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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
94 DHC 4

THE NORTH CAROLINA STATE BAR,)

Plaintiff)

v.)

DAVID P. FORD,)

Attorney)

Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause came on to be heard and was heard on August 12, 1994 before a hearing committee composed of Maureen Demarest Murray, chairman; Mary Elizabeth Lee, and A. James Early III. The North Carolina State Bar was represented by Fern E. Gunn. The defendant, David P. Ford, appeared pro se. Based upon the admissions of the defendant in his answer to the complaint, the stipulations on prehearing conference, and the evidence presented at the hearing, the hearing committee finds the following to be supported by clear, cogent, and convincing evidence:

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. David P. Ford (defendant), was admitted to the North Carolina State Bar in 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 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, defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Long Beach in Brunswick County, North Carolina.

4. Charlene Teal (Teal) was employed as defendant's secretary from April 1991 to May 1992.

5. On April 23, 1992, defendant represented Joseph T. Lenins (Lenins) and Ed Pruitt (Pruitt) in a real estate closing. On April 23, 1992, defendant or someone under his authority or control deposited \$4,258.57, the proceeds from the closing, into his attorney trust account (trust account) at United Carolina Bank (UCB), account number 043-231-059-2.

6. Defendant was instructed to pay approximately \$600.00 to Lenins and approximately \$3,600.00 to Pruitt from the closing.

7. Defendant has not disbursed any portion of the \$600.00 to Lenins or the \$3600.00 to Pruitt.

8. As of May 29, 1992, the balance in defendant's trust account was \$1,201.18. This amount is not sufficient to pay the money due to Lenins and Pruitt.

9. Neither defendant nor Teal had permission to use any part of the money due to Lenins and Pruitt for the benefit of defendant, Teal, or any third party.

10. In April of 1992, Ed Pruitt asked defendant's office to prepare a lease for property that Pruitt planned to lease to Billy Smart. Teal obtained \$2,000.00 from Smart's mother for the security deposit on the lease. This money was to be paid to Pruitt. On April 27, 1992, Teal deposited the \$2,000.00 into defendant's trust account.

11. Defendant has not disbursed any portion of the \$2000.00 to Pruitt.

12. As of May 29, 1992, the balance in Defendant's trust account was \$1,201.18. This amount is not sufficient to pay Pruitt.

13. Neither Defendant nor Teal had permission to use any part of the \$2,000.00 for the benefit of Defendant, Teal or a third party other than Pruitt or those parties identified by Pruitt to be paid from the funds.

14. On April 13, 1992, defendant represented Don A. Owen (Owen) in a real estate closing. Owen purchased property from Sterge Costa (Costa).

15. Defendant was instructed to pay \$13,415.03 to Costa from the sale of the property.

16. On April 13, 1992, defendant issued check number 3388 drawn on his trust account to Sterge and Sottie T. Costa in the amount of \$13,415.03. Check number 3388 did not clear defendant's trust account and the check was returned for insufficient funds on April 20, 1992.

17. From April 20, 1992 to April 28, 1992, the balance in defendant's trust account was below \$13,415.03. At least \$13,415.03 should have been in defendant's trust account during

this period since the Costas had not been paid.

18. Neither defendant nor Teal had permission to use any part of the \$13,415.03 for the benefit of defendant, Teal, or the benefit of a third party other than Sterge and Sottie Costa.

19. On April 28, 1992, Costa again presented check number 3388 for payment to the bank and an official bank check was issued for \$13,415.03.

20. On April 14, 1992, check number 3391 in the amount of \$500.00 was issued to defendant. The following language was written on the memorandum line of the check: "Paid in Full Proceeds - Costas".

21. Teal typed the check and signed defendant's name to check number 3391. Teal also endorsed the check in Ford's and her name.

22. Defendant testified that check number 3391 was not an attorney's fee to which he was entitled for the closing involving Sterge and Sottie Costa. Defendant testified that he neither authorized nor knew that Teal prepared the check and signed his name to it.

23. On April 20, 1992, check number 3393 in the amount of \$2,700.00 was issued to defendant. The words "Costa/Boyce/Bennett #216" appeared on the memorandum of the line of the check. The check was deposited into defendant's business account at UCB, account number 053-108-221.

24. Teal wrote the check and signed defendant's name to check number 3393.

25. Defendant testified that check number 3393 was not an attorney's fee to which he was entitled in any matter regarding Costa, Boyce, or Bennett. Defendant testified that he neither authorized nor knew that Teal wrote the check and signed his name to it.

26. On November 1, 1991, defendant was the closing attorney in Charles E. and Tanis Compton's purchase of property from Pyramid Ltd. of Brunswick County, Inc. On November 1, 1991, defendant or someone under his authority or control deposited a total of \$51,782.25, the proceeds from the closing, into his trust account.

28. Defendant disbursed funds to various parties according to the settlement statement in the Compton/Pyramid Ltd. closing.

29. Defendant was instructed to hold the balance of \$27,287.51 in his trust account to pay William and Marsha Taylor, the principals of Pyramid Ltd.

30. Defendant has not disbursed any portion of the \$27,287.51 to William and Marsha Taylor pursuant to the closing

instructions.

31. During the following periods, the balance in defendant's trust account dropped below \$27,287.51: January 10, 1992; January 13, 1992; January 28, 1992; February 3, 1992 to February 11, 1992; February 27, 1992 to March 3, 1992; March 6, 1992 to March 11, 1992; March 17, 1992 to March 23, 1992; and April 20, 1992 to May 29, 1992.

32. At all times when defendant's trust account balance dropped below \$27,287.51, this amount should have been in his trust account to pay William and Marsha Taylor, the principals of Pyramid Ltd.

33. Neither defendant nor Teal had permission to use any part of the \$27,287.51 for the benefit of defendant, Teal, or a third party other than William and Marsha Taylor.

34. On December 5, 1991, a check in the amount of \$16,250.00, written on the trust account of Harry Heilig, was deposited into defendant's trust account. Heilig sent this money to defendant on behalf of his client, Marsha Taylor, with respect to the real estate transaction involving Marsha and William Taylor.

35. On December 10, 1991, check number 3183 in the amount of \$825.00 was issued to defendant. The words "Heilig-Foreclosure" appear on the memorandum line of the check. The check was deposited into defendant's business account.

36. Teal wrote check number 3183 and signed defendant's name to it.

37. Defendant testified that check number 3183 was not an attorney's fee to which he was entitled for representation of Heilig in a foreclosure action. Defendant testified that he neither authorized nor knew that Teal wrote the check and signed his name to it.

38. On November 26, 1991, defendant was the closing attorney for James E. and Dorothy Yaskiewicz's purchase of property from Carl Hatley (Hatley). On November 26, 1991, defendant or someone under his authority or control deposited \$151,109.37 for the closing into his trust account.

39. On November 26, 1991, defendant was also the closing attorney for Carl Hatley in his purchase of property from James E. and Dorothy Yaskiewicz. The Yaskiewiczes and Hatley traded properties that day.

40. According to the settlement statements regarding the Yaskiewiczes' purchase of property from Hatley, Defendant was to receive \$275.00 as his attorney's fee for handling the closing.

41. On November 26, 1991, Defendant issued check number 3158 in the amount of \$275.00 and check number 3162 in the amount of \$275.00 to himself. The name "Hatley" appeared on the memorandum

line of each check.

42. Hatley believes that the additional check in the amount of \$275.00 that defendant issued to himself represents defendant's attorney's fee in the closing where Hatley purchased property from the Yaskiewiczzes.

43. On January 16, 1992, check number 3235 in the amount of \$955.00 was issued to defendant. The names "Hatley/Yaskiewicz" appear on the memorandum line of the check and the check was deposited into Defendant's business account at UCB.

44. Teal wrote check number 3235 and signed defendant's name to it.

45. Defendant testified that check number 3235 was not an attorney's fee to which he was entitled for either of the closings he handled for Hatley and the Yaskiewiczzes. Defendant testified that he neither knew nor authorized Teal to write the check and sign his name to it.

46. In the November 26, 1991 closing regarding Hatley's purchase of property from the Yaskiewiczzes, 1991 county taxes in the amount of \$314.94 were collected by the defendant. However, defendant did not pay the 1991 county taxes from the proceeds of the closing. The 1991 county taxes were subsequently paid by the Yaskiewiczzes and Hatley.

47. The North Carolina State Bar Client Security Fund compensated the Yaskiewiczzes and Hatley for their losses caused by defendant's failure to pay the 1991 county taxes.

48. On March 12, 1992, defendant handled a real estate closing involving Richard and Deborah Engle and Parker Davis and Dottie Gilmore Kiser. On March 12, 1992, defendant or someone under his authority or control deposited a total of \$60,292.71, the proceeds from the closing, into his trust account at UCB.

49. According to the settlement statements, defendant was to receive \$325.00 as his attorney's fee for closing the loan.

50. On March 13, 1992, defendant issued check number 3327 in the amount of \$323.00 and check number 3332 in the amount of \$500.00 to himself. The name "Engle" appears on the memorandum line of each check.

51. Defendant was not entitled to receive more than \$325.00 as his attorney's fee from the Engle/Kiser closing.

52. Defendant testified that he handled a domestic matter for Deborah Engle and his fee was \$500.00. According to defendant, Deborah Engle authorized him to take his fee for the domestic case from the closing.

53. There was no evidence presented other than defendant's testimony concerning whether or not Engle authorized the

defendant to take his fee for the domestic case from the closing.

54. On March 11, 1992, check number 3325 in the amount of \$800.00 was issued to defendant. The names "Kiser-Engle" appear on the memorandum line of the check.

55. Teal wrote check number 3325 and signed defendant's name to it.

56. Defendant testified that check number 3325 was not an attorney's fee to which he was entitled with respect to his representation of Engle in any matter. Defendant testified that he neither authorized nor knew that Teal wrote the check and signed his name to it.

57. Defendant was the closing attorney in several real estate closings from October 31, 1991 to April 24, 1992.

58. Defendant was directed to pay various costs related to the closings, such as title insurance premiums, taxes, and surveyor's fees.

59. In several real estate closings, defendant or Teal wrote checks to Investors Title Insurance, the Register of Deeds, a surveyor, and an insurance company. These checks were not mailed to the parties. David Frederick, an investigator at the State Bar, found these checks in the clients' files which were stored in a lawyer's office in Long Beach. Defendant did not disburse the checks to the parties as he was instructed.

60. Defendant did not review his trust account records regularly. He testified that he reviewed them every four months.

61. Defendant reviewed his business account records less frequently than he reviewed his trust account records.

62. Defendant testified that he may have reconciled his trust account balances of funds belonging to all clients every six months.

63. From November 1991 to April 1992, Charlene Teal, wrote and signed defendant's name to numerous checks drawn on defendant's trust account. Many of these checks were made payable to the defendant and deposited into his business account. Some of the checks were made payable to the defendant, endorsed by Teal in either defendant's name or Teal's name, and cashed.

64. From November 1991 to April 1992, Teal issued checks to defendant, signed his name to the checks, and attributed the money as coming from client funds by writing the client's name on the memorandum line of the check. In every instance, defendant was not due the amount of the check as an attorney's fee.

65. Defendant wrote numerous checks from his business account for personal reasons during the time that Teal improperly deposited client funds into his business account. Defendant

received some financial benefit from Teal's actions.

66. Teal testified that she began signing checks on defendant's trust account, either in his name or her name, shortly after she began working for him in April of 1991.

67. Teal testified that she signed checks, endorsed checks and cashed checks drawn on defendant's trust account at his request and at his direction. She also testified that she deposited checks drawn on defendant's trust account into his business account at his request and direction.

68. Defendant testified that on April 24, 1992, he learned for the first time that Teal signed his name to checks written on his trust account and either deposited the money into his business account or cashed the checks.

69. As a result of not reviewing his trust account records, defendant did not detect Teal's check-signing activities prior to April 24, 1992. Defendant also did not detect that many of the checks to which Teal signed his name did not have entries on the stubs indicating the purpose of the checks.

70. Defendant did not adequately supervise Teal with respect to her handling client funds and defendant's trust and business account records.

71. Defendant closed his law practice in May or June of 1992. In June of 1992, he moved to Japan until he returned to the United States in April of 1994. In the last two years, defendant has taken no substantive action to compensate those persons whose money was misappropriated.

72. Misappropriation of clients' funds occurred when the balances in defendant's trust account fell below the amounts due to Joseph Lenins, Ed Pruitt, Sterge and Sottie Costa, and William and Marsha Taylor.

73. Defendant's failure to monitor and keep track of his clients' funds resulted in the misappropriation of their funds.

74. The misappropriation of defendant's clients' funds was the result of his gross negligence in handling their funds, including monitoring and maintaining his trust account.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

Defendant's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(2) in that defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to preserve and maintain the funds of Joseph

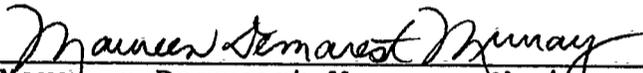
Lenins, Ed Pruitt, Sterge and Sottie Costa, and William and Marsha Taylor in his trust account and by failing to pay or deliver funds to those clients as they directed, defendant has violated Rule 10.1(A) and (C) and Rule 10.2(E), respectively.

(b) By failing to pay the 1991 county taxes in Carl Hatley's purchase of property from the Yackiewiczzes, as directed by his client, defendant has violated Rule 10.2(E).

(c) By failing to disburse the funds he received in a fiduciary capacity to Investors Title Insurance, the Register of Deeds, and other third parties as directed by his clients, defendant has violated Rule 10.2(E).

(d) By failing to adequately supervise Teal so as to prevent the misappropriation of his clients' funds, defendant has violated Rule 3.3(B).

Signed by the undersigned chairman with the full knowledge and consent of all of the other members of the hearing committee, this the 16th day of September, 1994.



Maureen Demarest Murray, Chairman

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ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law entered in this matter, and further based upon arguments of counsel, the hearing committee composed of Maureen Demarest Murray, chairman; Mary Elizabeth Lee, and A. James Early III, makes the following additional findings regarding the existence of aggravating and mitigating factors in this case.

AGGRAVATING FACTORS

1. A pattern of misconduct;
2. Multiple offenses;
3. Refusal to acknowledge the wrongful nature of his conduct in that the defendant places primary blame for the misappropriation of clients' funds on his bank and his secretary, failing to recognize his obligation to monitor his trust account and supervise his employees;
4. Vulnerability of victims in that the clients entrusted defendant with their money;
5. Substantial experience in the practice of law; and
6. Indifference to making restitution in that defendant has not attempted to compensate any of the parties who suffered losses as a result of the misappropriation of their money.

MITIGATING FACTOR

1. Absence of a prior disciplinary record.

BASED UPON all the Findings of Fact, the Conclusions of Law,

and the aggravating and mitigating factors listed above, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. David P. Ford, defendant, is hereby DISBARRED from the practice of law in North Carolina.

2. Defendant shall immediately submit his law license and membership card to the Secretary of the North Carolina State Bar.

3. Prior to defendant seeking reinstatement of his law license, defendant shall:

(a) pay \$600.00 to Joseph Lenins, \$5560.57 to Ed Pruitt, and \$27,287.51 to William and Marsha Taylor;

(b) reimburse the North Carolina State Bar Client Security Fund in the amount of \$314.94 for the taxes paid by the fund on behalf of the Yaskiewiczzes and the Hatleys;

(c) obtain an assessment of substance abuse from a medical doctor or mental health professional and follow the prescribed course of treatment; and

(d) participate in the Law Management Assistance Program of the North Carolina State Bar or, if it no longer exists, a comparable continuing legal education program regarding handling an attorney trust account.

4. Defendant shall violate no provisions of the Rules of Professional Conduct of the North Carolina State Bar during his disbarment.

5. Defendant shall violate no state or federal laws during his disbarment.

6. Defendant shall fully comply with the provisions of Rule 24 of Article IX of the Discipline and Disbarment Procedures of the North Carolina State Bar regarding the winding down of his practice.

7. Defendant shall pay the costs of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 16th day of September, 1994.


Maureen Demarest Murray, Chairman