



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 9

THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
CREIGHTON W. SOSSOMON, Attorney,
Defendant

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

This matter was heard on February 29 and March 1, 2008, before a hearing committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, M. H. Hood Ellis, and R. Mitchel Tyler. Carmen K. Hoyme and Brian P.D. Oten represented Plaintiff, the North Carolina State Bar. Defendant, Creighton W. Sossomon, was represented by Eugene E. Lester III. The original order in this matter was appealed and remanded by the Court of Appeals for additional findings of fact and conclusions of law, and reconsideration of the discipline to be imposed. On remand, based upon the pleadings, the evidence presented at the hearing, and the stipulations of the parties, 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, Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC").
2. Defendant, Creighton W. Sossomon (hereinafter "Sossomon" or "Defendant"), was admitted to the North Carolina State Bar in 1969, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During the relevant periods referred to herein, Sossomon was engaged in the practice of law in the State of North Carolina and maintained a law office in Highlands, Macon County, North Carolina.

4. Sossomon was properly served with process and received due notice of the hearing in this matter.
5. Sossomon represented Linda David ("David") in the sale of approximately nineteen acres of land outside of Highlands, North Carolina to Old Hemlock Cove Development, LLC ("Old Hemlock"), a North Carolina Limited Liability Corporation organized by G. Sanders Dupree ("Dupree"), a developer.
6. David agreed to sell the land to Old Hemlock on condition that restrictive covenants were placed on the property.
7. David told Sossomon that she only wished to sell the property if restrictive covenants limited use of the land to a residential community of single-family homes.
8. The contract for sale of the property provided "Buyer and Seller shall mutually agree to restrictive covenants similar to Highlands Point." Highlands Point was an existing residential community developed by Dupree.
9. Prior to the 12 January 2004 closing, David reviewed and approved a proposed set of restrictive covenants, which she provided to Sossomon with the expectation that Sossomon would assure the covenants were enforceable. At the time of the closing, however, the parties had not executed the restrictive covenants.
10. Sossomon did not explain to David the legal significance of failing to execute and record the restrictive covenants prior to closing.
11. The deed from David to Old Hemlock filed at closing did not include any reference to restrictive covenants.
12. After the property was transferred from David to Old Hemlock in January 2004, Sossomon spoke with David and/or her husband Kenton (collectively, "the Davids") about their concerns regarding the fact that no restrictive covenants had been placed on the property.
13. When Sossomon spoke with the Davids about their concerns, Sossomon told the Davids that he believed Old Hemlock's obligation to restrict the use of the property survived closing and that, if necessary, they could sue to enforce said obligation.
14. Sossomon contacted the attorney for Old Hemlock on at least two occasions and requested that Old Hemlock and/or Dupree record the covenants.
15. Sossomon made these communications to Old Hemlock's attorney, which continued through at least February 2006, at the Davids' request.
16. No restrictive covenants were recorded on the property.
17. In July 2006, Dupree contracted to convey the unrestricted nineteen-acre tract to another developer, William Shephard ("Shephard"), who planned to build a multi-story

condominium on the property (this anticipated sale is referred to herein as “the Shephard/Dupree transaction”).

18. On or about 19 July 2006, Shephard asked Sossomon to represent him in purchasing the property from Old Hemlock and Sossomon agreed to represent Shephard.

19. Sossomon undertook representation of Shephard without obtaining David’s informed consent.

20. Shephard also planned to purchase a parcel of land adjacent to Old Hemlock’s property from Lloyd Wagner (“Wagner”) (this anticipated sale is referred to herein as “the Shephard/Wagner transaction”), and Sossomon agreed to handle that closing as well.

21. During the initial meeting between Sossomon and Shephard, Sossomon told Shephard about some of the terms of the prior contract between Old Hemlock and David, and indicated to Shephard that there were “possible problems” concerning restrictive covenants. The information about “possible problems” that Sossomon disclosed to Shephard came solely from Sossomon’s representation of David in selling the property and the continuing concerns the Davids had communicated to Sossomon.

22. David did not give informed consent for Sossomon to reveal any information about the terms of the prior contract between Old Hemlock and David (referred to herein as “the Old Hemlock/David contract”).

23. Sossomon’s disclosure to Shephard of information about the Old Hemlock/David contract was not impliedly authorized in order to carry out the terms of Sossomon’s representation of David.

24. No evidence was offered to show that Sossomon was permitted, pursuant to any of the exceptions set forth in Rule 1.6(b), to reveal to Shephard information about the Old Hemlock/David contract.

25. Sossomon subsequently agreed to also represent Old Hemlock in the transfer of the property to Shephard.

26. David did not give informed consent, confirmed in writing, to Sossomon’s representation of either Old Hemlock or Shephard despite the conflicts of interest deriving from Sossomon’s prior representation of David.

27. Neither Shephard nor Old Hemlock gave informed consent, confirmed in writing, to Sossomon’s representation of them despite the conflicts of interest deriving from Sossomon’s prior representation of David.

28. Prior to closing the Shephard/Wagner and the Shephard/Dupree transactions, Sossomon contacted the Davids in an effort to negotiate a modification or “waiver” of the restrictive covenant requirement in the Old Hemlock/David contract.

29. When Sossomon contacted the Davids regarding the possibility of "waiver," he did not inform them that he was representing Old Hemlock or Shephard.

30. The Davids informed Sossomon that they would accept a monetary amount in exchange for waiving the restrictive covenant requirement. Old Hemlock and Shephard declined to pay the amount the Davids requested as consideration for waiver of the restrictive covenant requirement in the Old Hemlock/David contract, and Old Hemlock and Shephard made no counteroffer.

31. Prior to the closings in the Shephard/Dupree and Shephard/Wagner transactions, which were scheduled for 12 September 2006, Sossomon contacted the Davids and informed them that transfer of the property was imminent.

32. Also during this September 2006 conversation, Sossomon explained to the Davids that filing a lawsuit and *lis pendens* would prevent a piece of property from being transferred.

33. Neither Shephard nor Old Hemlock gave informed consent for Sossomon to reveal to the Davids that closing on the Shephard/Dupree transaction was imminent.

34. Sossomon's disclosure to the Davids that transfer of the property was imminent was not impliedly authorized in order to carry out the terms of Sossomon's representation of Shephard or Old Hemlock.

35. No evidence was offered to show that Sossomon was permitted, pursuant to any of the exceptions set forth in Rule 1.6(b), to reveal to the Davids that transfer of the property was imminent.

36. During the 12 September 2006 closings, Mr. David arrived at Sossomon's office and requested a copy of the file from the 2004 Old Hemlock/David closing.

37. Dupree and Shephard asked Sossomon if the Davids could interfere with the transfer of the property to Shephard.

38. Sossomon informed Dupree and Shephard that the Davids could file a *lis pendens*.

39. Dupree and Shephard asked Sossomon to drive from his office in Highlands to the Macon County Register of Deeds office immediately to record the deed from Old Hemlock to Shephard and offered to drive Sossomon there. Sossomon declined and waited until he completed another closing before he left.

40. Sossomon arrived at the Macon County Register of Deeds at approximately 3:30 pm on 12 September 2006, and discovered that the Davids had filed a *lis pendens* against the property earlier that day at 3:00 pm.

41. Sossomon did not record the deed from Old Hemlock to Shephard because of the *lis pendens*.

42. Because the Shephard/Dupree transaction was not completed, the associated Shephard/Wagner transaction was also not completed at that time.

43. Protracted litigation between Old Hemlock and the Davids over the property ensued.

44. Sossomon admitted that his conduct violated Rule 1.9 of the North Carolina Rules of Professional Conduct.

Based on the record and the foregoing Findings of Fact, the Hearing Committee makes the following

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over Defendant, Creighton W. Sossomon, and the subject matter.

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

- (a) By failing to ensure that the single family lot restriction requested by Linda David was in effect and enforceable upon transfer of the property to Old Hemlock, Sossomon failed to act with reasonable diligence in representing a client in violation of Rule 1.3;
- (b) By failing to inform Linda David prior to the January 2004 closing of the legal effect of failing to execute and record the restrictive covenants, Sossomon failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of Rule 1.4(b);
- (c) By undertaking representation of Shephard and Old Hemlock to transfer the land free from the restrictions that the Davids sought to place on the property without obtaining Linda David's informed consent, confirmed in writing, Sossomon represented persons whose interests were materially adverse to the interests of a former client, without the former client's informed consent confirmed in writing, in violation of Rule 1.9(a);
- (d) By negotiating with his former client, Linda David, about waiving the property restrictions without disclosing that he was representing Shephard and Old Hemlock, Sossomon failed to inform his former client of a circumstance for which her informed consent was required in violation of Rule 1.4(a);
- (e) By discussing with Shephard some of the terms of the prior contract between Old Hemlock and David without first obtaining David's informed

consent to this disclosure, Sossomon revealed information acquired during the professional relationship with a client in violation of Rule 1.6(a); and

- (f) By disclosing to the Davids that the closing in the Shephard/Dupree transaction was imminent without obtaining Shephard and Old Hemlock's informed consent to this disclosure, Sossomon revealed information acquired during the professional relationship with a client in violation of Rule 1.6(a), and used information relating to the representation of a client to the disadvantage of the client in violation of Rule 1.8(b).

Based upon the foregoing Findings of Fact and Conclusions of Law, the stipulations of the parties, and upon 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 additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The property at issue in this case belonged to David's family for generations. David sought to limit use of the property because it had substantial sentimental value to David and because it is immediately adjacent to the Davids' house. [37:23-38:6 & 39:1-10, 224:1-3]
2. Linda David was vulnerable at the time Sossomon represented her in the sale of her property, as she did not understand the legal requirements for restricting land use, and therefore relied upon Sossomon to explain the situation and to effectuate her wishes. [42:11-18, 45:1-16]
3. As a result of her experience with Sossomon, David is "dubious" of lawyers and "leery" about dealing with them. [Vol. 2, 12:1-4].
4. As a result of his experience with Sossomon, Mr. David has "very little faith" that lawyers will tell clients "the whole story." [Vol. 2, 19:21-25]
5. The Shephard/Old Hemlock transaction and the Shephard/Wagner transaction were completed in March 2007, six months after the failed closing at issue in this case.
6. At the time of the September 2006 failed closing, Wagner had already acquired another property on which he was living. [Vol. 2, 23:20 to 24:4] Due to the delay in closing the Shephard/Wagner transaction, Wagner was obligated to pay an additional six months of interest and principal, utilities, taxes, insurance, and maintenance on the property he contracted to sell to Shephard. [Vol. 2, 26:22-25]
7. At the time of the September 2006 failed closing, Old Hemlock's principal Dupree was relying on receiving the closing proceeds in order to avoid foreclosure on another property he owned. Due to the delay in closing the Shephard/Dupree transaction, Dupree was unable to avoid foreclosure of that property and bankruptcy, and Dupree's credit was damaged. [Vol 2, 31:15 to 32:6]

8. Sossomon was forthcoming during his testimony before the DHC in this case when he acknowledged that he failed to obtain written confirmation of his clients' informed consent to the conflict of interest.

9. During his testimony, Sossomon testified that "the Bar's approach to this thing is wrong" and stated, despite his post-closing advice to Ms. David on her rights against subsequent owners of the property, "You're not connected to a client for the rest of your life simply because you close a real estate transaction for them." The committee found, despite his admission that he violated Rule 1.9, that these statements were a substantially incorrect minimization of his continuing ethical obligations to his clients and former clients. [197:23-24]

10. Although he acknowledged that he was "representing the seller" in the David-Old Hemlock transaction, in his testimony Sossomon repeatedly testified to the effect that his obligations were limited to effecting the seller's contract rather than achieving the client's goals in the transaction, especially the recording of restrictive covenants that would limit future use of the property to single-family residences. [e.g., 136:4-8 & 16-18, 138:13 through 139:18, 165:2-11, 199:18 through 203:5]

11. A lawsuit initiated by the Davids against Dupree on 12 September 2006 was still ongoing at the time of the hearing in this matter. [Plaintiff's Exhibits 10, 11, 13, 14, 15. Vol II, 11:16-21]

12. On 24 January 2007, David filed suit against Sossomon alleging legal malpractice, among other things. On 16 April 2007, Sossomon added Old Hemlock/Dupree as a third party defendant in that case. This lawsuit was also still pending at the time of the hearing in this matter. [Plaintiff's Exhibits 18 & 21]

13. As of the date of the hearing in this case, Dupree and the Davids had incurred substantial legal fees litigating the two cases described above. [Vol II, 19:2-3 & 33:9-18]

14. Sossomon has not previously been disciplined by the North Carolina State Bar.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing committee hereby enters the following additional

CONCLUSIONS REGARDING DISCIPLINE

1. Sossomon's misconduct is aggravated by the following factors:
 - a. A pattern of misconduct;
 - b. Multiple offenses;

c. Except for acknowledging his failure to obtain written informed consent to the conflict of interest, a refusal to acknowledge the wrongful nature of his conduct;¹ and

d. Vulnerability of the victim, Linda David.

2. Sossomon's misconduct is mitigated by the following factors:

a. Absence of a prior disciplinary record;

b. Full disclosure to the hearing committee.

3. The aggravating factors outweigh the mitigating factors.

4. Sossomon's actions caused significant actual harm to the profession in that his conduct undermined the trust of his former clients in the legal profession.

5. Sossomon's actions caused significant actual harm to his clients in that his knowing representation of clients and/or former clients with competing interests without informed consent from the clients and/or former clients, and his unauthorized disclosure of their confidences:

a. Created for those clients a situation that could only be resolved through expensive litigation; and

b. Otherwise caused economic loss to his clients.

6. Specifically, Sossomon's actions caused the following significant actual harm to his clients and/or former clients:

a. Both Sanders Dupree and Lloyd Wagner sustained economic loss due to the six-month delay in selling their respective properties to Shephard.

b. Both Sanders Dupree and Linda David sustained significant actual harm in the form of continued litigation against each other, in which both have expended substantial sums on attorneys fees, and in which only one of these affected parties will prevail.

7. The hearing committee has considered lesser alternatives and finds that a public censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the actual harm to his clients and to the legal profession caused by Sossomon's conduct, and the threat of significant potential harm Sossomon poses to the public, including potential harm

¹ This is the conclusion of two of the Committee's three members; the third member dissents from this conclusion.

stemming from his continuing failure to appreciate his obligations as an attorney to his current and former clients.

8. The hearing committee considered all lesser sanctions and finds that discipline short of suspension would not sufficiently protect the public for the following reasons:

- a. Sossomon's pattern of continuing conduct;
- b. Sossomon's continuing course of multiple undisclosed offenses;
- c. With the exception of his admitted violation of Rule 1.9, Sossomon's refusal to appreciate the significance of the wrongful nature of his misconduct;
- d. In light of Sossomon's refusal to appreciate the wrongful nature of his conduct (over and above his failure to obtain written informed consent to the conflict), only discipline with tangible personal consequences will serve to deter Sossomon from future misconduct of this kind.
- e. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Sossomon committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

9. The hearing committee therefore concludes that the only sanction in this case that can adequately protect the public is an active suspension of Sossomon's license for a period of time.

10. The expenses incurred by Plaintiff for stenographic and videographic assistance in the taking of Defendant's deposition, Dan Chapman's deposition, and William Shephard's deposition in this matter and the cost of those deposition transcripts were reasonable and necessary in the litigation of this case. The cost of those depositions should be taxed to the Defendant.

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

ORDER OF DISCIPLINE

1. Defendant, Creighton W. Sossomon, is hereby suspended from the practice of law in North Carolina for one year, beginning 30 days from the date of service of this order upon Defendant.
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. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.
4. All costs of this action, which are to include the State Bar's deposition costs for the depositions of Defendant, Dan Chapman, and William Shephard, are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service of the statement of costs by the Secretary.
5. At the conclusion of the one year active suspension of his license, Defendant may apply to be reinstated to the practice of law by filing a petition with the Secretary of the North Carolina State Bar demonstrating compliance with the general provisions for reinstatement set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B § .0125(b) and demonstrating the following by clear, cogent, and convincing evidence:
 - a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B § .0124 of the State Bar Discipline & Disability Rules;
 - b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him;
 - c. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address;
 - d. That he has responded to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner; and
 - e. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state.

Signed by the Chair with the consent of the other hearing committee members, this the

30th day of June, 2009.

A handwritten signature in black ink, appearing to read 'T. Kane', written over a horizontal line.

T. Richard Kane, Chair
Disciplinary Hearing Committee