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B.E. JAMES, Sec.
The N.C. State Bar

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
84 DHC 11

NORTH CAROLINA STATE BAR,)
Plaintiff,)
)
vs)
)
EDWARD L. BULLARD, JR., Attorney,)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Philip A. Baddour, Jr., Chairman, and John W. Beach on Friday, February 1, 1985. A third member of the Committee, W. Osborne Lee, Jr., was unable to attend for medical reasons and the parties agreed to proceed in his absence and waived any objection incident thereto. The Plaintiff was represented by L. Thomas Lunsford, II, and the Defendant was represented by Duncan A. McMillan. Based upon the pleadings, the pretrial stipulations and the evidence, the Committee makes the following Findings of Fact:

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and was 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. The Defendant, Edward L. Bullard, Jr., was admitted to the North Carolina State Bar in 1980 and is and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina subject to the Rules, Regulations, and Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.
3. At and during all of the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Sanford, Lee County, North Carolina.
4. On or about November 22, 1983, the Defendant closed a loan from Allstate Enterprises Mortgage Corporation to his client, Clay C. Daughtridge. At the closing, the Defendant received loan proceeds totalling \$26,150.00, which he deposited in his

trust account, which bears account number 031000886 at the Mid-South Bank and Trust Company.

5. Incident to the transaction described above, the Defendant disbursed the loan proceeds through the issuance of several trust account checks to various payees in amounts specified on the settlement statement executed at the closing. One such check, number 0317 in the amount of \$14,305.88, was issued and delivered to J. T. Davenport to payoff an existing loan.
6. Shortly thereafter, Davenport deposited the check in his account at Southern National Bank. Although Davenport's account received full credit for the total amount of the check, the instrument was subsequently underencoded by Southern National Bank and was processed as \$305.88 rather than \$14,305.88.
7. Southern National Bank's encoding error was perpetuated as the check passed through the banking system back to the drawee bank, Mid-South Bank and Trust Company. When it received the check, Mid-South Bank and Trust Company paid the encoded amount and debited the Defendant's trust account \$305.88, leaving \$14,000.00 in the trust account, which represented the extent to which the accounts of Southern National Bank were then out of balance.
8. In late March, 1984, the Defendant discovered the error and the presence of \$14,000 in his trust account to which he knew he was not entitled. After making this discovery, the Defendant took no action to determine the ownership of the money, but, rather, permitted it to remain in his trust account so it would be available to him if needed to pay personal obligations.
9. Although the Defendant was involved in several cases which he expected to produce considerable fees during the spring of 1984, he was disappointed by the inability of several clients to pay legal fees and by the fact that other matters which had substantial settlement value were not then ripe for compromise. These factors, in combination with high overhead expenses, resulted in a serious cash flow problem for the Defendant during that period.
10. All of the subject money remained in the trust account until May, 1984, when the Defendant began using it to satisfy personal obligations. The Defendant used \$10,660.00 of the money for his own purposes.
11. On or about June 12, 1984, the Defendant, having realized the seriousness of his misconduct, voluntarily initiated contact with Cecil Cameron, Vice-President of Mid-South Bank and Trust Company, and fully informed him of the situation. Because he was then unable to replace the misappropriated funds with personal funds, the following day the Defendant negotiated a personal loan in the amount of \$11,000.00 from the Mid-South

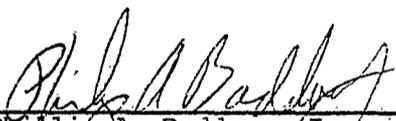
Bank and Trust Company. The entire loan proceeds were immediately deposited by the Defendant in the trust account. Mr. Cameron then explained the situation to the appropriate officials at Mid-South Bank and Trust Company and Southern National Bank and the Davenport check was consequently presented for payment a second time and was paid in full from the trust account of July 27, 1984.

12. All claims to the \$14,000 which remained in the Defendant's trust account following the initial presentment and payment of the Davenport check as a result of the encoding error, including that of the depository bank, Southern National Bank, have been fully satisfied.
13. The Defendant has not been the subject of previous disciplinary action.
14. The fact that the Defendant voluntarily admitted and rectified his misconduct prior to the initiation of the State Bar's investigation is a significant mitigating circumstance and justifies a disciplinary sanction less severe than disbarment, which is ordinarily warranted in misappropriation cases.

Based upon the foregoing Findings of Fact, the Committee makes the following Conclusions of Law.

The Defendant, by intentionally misappropriating funds held in his trust account, engaged in conduct involving dishonesty and engaged in conduct which adversely reflects on his fitness to practice law in violation of Disciplinary Rules 1-102(A)(4) and (6), respectively, of the North Carolina Code of Professional Responsibility.

This the 28th day of February, 1985.



Phillip A. Baddour, Jr.
Hearing Committee Chairman
(for the Committee)

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WAKE COUNTY

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84 DHC 11

NORTH CAROLINA STATE BAR,
Plaintiff,

vs

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ORDER OF DISCIPLINE

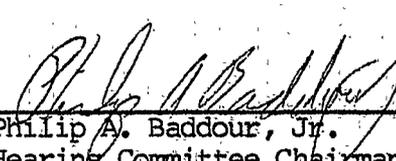
This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, February 1, 1985. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the evidence presented relative to the appropriate disciplinary sanction, including all aggravating and mitigating evidence, the Hearing Committee enters this ORDER OF DISCIPLINE:

1) The Defendant shall be and is hereby suspended from the practice of law for a period of twelve (12) months commencing thirty (30) days after service of this Order upon the Defendant or affirmation of this Order on Appeal, and until he has passed the Multistate Professional Responsibility Examination administered by the North Carolina Board of Law Examiners.

2) The Defendant shall surrender his license and his membership card to the Secretary of the North Carolina State Bar, who will maintain them in his possession for the duration of the suspension.

3) The Defendant shall pay the costs of this proceeding.

This the 15 day of February, 1985.


Philip A. Baddour, Jr.
Hearing Committee Chairman
(for the Committee)