

NORTH CAROLINA  
WAKE COUNTY

FILED  
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COURT CLERK  
STATE BAR

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
85 DHC 13

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
vs. )  
JOHN P. SISKIND, )  
Defendant )

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on November 7, 1985 before a hearing committee composed of Philip A. Baddour, Jr., Chairman, George Ward Hendon, and John Beach; with A. Root Edmonson representing the North Carolina State Bar and Russell W. Roten representing John P. Siskind; and based upon the pleadings, stipulations, and evidence presented in this matter, the hearing committee finds the following by clear, cogent & convincing evidence:

1. The 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. The Defendant, John P. Siskind, was admitted to the North Carolina State Bar on September 8, 1977 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 Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, 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 Jefferson, Ashe County, North Carolina.

As pertains to the First Claim for Relief as set out in the Complaint, the hearing committee makes the following Findings of Fact:

4. The Defendant represented Carl D. and Jo Ann Johnson concerning execution proceedings and payment of a default judgment rendered against the Johnsons in a civil action in

Wilkes County, file number 81 CvS 1585. The Defendant did not represent them in the action itself as a default judgment was entered therein.

5. On or about May 31, 1984, Defendant received the \$24,900 proceeds of a loan the Johnsons' had obtained to pay off the judgment the plaintiff had previously obtained in file number 81 CvS 1585.

6. Defendant was instructed by Carl D. Johnson to use these funds to satisfy the judgment in file number 81 CvS 1585. However, Johnson specifically instructed Defendant not to pay off the judgment until the judgment had been cancelled both in Wilkes and Ashe Counties and until the plaintiff had dismissed post-judgment motions filed in the case seeking a Writ of Mandamus and a Writ of Amercement against the Sheriff of Ashe County.

7. On May 31, 1984, Defendant notified the attorney for the plaintiff, Reginald T. Joyner of Taylorsville by telephone of receipt of the funds for satisfaction of the judgment.

8. A misunderstanding developed between the two attorneys as to how considerations would be exchanged for satisfaction of the judgment and conclusion of the lawsuit. Mr. Joyner expected the money to be mailed to him by Defendant while Defendant expected evidence to be presented to him of satisfaction of his clients' requirements before the funds would be paid.

9. Defendant deposited the Johnsons' funds into his trust account at Ashe Federal Savings and Loan in West Jefferson, North Carolina, account number 1-50-29 on June 1, 1984.

10. At the time Defendant deposited the Johnsons' funds into his trust account, he had an opportunity to purchase a second mortgage he was obligated on at a discount rate. Although Defendant had other liquid funds he had access to, he asked Carl Johnson if he could use some of the Johnsons' funds for his personal use until the conditions were met for satisfaction of the judgment. Defendant wanted to do this as a matter of convenience.

11. Carl Johnson authorized Defendant to use the funds delivered to Defendant for payment of the judgment for personal reasons as long as the judgment would be paid when the conditions were met.

12. On June 1, 1984 Defendant wrote check number 526 from his trust account in the sum of \$8,457.75 for his own use in purchasing the discounted second mortgage.

13. On June 5, 1984 Defendant removed an additional \$12,197.37 of Carl Johnson's funds from his trust account for his personal use with Carl Johnson's consent.

14. On June 6, 1984, Reginald T. Joyner went to Defendant's office to collect the amount of the judgment after not receiving it in the mail as he had expected.

15. Defendant wrote check number 530 on his trust account to Reginald T. Joyner in the sum of \$24,442.25 representing the amount necessary to satisfy the judgment.

16. At the time Defendant wrote this check, he thought it was understood that the check would not be negotiated until Defendant had proof that all of his client's conditions had been met.

17. Even though Defendant wrote a check to Joyner that his account balance was not sufficient to cover, Defendant did not expect the check to be presented against his account at that time. Defendant had access at that time to another account from which he could have readily covered check number 530.

18. Not understanding that he needed to prove satisfaction of the conditions prior to negotiating the check, Joyner deposited check 530 into his trust account on June 7, 1984 and paid his client by check from his trust account.

19. On June 13, 1984 check number 530 was presented at Ashe Federal Savings and Loan and returned for "uncollected funds."

20. After being informed that the check had been presented, and knowing the conditions specified by his client had not yet been fulfilled, Defendant entered a stop payment order on check 530 on June 14, 1984.

21. Reginald T. Joyner filed a motion in the cause in file number 81 Cvs 1585 alleging the facts concerning the check being returned as he perceived them to be.

22. Subsequently, Defendant removed \$25,000 from the other account he had access to and purchased a cashier's check which he delivered to Reginald T. Joyner in Taylorsville on July 3, 1984 in satisfaction of the judgment. Mr. Joyner returned the balance to Defendant and executed documents Defendant had prepared to satisfy the conditions imposed by Carl Johnson. Defendant also provided Joyner with a response to his motion in the cause.

23. Defendant subsequently removed the remaining funds initially deposited into his trust account for the Johnsons' from that account.

Based upon the foregoing Findings of Fact pertaining to the First Claim for Relief set out in the Complaint, the hearing committee makes the following Conclusions of Law:

The conduct of Defendant as set out in paragraphs 4-23 above did not constitute grounds for discipline in that his conduct did

not violate any of the Disciplinary Rules as alleged in the Complaint.

As pertains to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following Findings of Fact:

24. The trust account mentioned in the First Claim for Relief which Defendant maintained at Ashe Federal Savings and Loan, account number 1-50-29, was an interest bearing account (not an IOLTA account), although Defendant had requested that the account not bear interest.

25. Defendant deposited clients' funds which he held in a fiduciary capacity into said account while it was an interest bearing account. Defendant did not account to his clients for any interest generated by their funds while they remained in his trust account nor did he pay any of the interest earned on client funds in the account to his clients.

26. Defendant did not notify any of these clients that he maintained their funds in an interest bearing account or that the funds be held on their behalf had earned any interest.

27. Defendant allowed the interest earned on his clients' funds to accumulate in his account.

28. After realizing the account was earning interest, Defendant directed the Savings and Loan to discontinue paying interest on the account.

29. Defendant never appropriated the interest earned on the trust account to his own use.

30. The interest earned on client funds remained in the trust account at the time of this hearing.

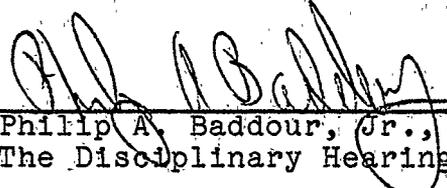
Based upon the foregoing Findings of Fact pertaining to the Second Claim for Relief, the hearing committee makes the following Conclusions of Law:

The conduct of Defendant as set out in paragraphs 24-30 above constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated the Disciplinary Rules of the Code of Professional Conduct as follows:

- (a) By failing to notify clients that the funds be held on their behalf had earned interest, Defendant failed to promptly notify clients of receipt of their funds, securities, or other properties in violation of Disciplinary Rule 9-102(B)(1).

(b) By failing to pay his clients the interest earned on their funds held in a fiduciary capacity, Defendant failed to promptly pay or deliver to the client or as directed by the client the funds, securities, or other properties in the possession of the lawyer which his clients were entitled to receive in violation of Disciplinary Rule 9-102(B)(4).

Signed with the full accord and consent of the other members of the hearing committee. This the 24 day of ~~January~~, *February* 1986.

  
Philip A. Baddour, Jr., Chairman  
The Disciplinary Hearing Committee

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Defendant

ORDER OF DISCIPLINE

This matter coming on to be heard and being heard on November 7, 1985 before a hearing committee composed of Philip A. Baddour, Jr., Chairman, George Ward Hendon, and John Beach; and based upon the Findings of Fact and Conclusions of Law of even date herewith; and further based upon the evidence and arguments made in the second phase of the hearing, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, John P. Siskind, is to be reprimanded. A reprimand will be prepared by the Chairman of this hearing committee and served with this order.
2. The costs of this action are taxed against Defendant as certified by the Secretary of the North Carolina State Bar.
3. The interest earned on clients' funds must be returned to the clients if reasonably possible. If the interest for each client is too difficult to calculate or too little in amount, the interest is to be turned over to the IOLTA Board of Trustees.

Signed with the full accord and consent of the other members of the hearing committee. This the 24<sup>th</sup> day of ~~January~~ February, 1986.

  
Philip A. Baddour, Jr., Chairman