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NC State Bar
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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 19

THE NORTH CAROLINA STATE BAR)
Plaintiff)

vs.)

S. ALLEN PATTERSON, II,)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard before a hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of Robert W. Wolf, Chairman, Garrett Bailey and Alton Ingalls on Friday, December 6, 1985, in the Wake County Commissioners Chambers, Wake County Courthouse, Fayetteville Mall, Raleigh, North Carolina.

The Plaintiff was represented by Fern E. Gunn, staff attorney for the North Carolina State Bar, the Defendant was present and represented by Robert W. Spearman, Wake County Bar.

Based upon the evidence, pre-trial stipulations and following arguments of counsel, the Hearing Committee makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The North Carolina State Bar is a body duly organized under the laws of the state 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. The Defendant, S. Allen Patterson, II, was admitted to the North Carolina State Bar on September 3, 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, canons of ethics and code of professional responsibility of the North Carolina State Bar and of the laws of the State of North Carolina.
3. That 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 Raleigh, Wake County, North Carolina.

4. That on or about May 22, 1984, William B. McDowell as the seller, and William P. Whitehurst and wife, Myrtle H. Whitehurst as the buyers (hereinafter referred to as the Whitehursts) entered into a contract to purchase real property known as Lot 18 of the Kensington Meadows Subdivision in Raleigh, North Carolina.

5. That on or about May 30, 1984, the Whitehursts applied to Central Carolina Bank (hereinafter referred to as CCB) for an adjustable rate mortgage.

6. The Whitehursts and Mr. McDowell had entered into an addendum to the contract to purchase on May 23, 1984. The addendum to the contract reflects that the Whitehursts would pay a second and third mortgage on the property, in the approximate amounts of \$22,500.00 and \$5,000.00 respectively.

7. On June 13, 1984, the Defendant closed the loan involving the sale of Lot 18, Kensington Meadows Subdivision in Raleigh, North Carolina. Mr. McDowell and the Whitehursts were present at the closing.

8. That the Defendant as the closing attorney prepared and submitted a settlement statement to CCB, regarding the closing of the loan. This settlement statement reflected a payoff of the second mortgage loan in the amount of \$22,402.00.

9. Subsequent to the closing referred to in paragraph eight above, the Whitehursts gave Charles D. Williams a second deed of trust securing the amount of \$22,406.46 on Lot 18, Kensington Meadows and gave McDowell a third deed of trust on the same property securing the amount of \$6,697.45. These latter two transactions were reflected a settlement statement prepared by the Defendant, but which was not presented to nor given to CCB by the Defendant.

10. On or about September 10, 1984, William B. McDowell, the seller and James W. Jenkins and wife, Sylvia R. Jenkins, buyers (hereinafter referred to as "Jenkins") entered into a contract to purchase real property known as Lot 17 of Kensington Meadows Subdivision in Raleigh, North Carolina.

11. That on or about September 11, 1984, the Jenkins applied to CCB for an adjustable rate mortgage.

12. That on or about October 30, 1984, the Defendant closed the loan involving the sale of the land from McDowell to Jenkins. Mr. McDowell, the Jenkins and the Defendant were present at the closing.

13. The Defendant, as the closing attorney, prepared and submitted a settlement statement to CCB regarding the closing of the CCB loan to Jenkins. This settlement statement reflected a \$7500.00 second deed of trust and a \$9000.00 credit for a trailer.

14. On or about October 30, 1984, the Defendant prepared another deed of trust on Lot 17, Kensington Meadows Subdivision property. This additional deed of trust secured the amount of \$16,500.00. Mr. McDowell and the Jenkins had agreed that Mr. McDowell would take a \$16,500.00 deed of trust from the Jenkins, which deed of trust was a second deed of trust to the \$44,000.00 deed of trust from the Jenkins to the trustee for CCB. That this

transaction was not reflected on the settlement statement provided to CCB by the defendant, and that the defendant did not advise CCB that Mr. McDowell was not crediting the Jenkins with \$9,000.00 on the trailer, but instead was taking and accepting a \$16,500.00 second deed of trust.

15. That the Defendant received from CCB closing instructions pertaining to the Whitehurst closing, which were undated and closing instructions from CCB dated October 23, 1984, pertaining to the Jenkins closing; that neither of said set of closing instructions prohibited secondary financing; that both of said sets of closing instructions required that CCB have a first mortgage lien.

16. That by the preparation of and submission to CCB of the closing statements, which did not accurately reflect the true facts of the closing on the Whitehurst loan and the Jenkins loan the Defendant knowingly misrepresented to CCB the factual nature of the closing of each respective loan.

17. That the Defendant represented the borrowers, the seller, and the lender; that the Defendant owed a duty to CCB to submit a loan settlement statement that accurately and factually depicted the transaction at the closing.

18. That by his own admission, the Defendant acknowledges that disciplinary action is proper.

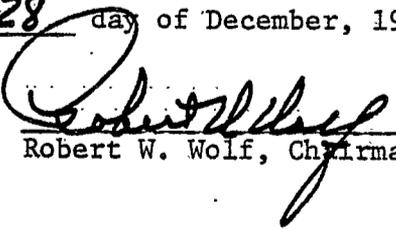
19. That the Defendant's conduct was a violation of DR1-102(a)(4), in that he engaged in conduct in which he misrepresented to the client, CCB, the true nature of the closing as to the Whitehurst loan and the true nature of the closing as to the Jenkins loan.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COMMITTEE CONCLUDES AS A MATTER OF LAW AS FOLLOWS:

That the Defendant by failing to submit to CCB accurate and correct settlement statements in the Whitehurst closing and the Jenkins closing violated DR1-102(a)(4) in that he did engage in conduct that misrepresented to the client, CCB, the true nature of said closings; Which conduct constitutes a violation of Disciplinary Rule 1-102(a)(4) of the Code of Professional Responsibility of the North Carolina State Bar.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE HEARING COMMITTEE DETERMINES THAT THE DEFENDANT IS SUBJECT TO DISCIPLINE.

Signed by the undersigned Chairman with full accord and consent of the other hearing members, this the 28 day of December, 1985.


Robert W. Wolf, Chairman

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THE NORTH CAROLINA STATE BAR,)
Plaintiff,)

vs.) ORDER

S. ALLEN PATTERSON, II,)
Defendant.)

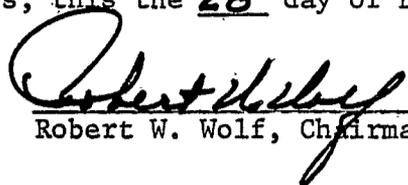
Following the establishment of the charges of misconduct, the Hearing Committee composed of the undersigned Chairman and Committee Members, Garrett Bailey and Alton Ingalls was reconvened, pursuant to Section 14(19) of Article 9 of the Rules of Discipline and Disbarment of the North Carolina State Bar for the purpose of considering evidence relative to the discipline to be imposed; based upon that evidence the Hearing Committee makes the following findings of fact:

1. The Defendant has no record of any previous misconduct for which he has been disciplined in this state or any other jurisdiction.
2. That the Defendant's misconduct was unintentional, and that the Defendant has made a full disclosure to the North Carolina State Bar prior to the institution of this action.
3. That the lender, CCB, suffered no monetary damage as the result of the Defendant's misconduct.
4. That the primary cause of the Defendant's misconduct was in becoming involved in a situation that created a conflict of interest between the borrower, the seller and the lender.

BASED UPON THE FOREGOING FINDINGS OF FACT, the Hearing Committee finds and concludes that the discipline which best protects the public, the courts and the legal profession in this case is a private reprimand.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant, S. Allen Patterson, II, be, and he is hereby taxed with the costs of this proceeding, and furthermore, that a copy of this order is directed to be forwarded to the Chairman of the Disciplinary Hearing Commission for the preparation of a Letter of Reprimand.

Signed by the undersigned Chairman with the full accord and consent of the other Hearing Committee Members, this the 28 day of December, 1985.


Robert W. Wolf, Chairman