81,000.00 in loan proceeds that Romeo should have received in 2004 and approximately \$28,000 he should have received in 2005, resulted in a significant shortfall in Romeo's trust account.

22. In multiple real estate closings, Romeo twice disbursed the amount he was entitled to collect for expenses. As a result, Romeo received the benefit of entrusted funds to which he was not entitled.

23. Romeo routinely prepared checks for disbursements associated with a scheduled closing in advance of the closing. On at least one occasion, he deposited a trust account check for his fee that was prepared in anticipation of a closing which did not ultimately take place. Because the closing did not take place, Romeo was not entitled to this fee, and no funds were deposited into his trust account to cover this fee. As a result, Romeo received the benefit of entrusted funds to which he was not entitled.

24. On at least one occasion, Romeo disbursed the amount of his fee from the trust account when the lender had already paid his fee for that closing directly to Romeo. In so doing, Romeo received the benefit of entrusted funds to which he was not entitled.

25. A member of Romeo's staff performed regular reconciliations of Romeo's trust account, flagged discrepancies in the reconciliations, and presented the reconciliations to Romeo.

26. Romeo received the overall account balance reconciliations and the individual client ledger reconciliations of his attorney trust account prepared by his staff, but did not review them.

27. In the fall of 2008, Romeo learned that there was a deficit in his trust account. The total shortfall was approximately \$150,000.00.

28. On 16 January 2009, Romeo deposited \$23,497.00 of his personal funds into the trust account. Over the ensuing six month period, he withdrew all but \$97.00 of those funds for personal expenses.

29. By letter dated 16 March 2009, Macon Bank notified the State Bar that Romeo's attorney trust account had been overdrawn on four separate occasions between December 2008 and March 2009. The letter noted that the bank "did not find a directive signed by Mr. Romeo on NSF Trust account checks," but stated the bank had nonetheless determined that it should notify the State Bar.

Based on 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 Defendant and the subject matter of this proceeding.

2. Defendant's actions, as set forth in the foregoing Findings of Fact, constitute grounds for discipline pursuant to N.C.G.S. §§ 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a. By failing to direct Macon Bank to provide the State Bar with NSF notices, Romeo failed to file a written directive requiring the bank to report to the State Bar when an item drawn on his trust account was presented against insufficient funds, in violation of Rule 1.15-2(k);
- b. By using \$2,827.20 of entrusted funds belonging to other clients for the benefit of the executrix of the Anderson Estate, by disbursing to Clark \$2,991.09 of entrusted funds belonging to other clients, and by disbursing to Ward \$6,326.98 of entrusted funds belonging to other clients—all without authorization from the beneficial owners of those funds—Defendant used entrusted funds for the benefit of third parties in violation of Rule 1.15-2(j);
- c. By failing to promptly file the deed from Carriage Park to the Seims, and by delaying submission of the release payment at the request of Carriage Park, Romeo failed to act with reasonable diligence on behalf of his clients, the Seims, in violation of Rule 1.3 and permitted an entity that paid him to render legal services for another to direct his professional judgment in violation of Rule 5.4(c);
- d. By failing to ensure that all anticipated deposits for the benefit of parties to a real estate transaction had been received before he made disbursements for that transaction, Romeo failed to act with reasonable diligence on behalf of his clients—the buyers and the lenders—in violation of Rule 1.3;
- e. By failing to ensure that HUD-1 Settlement Statements accurately reflected receipts and disbursements for real estate transactions, Romeo failed to act with reasonable diligence on behalf of his client, the lender, in violation of Rule 1.3, and failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a);
- f. By disbursing twice the amount he was entitled to collect for expenses, by collecting a fee for a closing did not take place, and by disbursing the amount of his fee from the trust account when his fee for that closing had

already been paid, Romeo used entrusted funds for personal benefit in violation of Rule 1.15-2(j);

- g. By failing to personally perform reconciliations of his trust account and by failing to review trust account reconciliations performed by his staff, Romeo failed to ensure that individual client balances were reconciled at least quarterly in violation of Rule 1.15-3(d)(1), and failed to ensure that the overall balance of the trust account was reconciled with his records at least monthly in violation of Rule 1.15-3(d)(2);
- h. By depositing \$23,497.00 of personal funds into his trust account, Romeo commingled personal and entrusted funds in violation of Rule 1.15-2(f).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel also enters the following additional

FINDINGS REGARDING DISCIPLINE

- 1. Defendant's conduct caused significant potential harm to his clients, in that:
 - a. Defendant's failure, for many years, to perform the requisite reviews of his trust account created the risk that client funds could be compromised as a result of fraud or bank error, and such loss would not be detected;
 - b. Defendant misapplied entrusted funds, which could have resulted in his clients' permanent loss of entrusted funds or required them to incur additional expense in attempting to recover their funds;
 - c. Defendant commingled personal funds in his attorney trust account, which makes entrusted funds potentially subject to claims by the lawyer's creditors;
 - d. Defendant failed to diligently protect the interests of his lender clients by not providing them with accurate information about the receipts and disbursements associated with transactions they were funding. When lenders are inadequately represented in this way, they may make higher-risk loans they would not otherwise make if they were fully informed;
 - e. Defendant failed to promptly file the deed in the Seim-Carriage transaction, despite the fact that he had already disbursed the Seims' funds to the seller. As a result, there was a period of nearly 6 weeks in which the Seims' funds were already in the hands of the seller, but they were not the record owners of the property. During that time, the

lot purchased by the Seims could have been attached by a creditor of Carriage Park or deeded to someone else.

2. Defendant's gross inattention to the status of his trust account resulted in unintentional misappropriation of entrusted funds. Although these misappropriations were not the result of dishonest intent, they were nonetheless caused by dereliction of Defendant's obligations as an attorney and fiduciary.

3. Defendant recognizes the impropriety of his conduct and has modified his office procedures to ensure proper handling of entrusted funds in the future.

4. When he was contacted by the State Bar, Defendant made good faith efforts to audit his trust account and identify the causes of the deficit.

5. Defendant has completely replenished the shortfall in his trust account, primarily by depositing a significant amount of personal funds into the account.

6. Defendant has fully cooperated with the State Bar in this matter.

7. There is no evidence that any client suffered actual harm due to the mismanagement of Defendant's trust account. However, such mismanagement in the handling of client funds puts the entrusted funds at risk and erodes the confidence clients place in attorneys who handle their affairs. As a result, such conduct harms the profession as a whole.

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

- a. The absence of prior disciplinary offenses;
- b. The absence of dishonest or selfish motive;
- c. Cooperative attitude toward the proceedings;
- d. Good faith efforts to rectify the consequences of his misconduct, including remedying the shortfall in his trust account with personal funds;
- e. Good character or reputation;
- f. A pattern of misconduct;

g. Multiple offenses;

h. Defendant's considerable experience in the practice of law;

2. The Hearing Panel has considered written discipline but finds that an admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the potential harm to client funds. The Panel further finds 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.

3. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) and (2) of the Rules and Regulations of the North Carolina State Bar and finds the following factor warrants suspension of Defendant's license:

Misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source.

4. But for the mitigating factors and Defendant's recognition of the impropriety of his conduct, this Panel would consider an active suspension of Defendant's license to practice law due to the nature and extent of Defendant's trust account violations. However, given those circumstances, the Hearing Panel finds and concludes that the public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant designed to ensure protection of the public and Defendant's continued compliance with the Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Randolph C. Romeo, is hereby suspended for three years from the date this Order of Discipline is entered. The period of suspension is stayed for two years upon the following conditions:

a. During the period of stayed suspension Defendant will retain the services of a Certified Public Accountant to review the status of any accounts into which client or fiduciary funds have been deposited. Defendant will deliver to the Office of Counsel a report prepared and signed by the Certified Public 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 1.15-3 of the Rules of Professional Conduct;

b. Defendant is to submit such reports by each January 30, April 30, July 30, and October 30 during the period of stay, and shall provide the CPA 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. Within sixty days of the effective date of this order, 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 disbursed during the audit period in excess of deposits for specific clients from his attorney trust account at Macon Bank;

d. Within sixty days of the effective date of this order, Defendant shall demonstrate, to the satisfaction of the Office of Counsel of the North Carolina State Bar, that Defendant has identified all clients 1) with funds remaining in his attorney trust account at Macon Bank or 2) who should have funds remaining in that trust account. Once those clients are identified to the satisfaction of the Office of Counsel, Defendant shall properly disburse the identified funds. In the event the account does not contain sufficient funds for clients identified who should have funds in the account, Defendant shall reimburse to the account those amounts from his own funds in order to properly disburse funds on behalf of those clients;

e. Defendant will complete an accounting course, either a continuing legal education course teaching trust accounting practices or other accounting course with an emphasis on trust accounts and/or fiduciary funds approved in advance by the Office of Counsel. Defendant will complete the course within six months of the date this order is entered 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, as required by Rule 8.1(b) of the Revised Rules of Professional Conduct;

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 of time 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 revoked or the suspension of Defendant's license is activated for any reason, 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. 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;

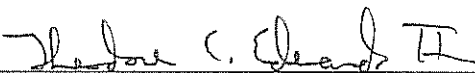
b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order suspending his law license;

c. 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. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, the DHC may enter an order providing for such additional conditions as it deems appropriate and/or necessary for reinstatement of Defendant's law license.

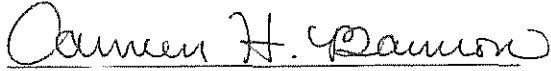
5. Defendant is taxed with the costs of this action as assessed by the Secretary which shall be paid within thirty days of service of the notice of costs upon the Defendant.

Signed by the Chair with the full knowledge and consent of the other members of the Hearing Panel, this 27th day of January, 2010.



Theodore C. Edwards II, Chair, Hearing Panel

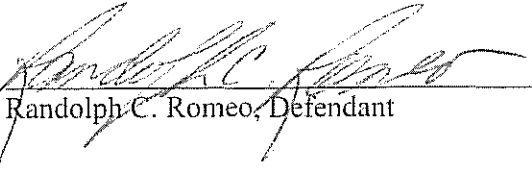
CONSENTED TO:



Carmen H. Bannon, Deputy Counsel
Attorney for Plaintiff



Alan M. Schneider
Attorney for Defendant



Randolph C. Romeo, Defendant