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NORTH CAROLINA

WAKE COUNTY

FILED
1986 FEB 14 PM 1:48
B.E. JAMES, SEC.
THE N.C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 14

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
vs.	)	ORDER OF DISCIPLINE
PETER J. SPECKMAN, JR., Defendant	)	

This matter coming on to be heard and being heard on November 22, 1985 and continued on November 27, 1985 before a hearing committee composed of John B. McMillan, Chairman, Angela Bryant, and Alton Ingalls; 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, Peter J. Speckman, Jr. is suspended from the practice of law in North Carolina for a period of three years.

2. The costs of this action are taxed against Defendant as certified by the Secretary of the North Carolina State Bar, including all costs incurred by the North Carolina State Bar in subpoenaing any of Defendant's bank records.

3. As a reasonable condition of reinstatement, Defendant is ordered to pay the $5150.00 to either Robert A. Spence, Jr. or to Berdan's.

4. With Defendant's consent, the third year of his suspension may be stayed upon proof being provided the Secretary of the North Carolina State Bar that the following conditions have been met:

   (a) Defendant has paid all the costs referred to in paragraph 2 above.

(b) Defendant has paid the $5150 referred to in paragraph 3 above to either Spence or Berdan's.

(c) Defendant has refrained from the practice of law in North Carolina during the period of his suspension.

Signed with the full accord and consent of the other members of the hearing committee this the 14th day of ~~January~~ February, 1986.

John B. McMillan

John B. McMillan, Chairman

NORTH CAROLINA

WAKE COUNTY

FILED

1986 FEB 14 PM 1:40

B.E. JAMES, SEC.
THE N.C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 14

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
vs.	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
PETER J. SPECKMAN, JR., Defendant	)	

This matter coming on to be heard and being heard on Friday, November 22, 1985 and continued on Wednesday, November 27, 1985 before a hearing committee composed of John B. McMillan, Chairman, Angela Bryant, and Alton Ingalls; with A. Root Edmonson representing the North Carolina State Bar and Norman B. Smith representing Peter J. Speckman, Jr.; and based upon the pleadings, stipulations, and evidence presented, the hearing committee finds the following by clear, cogent, and 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, Peter J. Speckman, was admitted to the North Carolina State Bar on December 9, 1980 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 Charlotte, Mecklenburg 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. Defendant represented Berdan's Deerfield Beach Art Galleries, Inc. (hereinafter Berdan's) and Boone Art Galleries, Inc. in several matters.

5. Defendant employed Robert A. Spence, Jr. of the Spence and Spence law firm in Smithfield, North Carolina as local counsel to represent Berdan's et al., in defense of an unfair and deceptive trade practices action brought in Johnston County by Tommy H. Parrish.

6. Spence's billings were to be forwarded to Defendant rather than to the client.

7. On or about January 25, 1985, Robert A. Spence, Jr. forwarded a bill in the amount of $2525.00 to Defendant for legal fees incurred to that date in the Parrish v. Berdan's lawsuit.

8. This bill was not paid.

9. Under date of February 14, 1985, Robert A. Spence, Jr. presented a bill in the amount of $5150.00 to Defendant for legal fees incurred to that date in the Parrish v. Berdan's lawsuit, including the unpaid balance of the January bill. At the time of this bill, the lawsuit had been concluded.

10. After receiving Spence's bill, Defendant advised Irwin J. Sherwin of Berdan's of the amount of Spence's bill.

11. By check dated March 7, 1985, made payable to the order of Peter J. Speckman, Jr., Esq., Sherwin forwarded Defendant the sum of $5150.00 for the payment of the Spence fee, as directed by Defendant. The designation "For Spence & Spence" appeared on the face of the check.

12. Defendant endorsed Sherwin's check and negotiated the check on March 11, 1985.

13. Defendant did not deposit Sherwin's check into his trust account.

14. Defendant appropriated the proceeds of this check for his own use knowing that the proceeds were entrusted to him by Sherwin solely for the purpose of paying the Spence fee.

15. Defendant did not forward the $5150.00 or any part thereof to Robert A. Spence, Jr. or his law firm. Defendant had not done so as of the date of the commencement of this hearing.

16. Defendant's failure to pay the fee to Spence resulted in Berdan's and Defendant being sued by the Spence firm for recovery of the fee. This subjects Berdan's to liability for payment of the Spence fee a second time.

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:

Defendant's conduct as set out in paragraphs 4-16 above constitutes grounds for discipline under N.C. Gen. Stat. §84-28(b)(2) in that the Defendant violated the Disciplinary Rules of the Code of Professional Responsibility as follows:

(a) By appropriating the $5150.00 check sent to him by his client for payment of the Spence and Spence fee to his own use, Defendant engaged in illegal conduct involving moral turpitude in violation of Disciplinary Rule 1-102(A)(3) and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Disciplinary Rule 1-102(A)(4).

(b) By failing to segregate the funds he received from his client to pay the fees of Spence and Spence in a trust account, Defendant failed to hold and maintain property received by the lawyer in a fiduciary capacity separately from the lawyer's property in violation of Disciplinary Rule 9-102(A)(1) and failed to keep all money or funds received by a lawyer from a client in a lawyer trust account in violation of Disciplinary Rule 9-102(A)(3).

(c) By failing to pay Spence and Spence the funds sent to him by his client for the purpose of paying the fee of Robert A. Spence, Jr., Defendant failed to pay or deliver to the client or a third person as directed by the client the funds, securities, or properties belonging to the client to which the client is entitled in the possession of the lawyer in violation of Disciplinary Rule 9-102(B)(5).

As pertains to the Second Claim for Relief set out in the Complaint, the hearing committee finds that the North Carolina State Bar did not prove facts which would constitute any violations of N.C. Gen. Stat. §84-28(b)(2) or (3). As a result, the Second Claim for Relief set out in the Complaint is dismissed.

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

17. In August, 1984, Defendant deposited $70,000.00 into his trust account at Southern National Bank (SNB), account number 251-503647, such sum being the settlement proceeds recovered on behalf of Defendant's client, Nadine Starnes.

18. After payment to Ms. Starnes of her share of the proceeds of the settlement, Defendant allowed the remainder of the settlement proceeds to which he was entitled to as a fee to remain in his trust account.

19. Defendant continued to deposit client funds into his SNB trust account while his own funds remained in the account.

20. Between August and October, 1985, when the balance in his office account was too low to meet his office payroll or to pay other office expenses, Defendant wrote checks payable to himself or to cash from his SNB trust account to cover his office obligations.

21. The North Carolina State Bar did not produce any evidence to show that the amounts Defendant removed from his trust account for office obligations exceeded the amount Defendant had left in the account from the Starnes settlement.

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

Defendant's conduct as set out in paragraphs 17-21 above constitutes grounds for disciplie under N.C.G.S. §84-28(b)(2) in that:

> By allowing funds belonging to himself or his law office to be commingled with client funds in his trust account at SNB, Defendant failed to preserve all funds of clients paid to the lawyer or law firm in one or more identifiable bank accounts with no funds of the lawyer or law firm deposited therein in violation of Disciplinary Rule 9-102(A) of the Code of Professional Responsibility.

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

22. After the allegations contained in the Third Claim for Relief were brought to the attention of the North Carolina State Bar, the Chairman of the Grievance Committee issued a Letter of Notice to Defendant pursuant to §12(3) of Article IX of the Rules and Regulations of the North Carolina State Bar and a Subpoena to Produce Documents or Objects pursuant to §12(5) of Article IX.

23. The Letter of Notice and Subpoena to Produce Documents or Objects were served on Defendant by certified mail on June 17, 1985.

24. Defendant appeared at the North Carolina State Bar office on June 27, 1985 as directed by the subpoena but failed to

produce the documents or objects requested to be produced by the subpoena.

25. The Chairman of the Grievance Committee again issued a Subpoena to Produce Documents or Objects to Defendant for his appearance at the July Grievance Committee meeting.

26. The second Subpoena to Produce Documents or Objects was served on Defendant by certified mail on July 18, 1985.

27. Defendant appeared at the Grievance Committee meeting on July 24, 1985 but failed to produce any documents or objects as directed by the supboena. At the grievance committee meeting on July 24, 1985, defendant filed motions to quash the subpoenas. These motions were denied by the grievance committee on that date.

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

The conduct of Defendant as set forth in paragraphs 22-27 above constitutes grounds for discipline in that:

> By failing to produce the documents or objects as directed by each of the subpoenas, Defendant failed to answer formal inquiries issued by or in the name of the North Carolina State Bar in a disciplinary matter in violation of N. C. Gen. Stat. §84-28(b)(3).

Signed with the full accord and consent of the other members of the hearing committee this the 14th day of ~~January,~~ February 1986.

John B. McMillan, Chairman
The Disciplinary Hearing Committee