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NORTH CAROLINA :
WAKE COUNTY :

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

A. CLYDE TOMBLIN,

Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of John B. McMillan, Chairman, John G. Shaw and Frank L. Boushee, on Friday, October 6, 1989 and continuing on October 10 and October 11, 1989. Based upon admissions contained in the pleadings, the pretrial stipulations and the evidence admitted at trial, the Hearing 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 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, A. Clyde Tomblin (hereafter, Tomblin), was admitted to the North Carolina State Bar in 1952 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, Code of

00233

Professional Responsibility, Rules of Professional Conduct and the laws of the State of North Carolina.

3. During all of the periods referred to herein, Tomblin was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Spindale, Rutherford County, North Carolina.

4. In 1973 Tomblin, George Griffin (hereafter, Griffin) and Ernest Bumgarner (hereafter, Bumgarner) agreed to purchase two large tracts of land in Rutherford County. One tract was known as Cherry Mountain and the other as Bill's Creek.

5. Tomblin, Bumgarner and Griffin agreed to attempt to develop and resell both tracts of land for a profit. Each was to own an undivided one-third (1/3) interest in the land, although the land was initially held only in Tomblin's name.

6. Griffin and Bumgarner considered Tomblin to be their attorney and expected him to exercise his professional judgment on their behalf in connection with both tracts of land.

7. Tomblin acted as the attorney for Griffin and Bumgarner, and at various times provided legal services respecting the tracts of land, including drafting deeds, performing title searches and filing a cartway proceeding to obtain a right of way across the Cherry Mountain tract.

8. Tomblin failed to disclose or discuss any conflict of interest among or between his interests and those of Bumgarner and/or Griffin at any time.

9. On June 17, 1985, Tomblin placed a \$44,619.00 deed of trust against part of Bill's Creek property.

10. The \$44,619.00 deed of trust generated approximately \$34,000.00 in proceeds. Tomblin used approximately \$28,000.00 of the proceeds to pay off debts Tomblin and Griffin had incurred in a plastics business called Gricon Co. Approximately \$4,600.00 of the proceeds from the deed of trust was used to pay off notes signed only by Tomblin and his wife. Bumgarner had no interest in Gricon Co. and had no responsibility for any of its debts.

11. Neither Bumgarner nor Griffin had any knowledge of nor gave permission to Tomblin to encumber the Bill's Creek tract or to use the proceeds of the deed of trust to pay off the debts referred to in Paragraph 10.

12. Between 1974 and 1977 Tomblin sold eleven tracts of the remaining Bill's Creek land to third parties without the knowledge or permission of Bumgarner or Griffin.

13. Tomblin used part of the proceeds of the sales of the eleven tracts of Bill's Creek land to pay off the \$44,619.00 deed of trust Tomblin had placed against the Bill's Creek tract in 1975.

14. Neither Bumgarner nor Griffin received any of the funds generated by the sales referred to in Paragraph 12 and neither agreed to permit Tomblin to use the funds to pay off the \$44,619.00 deed of trust.

15. In 1978 and without the knowledge or consent of Bumgarner or Griffin, Tomblin delivered a deed to Bumgarner describing forty-three acres of the Bill's Creek tract. Neither Bumgarner nor Griffin had any input into designating which acres or how many acres would be deeded to Bumgarner. A dispute has since arisen regarding the title

to this forty-three acres, and it appears that litigation may be necessary to determine ownership of the land.

16. Tomblin holds title to the remaining land in Bill's Creek tract in his name and has refused to convey any portion of it to Griffin.

17. Tomblin has not at any time provided either Griffin or Bumgarner with an accounting for either the Cherry Mountain or Bill's Creek transactions.

Based on the foregoing Findings of Fact, the Committee makes the following

CONCLUSIONS OF LAW:

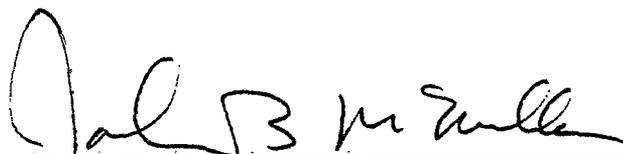
(a) By encumbering property of his clients and partners without their permission, Tomblin engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-202(A)(4), engaged in conduct that adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6) and prejudiced clients in violation of DR 7-101(A)(3).

(b) By failing to remit to Bumgarner and Griffin their shares of all proceeds resulting from the sale of portions of the Bill's Creek tract, Tomblin engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(A)(4), engaged in conduct that adversely reflects on his fitness to practice law in violation of DR 1-102(A)(2), prejudiced or damaged clients in violation of DR 7-101(A)(3) and failed to notify and pay over to clients funds received on behalf of the clients, in violation of DR 9-102(B)(1) and (4).

(c) By agreeing to provide legal services to Bumgarner and Griffin despite the likelihood that his professional judgment would be impaired by his own financial, business or personal interests, Tomblin violated DR 5-101(A).

(d) By entering into and continuing to act pursuant to the agreement to purchase, develop and re-sell the Bill's Creek tract, despite the fact Griffin and Bumgarner expected Tomblin to exercise his professional judgment on their behalf, without first fully disclosing the fact that his interests differed from theirs, Tomblin violated Rule 5-104(A).

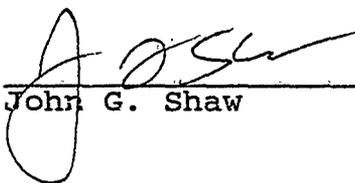
This 31st day of October, 1989.



John B. McMillan, Chairman



Frank L. Boushee



John G. Shaw

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THE NORTH CAROLINA STATE BAR,)

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A. CLYDE TOMBLIN,)

Defendant)

ORDER OF DISCIPLINE

This cause was heard on Friday, October 6, 1989, Tuesday, October 10, 1989 and Wednesday, October 11, 1989 before the Hearing Committee of John B. McMillan, John G. Shaw and Frank L. Boushee. Based upon the evidence presented at the hearing, the Committee makes the following additional findings of fact as mitigating factors:

1. The Defendant was licensed in 1952 and has not previously been the subject of professional discipline.

2. The Defendant enjoys a good reputation for honesty in the community in which he lives and works and has a long record of service to his church and numerous civic organizations.

3. The violations found in the Findings of Fact and Conclusions of Law stemmed from the Defendant's initial failure to advise his clients, Ernest Bumgarner and George Griffin, to obtain separate legal counsel to represent them. While the later violations committed by the Defendant are serious, it did not appear that the Defendant intended at the outset to defraud his clients.

4. Defendant cooperated with the State Bar during the investigation and trial of this matter.

Based upon the evidence produced at the hearing , the Committee makes the following additional findings of fact as aggravating factors:

1. The Defendant is an experienced attorney and should have been familiar with the Code of Professional Responsibility and his duties toward his clients.

2. The Defendant committed more than one violation of the Code of Professional Responsibility over a period of several years.

3. The Defendant has failed to pay any portion of the civil judgment obtained against him by Mr. Griffin and Mr. Bumgarner in 1987 and has shown no remorse for his misconduct.

BASED upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the foregoing additional findings of fact bearing upon the appropriate measure of discipline, the Hearing Committee enters the following Order of Discipline:

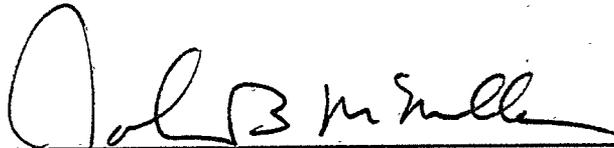
1. The Defendant is hereby suspended from the practice of law for a period of twelve months commencing thirty days after service of this order upon the Defendant.

2. The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar.

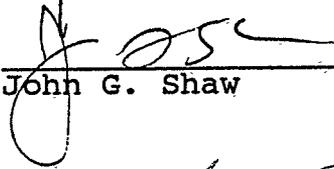
3. As a condition precedent to restoration of his North Carolina law license, the Defendant shall comply with Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar regarding the winding up of practice.

4. The Defendant is hereby taxed with the entire cost of this proceeding.

This 31st day of October, 1989.



John B. McMillan, Chairman



John G. Shaw



Frank L. Boushee