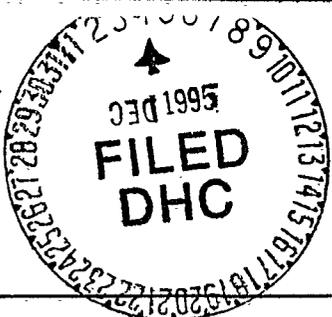


NORTH CAROLINA
WAKE COUNTY



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

9295

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
v.)
)
V. THOMAS JORDAN,)
)
Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause came on to be heard and was heard on November 17, 1995 before a hearing committee composed of Frank E. Emory Jr., chairman; Franklin E. Martin, and Robert B. Frantz. The North Carolina State Bar was represented by Fern E. Gunn. The defendant, V. Thomas Jordan, appeared pro se. Based upon the admissions of the defendant in his answer to the complaint, the stipulations on prehearing conference, the defendant's admissions at the hearing, 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. The defendant, V. Thomas Jordan, was admitted to the North Carolina State Bar on September 12, 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 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, the defendant was actively engaged in the practice of law in North Carolina and maintained a law office in Knightdale, North Carolina.

4. In April 1992, defendant began his own law practice after practicing in other law firms. Defendant hired Jeannie Wright as a legal assistant in his law office in April 1992. Ms. Wright was employed by defendant in his solo practice from April 1992 until February 7, 1995.

5. Defendant authorized Ms. Wright to sign checks

issued on his attorney trust account (trust account). He also authorized Ms. Wright to make deposits into his trust account.

6. Defendant maintained two trust accounts. A trust account, account number 2074084036859, was opened at First Union National Bank (FUNB) on August 6, 1992. Defendant's other trust account, account number 1081861291, was opened at First Citizens Bank (FCB) on November 9, 1993.

7. On August 26, 1994, defendant represented Philip M. Anderson Jr. and others in a real estate closing. At the closing held on August 26, 1994, defendant collected funds sufficient to pay the purchase price for the property and closing costs. On August 26, 1994, defendant or someone under his authority or control deposited \$78,937.00, proceeds from the closing, into defendant's trust account at FUNB. On August 29, 1994, defendant or someone under his authority or control deposited \$3,741.96, on behalf of Mr. Anderson and others for payment of closing costs, into defendant's trust account at FUNB.

8. Defendant was instructed to pay \$3,026.07 to CTX Mortgage from the proceeds of the Anderson closing. However, a check in the amount of \$3,026.07 was not issued to CTX Mortgage.

9. During the following periods, the balance in defendant's trust account dropped below \$3,026.07: 9-6-94 to 9-8-94; 9-9-94 to 9-12-94; 9-20-94 to 9-22-94; 11-8-94 to 11-9-94; 11-25-94; 12-12-94 to 12-14-94; 12-21-94; 1-30-95 to 3-9-95.

10. At all periods when defendant's trust account balance dropped below \$3,026.07, this amount should have been in defendant's trust account on behalf of his clients since defendant has not paid the money owed to CTX.

11. Neither defendant nor Ms. Wright, his employee, had permission to use any part of the money owed to CTX for the benefit of defendant, Ms. Wright, or any third party.

12. On November 7, 1994, defendant represented Joey and Jeanne Wiggins (the Wiggins) in a real estate closing. At the closing held on November 7, 1994, defendant collected funds sufficient to pay the purchase price of the property and closing costs. On November 9, 1994, defendant or someone under his authority or control deposited a total of \$63,925.00 into defendant's trust account at FUNB on the Wiggins' behalf for payment of closing costs. On November 16, 1994, defendant or someone under his authority or control deposited \$500.00 into defendant's trust account at FUNB on the Wiggins' behalf for the closing.

13. Pursuant to the settlement statement, defendant was instructed to pay \$27,500.00 to Centura Bank from the proceeds of the Wiggins closing. The \$27,500.00 was to be disbursed to Centura Bank to reduce an obligation owed by Q.C. Builders Inc., the sellers of the lot purchased by the Wiggins. Defendant or someone under his authority or control issued check number 10095, written on defendant's trust account on January 10, 1995, in the

amount of \$27,500.00 to Centura Bank.

14. Check number 10095 made payable to Centura Bank was returned for insufficient funds.

15. During the following periods, the balance in defendant's trust account dropped below \$27,500.00: 11-25-94; 11-28-94; 12-8-94 to 12-14-94; 12-21-94; 12-30-94; 1-12-95; 1-18-95 to 1-23-95; 1-25-95 to 3-9-95.

16. At all periods when defendant's trust account balance dropped below \$27,500.00, this amount should have been in defendant's trust account on the Wiggins' behalf since defendant has not paid the money owed to Centura Bank.

17. Neither defendant nor Ms. Wright, his employee, had permission to use any part of the money owed to Centura Bank for the benefit of defendant, Ms. Wright, or any third party.

18. By letter dated January 25, 1995, defendant was notified by Centura Bank that the \$27,500.00 check the bank received on January 10, 1995 was returned for insufficient funds on January 25, 1995.

19. On February 3, 1995, Centura Bank sent a letter to defendant by certified mail. Donna O. Bunn, defendant's employee, signed for the letter on February 7, 1995. In that letter, Centura Bank told defendant that the bank revoked the deed of release which would have released the lot that the Wiggins had purchased. The bank revoked the deed of release because the check written on defendant's trust account had been returned for insufficient funds. The bank asked defendant to return the unrecorded deed of release.

20. Despite being advised of the bank's revocation of the deed of release, defendant allowed the deed of release to be recorded on February 27, 1995.

21. Defendant did not take any measures to ensure that the deed of release was not recorded after he received notice that Centura Bank revoked the deed of release due to the bad trust account check the bank received from defendant.

22. On November 23, 1994, defendant represented Harold and Gail Vestal (the Vestals) in a real estate closing. At the closing held on November 23, 1994, defendant collected funds sufficient to pay the purchase price for the property and all closing costs. On November 23, 1994, defendant or someone under his authority or control deposited a total of \$89,037.68 into defendant's trust account at FCB on the Vestals' behalf for the payment of closing costs.

23. Pursuant to the settlement statement, defendant was instructed to disburse \$76,324.14 from the closing proceeds to GE Capital Mortgage Services Inc. (GE Capital) to pay off a prior mortgage loan. On January 16, 1995, defendant or someone under his authority or control issued check number 10130, written on defendant's trust account at FUNB, in the amount of \$76,324.14 to

GE Capital. No funds for the Vestals closing had been deposited into the defendant's trust account at FUNB.

24. Check number 10130 made payable to GE Capital in the amount of \$76,324.14 was returned for insufficient funds.

25. During the following periods, the balance in defendant's trust account at FCB dropped below \$76,324.14: 11-23-94 to 12-8-94; 12-9-94 to 1-20-95; 2-2-95 to 3-14-95.

26. At all periods when defendant's trust account balance dropped below \$76,324.14, this amount should have been in defendant's trust account on the Vestals' behalf since defendant has not paid the money owed to GE Capital.

27. Neither defendant nor Ms. Wright, his employee, had permission to use any part of the money due to Centura Bank for the benefit of defendant, Ms. Wright, or any third party.

28. On December 5, 1994, defendant represented Kevin and Sylvia Slattery (the Slatterys) in the closing of their purchase of property from M&T Homes Inc. (M&T). At the closing held on December 5, 1994, defendant collected the funds sufficient to pay the purchase price for the property and all closing expenses. On December 5, 1994 and December 6, 1994, defendant or someone under his authority or control deposited a total of \$166,685.51 into defendant's trust account at FUNB on the Slatterys' behalf for payment of closing costs.

29. Pursuant to the settlement statement, defendant was instructed to pay \$120,345.28 from the closing proceeds to AmSouth Mortgage Company Inc. (AmSouth) to pay off M&T's construction loan. On December 5, 1994, defendant or someone under his authority or control issued check number 9960, written on defendant's trust account and payable to AmSouth in the amount of \$120,345.28.

30. Check number 9960 made payable to AmSouth in the amount of \$120,345.28 was returned to AmSouth for insufficient funds.

31. During the following periods, the balance in defendant's trust account dropped below \$120,345.28: 12-8-94 to 12-19-94; 12-20-94 to 1-13-95; 1-18-95 to 3-9-95.

32. At all periods when defendant's trust account balance dropped below \$120,345.28, this amount should have been in defendant's trust account on the Vestals' behalf since defendant has not paid the money owed to AmSouth.

33. Neither defendant nor Ms. Wright, his employee, had permission to use any part of the money owed to AmSouth for the benefit of defendant, Ms. Wright, or any third party.

34. On December 6, 1994, a check in the amount of \$120,345.28 was sent to AmSouth from defendant's office. In a letter dated December 6, 1994 bearing defendant's stamped signature, AmSouth was asked to mark its note and deed of trust

"paid and satisfied in full" and to mail those documents to defendant so that the deed of trust could be cancelled of record.

35. On January 5, 1995, AmSouth sent the note and deed of trust, marked "satisfied in full," to defendant pursuant to defendant's instructions in his letter of December 6, 1995.

36. After AmSouth mailed the note and deed of trust marked "satisfied in full" to defendant, AmSouth learned that the payoff check written on defendant's trust account was dishonored by defendant's bank and returned to AmSouth for insufficient funds.

37. On January 17, 1995, James M. Brothers Jr., an assistant vice president at AmSouth, telephoned defendant and told him that the payoff check issued on his trust account had been returned for insufficient funds.

38. Defendant referred Mr. Brothers to Ms. Wright to discuss the bad check. According to Mr. Brothers, Ms. Wright promised to provide certified funds to replace the bad check.

39. It is undisputed that Mr. Brothers telephoned and wrote the defendant in January 1995. Defendant never responded to Mr. Brothers' inquiries about replacing the bad check with good funds.

40. On February 13, 1995, Mr. Brothers hand delivered a letter to defendant at his office. Mr. Brothers asked defendant in that letter of February 13 to return the satisfied promissory note and deed of trust since defendant's trust account check in the amount of \$120,345.28 was returned for insufficient funds.

41. Despite being advised that AmSouth wanted the promissory note and deed of trust returned because of the bad check presented to AmSouth, defendant did not return the documents to Mr. Brothers of AmSouth. Instead the defendant allowed the AmSouth promissory note and deed of trust to be cancelled at the Wake County Register of Deeds two days after he was notified that his trust account check made payable to AmSouth was returned for insufficient funds. Defendant did not take any measures to ensure that the deed of trust was not cancelled until he was certain that the bad check problem was resolved.

42. Defendant testified that he relied upon Ms. Wright's representation that the bad check to AmSouth was an error which she corrected. Although defendant had notice of the problems with the check to AmSouth, he did not conduct an independent investigation to determine if the check to AmSouth had been made good or if his trust account contained sufficient funds to pay the check.

43. On December 22, 1994, defendant represented Robert and Carrie Good (the Goods) in the closing of their purchase of a home from Farmers Home Administration (FmHA). At the closing held on December 22, 1994, defendant collected the funds sufficient to pay the purchase price of the property and closing costs. On December 22, 1994, defendant or someone under his

authority or control deposited \$44,271.40 into defendant's trust account at FUNB on the Goods' behalf for payment of closing costs.

44. Defendant was instructed to pay \$39,499.87 from the closing proceeds to FmHA. On December 22, 1994, defendant or someone under his authority or control issued check number 10054 written on defendant's trust account at FUNB and payable to United States of America in the amount of \$39,499.87.

45. Check number 10054 made payable to United States of America in the amount of \$39,499.87 was returned to FmHA for insufficient funds.

46. During the following periods, the balance in defendant's trust account dropped below \$39,499.87: 12-29-94 to 1-9-95; 1-12-95 to 1-13-95; 1-18-95 to 1-23-95; 1-24-95 to 3-9-95.

47. At all periods when defendant's trust account balance dropped below \$39,499.87, this amount should have been in defendant's trust account on the Goods' behalf since defendant has not paid the money owed to FmHA.

48. Neither defendant nor Ms. Wright, his employee, had permission to use any part of the money owed to FmHA for the benefit of defendant, Ms. Wright, or any third party.

49. Michael Harris, an employee of FmHA (now known as Rural Economic and Community Development), was notified that the check in the amount of \$39,499.87 was not paid due to insufficient funds in defendant's trust account.

50. Mr. Harris telephoned defendant's office on January 12, 1995 and spoke with Ms. Wright. Mr. Harris testified that Ms. Wright assured him that she would deliver a certified check to replace the bad check given to FmHA. Mr. Harris never received a replacement check.

51. Mr. Harris telephoned the defendant on January 23, January 24, and January 25, 1995. Mr. Harris was told that defendant was not in the office. Although Mr. Harris left messages for defendant to return his calls, Mr. Harris did not hear from defendant.

52. The North Carolina State Bar began an investigation of defendant's trust account when a grievance was filed by Mr. Harris regarding the bad check FmHA received from defendant.

53. Donald Jones, an investigator at the North Carolina State Bar, audited defendant's trust and office accounts. He began his audit of defendant's trust and office accounts in early February 1995.

54. Ms. Wright had defendant's authorization to sign checks on his trust account, and deposit money into his trust, office, and personal bank accounts. Ms. Wright also had a stamp with defendant's signature with which she stamped his signature

on checks.

55. Ms. Wright took approximately \$85,000.00 from defendant's trust account and deposited it into his office account in 1994 and 1995. In 1993, Ms. Wright took \$43,030.00 from defendant's trust account and deposited that money into his office account. This money was not attorney's fees that defendant had earned.

56. Defendant received benefit from the client money that Ms. Wright stole from his trust account and deposited into his office account in the following ways: payment of his and his employees' salaries, payment of office expenses, and payment of his child support.

57. Defendant testified that he did not know that Ms. Wright had stolen money from his trust account in 1993, 1994 and 1995 and placed that money into his office account. He stated that the first time he saw the cancelled checks that Ms. Wright had written to make these transfers was when Mr. Jones showed him the checks in February 1995.

58. Neither defendant nor Ms. Wright, his employee, had permission to use any part of the money belonging to defendant's clients.

59. Wright issued and then cashed trust account checks made payable to defendant. Some of these checks were attorney's fees which were owed to defendant.

60. Ms. Wright wrote checks on defendant's trust account which were made payable to "cash" and she received the money.

61. Ms. Wright issued trust account checks made payable to defendant and deposited those checks into her personal checking account at First Citizens Bank.

62. Ms. Wright issued trust account checks made payable to her and deposited the checks into her personal bank account.

63. The various checks that Ms. Wright wrote out of defendant's trust account and converted to her own personal use ranged in amounts from \$250.00 to \$7,000.00.

64. Defendant testified that neither he nor Ms. Wright was entitled to the client money she stole from his trust account. Defendant also testified that he did not know about her thefts until Mr. Jones showed him the cancelled checks in February 1995.

65. In 1994, Ms. Wright transferred over \$300,000.00 from defendant's trust account at FUNB into his trust account at FCB, where she converted much of the money to her own use.

66. According to defendant, there was no legitimate reason for Ms. Wright's transfer of clients' funds from the FUNB trust account into the FCB trust account.

67. Defendant was unaware of Ms. Wright's transfer of clients' funds from one trust account to another until Mr. Jones disclosed it to him in February 1995.

68. On November 23, 1994, Ms. Wright took \$17,000.00 from defendant's trust account at FCB and purchased a certified check in the amount of \$17,000.00. This certified check, dated November 23, 1994, was made payable to Debra Sue Peoples. Ms. Wright purchased a double wide mobile home from Ms. Peoples with the certified check in the amount of \$17,000.00.

69. Defendant did not know of Ms. Wright's theft of \$17,000.00 from his trust account until 1995 when the State Bar's investigation uncovered it.

70. Defendant did not properly supervise Wright with respect to her handling of client funds in defendant's trust account.

71. Defendant did not keep adequate records of receipts of client funds. He also did not keep adequate records of disbursements made on his clients' behalf.

72. Mr. Jones of the State Bar testified that defendant did not have all of his trust and office account records in his office so Mr. Jones had to obtain the missing records from the banks.

73. Defendant did not examine his trust account or office account bank statements. Insufficient funds (NSF) charges were assessed against defendant's trust account at FUNB as early as June 1992, two months after the account was opened. NSF charges appeared regularly thereafter on defendant's trust account statements at FUNB. NSF charges were assessed to defendant's trust account at FCB as early as December 1993, one month after the account was opened. NSF charges appeared regularly thereafter on defendant's trust account statements at FCB.

74. A total of \$3,824.00 was assessed as NSF charges to defendant's trust account at FUNB from 1992 to 1995. A total of \$2,240.00 was assessed as NSF charges to defendant's trust account at FCB from 1993 to 1995. These NSF charges were paid from client money which defendant held in trust in his trust account.

75. As a result of not examining his trust account bank statements, defendant could not detect the assessment of NSF charges and that his trust account was out of balance each month.

76. Defendant did not examine the cancelled checks written on his trust and office accounts when those checks came with his monthly bank statements each month.

77. As a result of not examining the cancelled checks from his trust and office accounts, defendant did not detect that Ms. Wright stole client money from the trust accounts.

78. Defendant did not reconcile the trust account balances of client funds at least quarterly. If defendant had reconciled his trust account balances, he could have detected defalcations of client money from his trust account.

79. The amount of loss in the five real estate closings set out in the State Bar's complaint totals \$266,695.36. Defendant has not made restitution to any of the injured parties who suffered losses as set out in the State Bar's complaint.

80. Defendant has made restitution in the amount of \$4400.00 to several clients who lost money as a result of the defalcation of their money.

81. Misappropriation of clients' funds occurred when the balances in defendant's trust account fell below the amounts due to CTX Mortgage Company, Centura Bank, GE Capital Mortgage Services Inc., AmSouth Mortgage Company Inc. and Farmers Home Administration.

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

83. 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 the Andersons and the other purchasers in his trust account and by failing to pay or deliver funds to a third party as directed, defendant has violated Rule 10.1(a) and (c) and Rule 10.2(e), respectively.

b. By failing to preserve and maintain the funds of the Wiggins in his trust account and by failing to pay or deliver funds to a third party as directed, defendant has violated Rule 10.1(a) and (c) and Rule 10.2(e), respectively.

c. By allowing the deed of release to be recorded after he was put on notice that the Centura Bank payoff check written on his trust account had been dishonored and returned for insufficient funds, defendant has violated Rule 6(b)(3), Rule 7.1(a)(1), Rule 7.1(a)(3), and Rule 3.3(b).

d. By failing to preserve and maintain the funds of the Vestals in his trust account and by failing to pay or deliver funds to a third party as directed, defendant has violated Rule 10.1(a) and (c) and Rule 10.2(e), respectively.

e. By failing to preserve and maintain the funds of the Slatterys in his trust account and by failing to pay or deliver funds to a third party as directed, defendant has violated Rule 10.1(a) and (c) and Rule 10.2(e), respectively.

f. By allowing the AmSouth deed of trust to be cancelled of record when he knew that the AmSouth payoff check written on his trust account had been dishonored and returned for insufficient funds, defendant has violated Rule 6(b)(3), Rule 7.1(a)(1), Rule 7.1(a)(3), and Rule 3.3(b).

g. By failing to preserve and maintain the funds of the Goods in his trust account and by failing to pay or deliver funds to a third party as directed, defendant has violated Rule 10.1(a) and (c) and Rule 10.2(e), respectively.

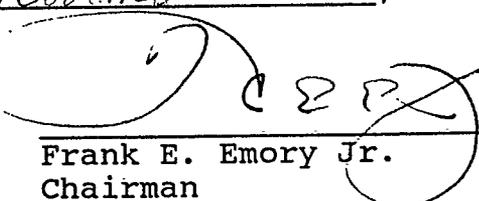
h. By allowing his employee, Jeannie Wright, to steal client funds because of his failure to monitor and maintain his trust account, defendant has violated Rule 10.1(a) and (c), Rule 10.2(e), and Rule 3.3(b).

i. By not properly supervising Ms. Wright's handling of defendant's trust account and client funds, which resulted in defalcations of client funds, defendant has violated Rule 3.3(b) and Rule 10.1(a) and (c).

j. By failing to maintain adequate minimum records of funds he received and disbursed on behalf of clients, defendant has violated Rule 10.2(b) and (c).

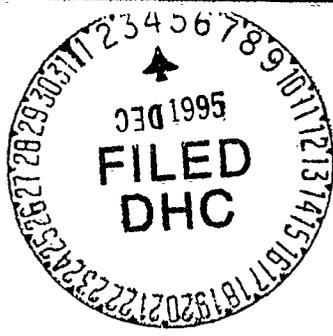
k. By failing to reconcile the trust account balances of funds belonging to all clients at least quarterly, defendant has violated Rule 10.2(d).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 29th day of November, 1995.



Frank E. Emory Jr.
Chairman

NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

V. THOMAS JORDAN,
Attorney

Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law entered in this matter, and further based upon arguments of counsel and the defendant, V. Thomas Jordan, the hearing committee composed of Frank E. Emory Jr., chairman; Franklin E. Martin, and Robert B. Franz, 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. Substantial experience in the practice of law; and
4. Submission of false statements or making statements that tended to be deceptive with respect to defendant's failure to disclose to the State Bar pursuant to its discovery request that he had not filed federal and state income tax returns for 1992, 1993 and 1994; and
5. The issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the State Bar's complaint.

MITIGATING FACTORS

1. Absence of a prior disciplinary record;
2. Absence of a dishonest motive;
3. Displayed a cooperative attitude a cooperative attitude during the State Bar's investigation;

4. Remorse;

5. Defendant sought help for alcoholism in August of 1994.

BASED upon all the Findings of Fact, the Conclusions of Law, aggravating and mitigating factors listed above, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. V. Thomas Jordan, 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 make full restitution to all parties who are the subject of this action.

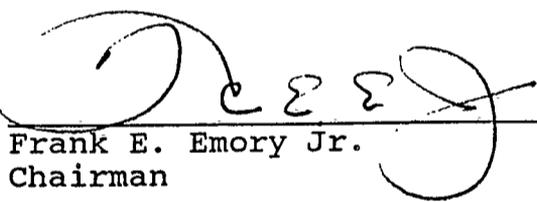
4. Defendant shall violate no provisions of the Rules of Professional Conduct of the North Carolina State Bar during his disbarment.

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

6. Defendant shall fully comply with the provisions of Section .0124 of the Discipline and Disability Rules of the North Carolina State Bar regarding the winding down of his law 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 29th day of November, 1995.



Frank E. Emory Jr.
Chairman