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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 17

THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.)
CHRISTOPHER T. WATKINS, ATTORNEY)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Rules and Regulations of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the following findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed herein, the Hearing Committee therefore enters the following:

FINDINGS OF FACT

1. The Plaintiff, 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, Christopher T. Watkins (hereafter, Watkins), was admitted to the North Carolina State Bar in 1984, 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, Watkins was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Graham, Alamance County, North Carolina.
4. In November or December of 1988, Watkins was approached by Roger Stanfield (hereafter, Stanfield), who asked if Watkins would provide the necessary legal services to handle the closing of the purchase of real property by Stanfield. Watkins agreed to do so.
5. Sometime thereafter Watkins received from Stanfield a partly

handwritten, partly typed Offer to Purchase and Contract dated Sept. 22, 1988 and signed by Stanfield on behalf of Insu Spec Inc. as buyer and Earl and Nellie Sutphen as sellers. The Offer to Purchase provided that the contract sales price was \$40,000 and that the Offer was subject to a construction loan commitment of \$65,000. The document served to identify for Watkins the property being purchased and the current owners in order to begin the title examination.

6. The title examination proved to be complex. The property was the subject of a life estate in favor of Parmelee C. Lucas Perry; one of the owners of the fee title to the property, Nellie D. Sutphen, was appointed Attorney-in-Fact for the life tenant; there were IRS liens on the property for failure to pay various taxes owed by a business operated by the life tenant; and there were judgments against Earl B. Sutphen, Jr., which appeared to encumber the property. The work necessary to clear the title was involved and delays resulted from dealing with the IRS on tax lien payoffs. The closing was eventually scheduled for Friday, Jan. 20, 1989.

7. Shortly before January 20, 1989, Watkins received a loan closing package from Stone Mortgage Company (hereafter, Stone), which included, among other items, an Offer to Purchase and Contract completed in type-written form and dated Sept. 22, 1988, which was signed by Roger L. Stanfield and Sarah S. Stanfield, as buyers, and Earl B. Sutphen and Nellie D. Sutphen as sellers, and reciting a purchase price of \$65,000.

8. Stone had issued a loan commitment to Stanfield in the amount of \$50,600 after receiving the typewritten Offer to Purchase which recited a \$65,000 purchase price and an appraisal by a HUD appraiser of \$65,000.

9. Prior to the closing, Stanfield told Watkins that the contract sales price for the house was \$65,000 and that the Sutphens would receive \$35,000 at closing for the house. Stanfield told Watkins that Sutphens had also agreed to give Stanfield the \$15,000 difference between the loan amount and the sales price as an allowance for improvements to get the house prepared for sale at or above \$65,000. Stanfield told Watkins that he had agreed to give the Sutphens a second deed of trust on the property.

10. Stanfield told Watkins that the Sutphens had agreed to structure the sale to Stanfield as set out in Paragraph 9.

11. Watkins prepared a HUD-1 Settlement Statement which he submitted to Stone after the closing.

12. The HUD-1 Settlement Statement signed by Watkins, the Stanfields and the Sutphens recited that the Sutphens received \$52,359.30 at the closing. In fact, the Sutphens received \$10,352.47 in cash at the closing.

13. The HUD-1 Settlement Statement also recited that the Stanfields paid \$15,746.37 at the closing. In fact, the Stanfields received \$24,970.14 in cash at the closing.

14. As of the time of closing, Stone and its agents and employees were not aware that the funds were not disbursed as set out in the HUD-1 Settlement Statement nor were they aware of the fact that Stanfield had

signed a second deed of trust on the house.

15. The documents necessary to effect the closing were signed by Stanfield and his wife, and taken by Stanfield to the Sutphens for signature, all on January 20, 1989.

16. After the closing documents were signed, Stanfield told Watkins that Stanfield would pay for all closing costs rather than require the Sutphens to pay the closing costs as set out on the typewritten Offer to Purchase. Watkins did not revise the HUD-1 Settlement Statement to reflect this change in allocation of closing costs.

17. Watkins believed at the time of the closing and preparation of the HUD-1 Settlement Statement that the buyers, sellers and lender fully understood the nature of the transaction. He did not prepare the Settlement Statement with the expectation or intention of defrauding or deceiving the lender or any other person or entity, and he had no expectation or intention that his preparation of the Settlement Statement would benefit any effort to deceive or misrepresent the nature of the transaction.

18. Payments due on the loan by Stone have been paid and the loan has not been declared in default.

19. Watkins did not recognize at the time of the closing and preparation of the HUD-1 Settlement Statement that the nature of the transaction could prove to have adverse consequences to the interests of the lender. Upon becoming fully aware of those consequences and the potential harm caused by the incorrect recitals in the HUD-1 Settlement Statement, Watkins caused the statement to be corrected, reported that correction to Stone, and reported the circumstances to the North Carolina State Bar.

20. Watkins' law practice involves principally personal injury and District Court matters. He has limited experience in closing real estate transactions, especially HUD insured loans. The closing in question is the only transaction he has ever handled for Stanfield or Stone. Watkins charged a normal closing fee for the transaction and did not benefit personally by the manner in which the Settlement Statement was prepared or how the closing was handled.

Based on the foregoing findings of fact, the Committee enters the following:

CONCLUSIONS OF LAW

1. By preparing and forwarding to Stone a closing statement containing incorrect information, and by failing to otherwise advise Stone of the existence of the second deed of trust and the actual payment going to the sellers prior to the closing and disbursement of the loan proceeds, Watkins failed to explain a matter sufficiently to enable Stone to make an informed decision on going forward with the loan commitment and disbursing the loan proceeds, in violation of Rule 6(B)(2), and undertook representation of a legal matter which he knew or should have known he was not competent to

handle, in violation of Rule 6(A)(1).

2. By continuing to represent Stone as closing agent and the borrower at the closing after he learned of the actual payment going to the sellers and after he should have known of or recognized the potential adverse impact on Stone, Watkins represented clients with adverse interests, in violation of Rule 5.1(B) and (C).

WHEREFORE, the Committee enters the following:

ORDER OF DISCIPLINE

1. The defendant, Christopher T. Watkins, is hereby publicly reprimanded for the conduct recited herein. In addition it is ordered that:

a. The Defendant shall violate no provisions of the Rules of Professional Conduct during the 12-month period following the effective date of this order;

b. The Defendant shall take for each of the next three years (1991, 1992 and 1993) at least six hours of continuing legal education courses, over and above the mandatory CLE requirements applicable to all attorneys, dealing with the subjects of real estate and ethical considerations affecting the practice of real estate law. Defendant shall submit proof of completion of such courses to the Office of Counsel of the North Carolina State Bar;

c. The Defendant shall select an experienced member of the Alamance County Bar, to be approved by the Secretary of the North Carolina State Bar, who will agree to be available to serve as a mentor for the Defendant and to assist and advise him regarding his law practice for a period of one year following the effective date of this order;

2. The North Carolina State Bar shall retain jurisdiction over this disciplinary proceeding pending compliance with the terms of this order, and a knowing and willful violation of the foregoing requirements shall be deemed a violation of an order of The North Carolina State Bar and shall result in an active suspension of the defendant's law license for six (6) months; and

3. The defendant shall pay the costs of these proceedings.

Signed by the Chairman with the consent of the Committee, this the

5th day of December, 1990.

Maureen Demarest Murray
Maureen Demarest Murray, Chairman

I CONSENT:

Ch. Watt
Christopher T. Watkins

APPROVED:

Walter Brock, Jr.
Walter E. Brock, Jr.
Young, Moore, Henderson & Alvis, PA.
Attorneys for the Defendant

Carolyn Bakewell
Carolyn Bakewell
Attorney for the Plaintiff
The North Carolina State Bar

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Defendant

PUBLIC REPRIMAND

This Public Reprimand is delivered to you pursuant to Section 14(18) of Article IX of the Rules and Regulations of the North Carolina State Bar and pursuant to the consent order of the Disciplinary Hearing Committee of the Disciplinary Hearing Commission entered herein on Wednesday, December 5, 1990, which order included Findings of Fact and Conclusions of Law.

In November or December of 1988, you undertook to provide the legal services to close the purchase of real property by Roger Stanfield. Sometime thereafter, you received from Stanfield a partly handwritten, partly typed Offer to Purchase and Contract dated Sept. 22, 1988 and signed by Stanfield on behalf of Insu Spec Inc. as buyer and Earl and Nellie Sutphen as sellers. The Offer to Purchase provided that the contract sales price was \$40,000 and that the Offer was subject to a construction loan commitment of \$65,000. The document served to identify for you the property being purchased and the current owners in order to begin the title examination.

The title examination proved to be complex. the property was the subject of a life estate in favor of Parmelee C. Lucas Perry; one of the owners if the fee title to the property, Nellie D. Sutphen, was appointed Attorney-in-Fact for the life tenant; there were IRS liens on the property for failure to pay various taxes owed by a business operated by the life tenant; and there were judgments against Earl B. Sutphen, Jr., which appeared to encumber the property. The work necessary to clear the title was involved and delays resulted from dealing with the IRS on tax lien payoffs. The closing was eventually scheduled for Friday, Jan. 20, 1989.

Shortly before January 20, 1989, you received a loan closing package from Stone Mortgage Company (hereafter, Stone), which included, among other items, an Offer to Purchase and Contract completed in type-written form and dated Sept. 22, 1988, which was signed by Roger L. Stanfield and Sarah S. Stanfield, as buyers, and Earl B. Sutphen and Nellie D. Sutphen as sellers, and reciting a purchase price of \$65,000.

Stone had issued a loan commitment to Stanfield in the amount of \$50,600 after receiving the typewritten Offer to Purchase which recited a

\$65,000 purchase price and an appraisal by a HUD appraiser of \$65,000.

Prior to the closing, Stanfield told you that the contract sales price for the house was \$65,000 and that the Sutphens would receive \$35,000 at closing for the house. Stanfield also told you that the Sutphens had also agreed to give him the \$15,000 difference between the loan amount and the sales price as an allowance for improvements to get the house prepared for sale at or above \$65,000. Finally, Stanfield told you that he had agreed to give the Sutphens a second deed of trust on the property and that the Sutphens had agreed to structure the sale to Stanfield as Stanfield had explained it to you.

Thereafter, you prepared and signed a HUD-1 Settlement Statement which you submitted to Stone after the closing. The settlement statement recited that the Sutphens received \$52,359.30 at the closing. In fact, the Sutphens received \$10,352.47 in cash at the closing. The settlement statement also recited that the Stanfields paid \$15,746.37 at the closing. In fact, the Stanfields received \$24,970.14 in cash at the closing.

As of the time of closing, Stone and its agents and employees were not aware that the funds were not disbursed as set out in the HUD-1 Settlement Statement nor were they aware of the fact that Stanfield had signed a second deed of trust on the house.

The Committee found, however, that you believed at the time of the closing and preparation of the HUD-1 Settlement Statement that the buyers, sellers and lender fully understood the nature of the transaction and that you did not prepare the Settlement Statement with the expectation or intention of defrauding anyone or with the intention of assisting anyone to misrepresent the nature of the transaction. The Committee found further that you did not recognize at the time of the closing and preparation of the HUD-1 Settlement Statement that the nature of the transaction could prove to have adverse consequences to Stone's interests.

By preparing and forwarding to Stone a closing statement containing incorrect information, and by failing to otherwise advise Stone of the existence of the second deed of trust and the actual payment going to the sellers prior to the closing and disbursement of the loan proceeds, you failed to explain a matter sufficiently to enable Stone to make an informed decision on going forward with the loan commitment and disbursing the loan proceeds, in violation of Rule 6(B)(2), and undertook representation of a legal matter which you knew or should have known you were not competent to handle, in violation of Rule 6(A)(1).

By continuing to represent Stone as closing agent and Stanfield as the borrower at closing after you learned of the actual payment going to the Sutphens and after you should have recognized the potential adverse impact on Stone, you represented clients with adverse interests, in violation of Rule 5.1(B) and (C).

Your misconduct in this situation was mitigated by the fact that, upon becoming fully aware of the consequences and the potential harm caused by the incorrect recitals in the HUD-1 Settlement Statement, you caused the statement to be corrected, reported that correction to Stone, and reported

the circumstances to the North Carolina State Bar.

The Committee also noted in mitigation that you have limited experience in closing real estate transactions, especially HUD insured loans, and that you did not benefit personally by the manner in which the Settlement Statement was prepared or how the closing was handled.

The Disciplinary Hearing Commission is confident that this Reprimand will be heeded by you and will ultimately prove beneficial to you. We trust that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession.

This the 5th day of December, 1990.

Signed by the Chairman with the express consent of all Committee members.

Maureen Demarest Murray
Maureen Demarest Murray
For the Committee