

WAKE COUNTY
NORTH CAROLINA



10149

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 2

THE NORTH CAROLINA STATE BAR)	
Plaintiff)	
v.)	FINDINGS OF FACT
)	AND CONCLUSIONS OF LAW
WILLIE R. BROOKS, ATTORNEY)	AND ORDER OF DISCIPLINE
Defendant)	

This matter was heard on the 30th day of May, 1997 before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; Richard T. Gammon and James Lee Burney. The defendant, Willie R. Brooks, appeared on his own behalf and Carolin Bakewell represented the N.C. State Bar. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters 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, Willie R. Brooks, (hereafter, Brooks) was admitted to the North Carolina State Bar in 1982, 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 relevant periods referred to herein, Brooks was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Town of Monroe, Union County, North Carolina.

4. Brooks was properly served with process and the hearing was held with due notice to all parties.

5. Prior to December 22, 1995, Ruth Dillard, then an associate in Brooks' law office, undertook to handle the closing of the sale of real property by Mr. & Mrs. Leonard Williams to Mr. & Mrs. James Small.

6. Dillard left her employment with Brooks on Dec. 22, 1995 and returned to Florida to practice law. As of December 1995 and January 1996, there were no attorneys or associates in Brooks' law office who were competent to handle real estate closings.

7. Brooks is not familiar with real estate practice and has conceded that he was not competent to handle real estate closings as of December 1995 and January 1996.

8. In early January 1996, Brooks contacted Frank C. Creft, another attorney with whom Brooks was acquainted, and whom Brooks knew to be competent to handle real estate closings. At Brooks' request, Creft agreed to assist in the Williams-Small closing, which occurred on Jan. 2 or 3, 1996.

9. Creft and Brooks both attended the Williams-Small closing. Creft presided over the signing of the various closing documents by Williams and Mr. & Mrs. Small and completed the HUD-1 settlement statement by incorporating information provided to him by Brooks and his staff.

10. At the conclusion of the closing, Brooks told Mr. & Mrs. Small that, owing to the lateness of the hour, he would make copies of the closing materials the following day and deliver the documents to them later. Despite these assurances, Mr. & Mrs. Small never received copies of the closing documents from Brooks or his office.

11. Mr. Small placed approximately 12 calls to Brooks' office in the month following the closing, to request copies of the closing documents and discuss other problems associated with the closing. Brooks did not return any of these calls, with the exception of one occasion, when Brooks telephoned Small very late one evening at Small's home in response to a call which Small had placed to Brooks' home. Brooks asked Small to call him the next day at Brooks' office. When Small telephoned the following day, however, Brooks was not available and he did not return Small's call.

12. Owing to a mathematical error in the HUD-1 closing statement, too much money was disbursed to Williams following the Williams-Small closing. As a consequence, Brooks' trust account was approximately \$1,000 short of the amount needed to pay the various creditors listed on the HUD-1 settlement statement.

13. Brooks learned of the error in the HUD-1 settlement statement within a day or two after the closing. An associate in his office, Phillip Penn, wrote a letter to Williams on Jan. 16, 1996, requesting Williams to refund the excess distribution. Williams did not respond to this request or refund the money, however.

14. All of the funds generated by the Williams-Small closing were deposited into and flowed out of Brooks' attorney trust account. Creft did not have access to any of the closing funds. All of the checks disbursing funds from Brooks' trust account relative to the Williams-Small closing were signed by Brooks. Creft was not involved in the Williams-Small closing after the parties met to sign the closing documents on Jan. 2 or 3, 1996 and Brooks did not request further assistance from Creft after that date.

15. Brooks did not disburse the funds which remained in his trust account relative to the Williams-Small closing in a timely fashion. Rather, the checks were issued in several batches between mid-January and late February, 1996, including the following:

- a. The \$390 payment for the Smalls' homeowner warranty contract was not disbursed until on or about Jan. 29, 1996.
- b. The \$230 payment to Derrick L. Miles, surveyor, was not disbursed until on or after Feb. 12, 1996.
- c. The \$427 payment to State Farm Ins. Co. for the Smalls' homeowner insurance premium for was not disbursed until on or about Feb. 28, 1996.
- d. The \$122.72 payment to Union County for the Smalls' share of the 1995 real estate taxes on the property which they purchased was not disbursed until on or about May 7, 1996.

16. The Smalls' State Farm Ins. Co. policy would have lapsed, owing to Brooks' failure to disburse the premium to State Farm on a timely basis, but for the fact that the Smalls were owed a refund on a prior policy.

17. Brooks ultimately made up the shortfall in the Williams-Small closing funds by making at least two disbursements on Small's behalf out of personal funds in his office operating account.

18. Brooks knew or should have known prior to the Smalls' closing that he was not competent to handle a real estate transaction and to complete disbursement of the closing funds in a timely fashion.

19. After it became clear that an error had been made respecting the disbursement to Williams, Brooks failed to handle the disbursement of the funds in a timely, competent

fashion and failed to associate with him an attorney competent to handle the disbursement of the Smalls' closing funds in a timely, competent fashion.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant, Willie R. Brooks and the subject matter.

2. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. § 84-28(b)(2) as follows:

(a) By failing to promptly disburse sums from the Smalls' closing funds promptly after the closing, Brooks failed to promptly disburse sums held in trust to third parties as directed by the client in violation of Rule 10.2(e).

(b) By failing to provide copies of the closing documents to the Smalls promptly after the closing, despite requests from the Smalls, Brooks failed to comply with a reasonable request for information from a client in violation 6(b)(1).

(c) By undertaking the Smalls' real estate closing when he knew or should have known he was not competent to handle disbursement of the funds in a timely and competent way, without associating a lawyer who was competent to handle the disbursements, Brooks violated Rule 6(a)(1).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes the additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant willfully failed to comply with orders of the Chair of the hearing committee relative to discovery requests of the N.C. State Bar.

2. The defendant's conduct is mitigated by the following factors:

(a) the defendant did not act from a dishonest or selfish motive.

(b) the defendant made restitution to Mr. & Mrs. Small from his personal funds.

(c) the defendant retained competent counsel to assist with the Williams-Small closing.

3. The defendant's conduct is aggravated by the following factor:

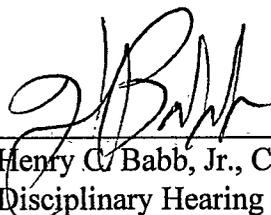
(a) the defendant engaged in bad faith obstruction of the disciplinary process by failing to comply with the hearing committee's orders regarding discovery.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The defendant, Willie R. Brooks is hereby admonished for his misconduct.
2. The defendant shall pay the costs of this proceeding, including the costs of depositions taken by the plaintiff, within 10 days of service of notice of the amount of the costs, as assessed by the Secretary.
3. The defendant shall not conduct any real estate closings or engage in any real estate transactions in the capacity as an attorney without first completing 25 hours of continuing legal education courses approved in advance by the N.C. State Bar and dealing with the subject of real estate.

Signed by the chair with the consent of the other hearing committee members, this the 13 day of June, 1997.


Henry C. Babb, Jr., Chair
Disciplinary Hearing Committee