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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
98 DHC 1

THE NORTH CAROLINA STATE BAR,)

Plaintiff)

v.)

ROBERT J. PAGE,)

Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
ORDER OF DISCIPLINE

This matter was heard on the 31st day of July, 1998, before a hearing committee of the Disciplinary Hearing Commission composed of Robert B. Smith Jr., Chair; Joseph G. Maddrey and Anthony E. Foriest. The plaintiff was represented by Fern Gunn Simeon. The defendant, Robert J. Page, was represented by James B. Maxwell. Based upon the pleadings, the pre-hearing stipulations, and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar, the plaintiff, 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. Robert J. Page, the defendant, was admitted to the North Carolina State Bar on September 26, 1961, 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 most of the periods referred to herein, defendant was engaged in the practice of law in North Carolina and maintained a law office in Chapel Hill, North Carolina.

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

5. In January 1994, Lawrence W. Cramer Jr. (hereafter "Cramer") entered into an agreement with the defendant for the defendant to act as trustee of a trust containing real property owned by Cramer.

6. Pursuant to the trust agreement, the defendant agreed to manage Cramer's rental properties and collect the rents due on Cramer's behalf. In addition, the defendant as trustee agreed to provide Cramer with a monthly accounting of the receipt and disbursement of money collected from the rental of Cramer's property. The defendant did not give Cramer monthly accountings concerning the rents.

7. The defendant opened a bank account at Centura Bank called the Cramer Rental Account, account number 042-000-068-0. The Cramer Rental Account contained money received in connection with the rental of Cramer's property. The defendant did not keep his personal funds in the Cramer Rental Account. The defendant and his daughter, Attorney Kendall Page, had signature authority on the Cramer Rental Account. The defendant never gave Cramer any bank statements or other records concerning the Cramer Rental Account.

8. On January 20, 1995, the defendant wrote check number 1531 drawn on the Cramer Rental Account in the amount of \$5,000.00 to himself. The defendant signed this check and wrote on the memorandum line, "Loan." The defendant endorsed the check and deposited it into his personal bank account at Centura Bank, account number 042-300-116-0, on January 20, 1995.

9. Cramer did not lend \$5,000.00 to the defendant.

10. The defendant reviewed monthly the bank records for his personal bank account at Centura Bank.

11. On January 19, 1995, the defendant wrote check number 2674 in the amount of \$5,000.00 made payable to Lillyan Page and drawn on the defendant's personal bank account at Centura Bank, account number 042-300-116-0. Lillyan Page is the defendant's wife and the \$5,000.00 check that he wrote to her was for a personal matter and did not relate to Cramer or his rental properties. Check 2674 was paid by the defendant's bank on January 20, 1995. The defendant did not have enough money in his personal bank account to cover check number 2674 in the amount of \$5,000.00 until he deposited Cramer's \$5,000.00 into his personal bank account.

12. During the following periods, the balance in the defendant's personal bank account at Centura Bank dropped below \$5,000.00: 1-20-95 to 2-3-95; 2-6-95 to 9-18-95; 11-28-95; 12-6-95 to 12-14-95.

13. At all periods when the balance in the defendant's personal bank account dropped below \$5,000.00, this amount should have been in the account on behalf of Cramer since the defendant had not disbursed the money on Cramer's behalf.

14. The defendant misappropriated Cramer's \$5,000.00 and used the money for his own benefit or the benefit of a third party other than Cramer, without Cramer's knowledge or consent.

15. On February 1, 1995, the defendant deposited check number 1535 in the amount of \$3,500.00 drawn on the Cramer Rental Account into the defendant's bank account (hereafter "Page Building Account") at Branch Banking and Trust Co. (hereafter "BB&T"), account number 5193026089. The Page Building Account was a personal account belonging to the defendant and he used it for business purposes. Cramer had no signatory authority on the Page Building Account.

16. The defendant reviewed the bank records for the Page Building Account at least monthly.

17. On January 31, 1995, the defendant wrote check number 848 in the amount of \$3,458.35, made payable to Village Bank and drawn on the Page Building Account. The defendant was paying a personal loan obligation with check number 848 in the amount of \$3,458.35. Check number 848 was paid by the defendant's bank on February 2, 1995. The defendant did not have enough money in the Page Building Account to cover check number 848 in the amount of \$3,458.35 until he deposited Cramer's \$3,500.00 into his Page Building Account.

18. During the following periods, the balance in the defendant's Page Building Account dropped below \$3,500.00: 2-2-95 to 2-7-95; 2-13-95 to 2-28-95; 3-10-95; 3-14-95 to 3-29-95; 4-6-95; 4-11-95 to 5-4-95; 5-4-95 to 5-9-95; 5-18-95 to 5-19-95; 5-26-95 to 6-7-95; 6-9-95 to 6-12-95; 6-16-95 to 6-21-95; 6-22-95; 7-11-95 to 7-24-95; 7-25-95; 8-9-95; 8-10-95 to 8-25-95; 9-1-95 to 9-5-95; 9-5-95 to 9-6-95; 9-11-95 to 9-19-95; 10-24-95 to 10-26-95; 11-6-95; 11-9-95 to 11-22-95; 11-29-95 to 11-30-95; 12-18-95 to 12-21-95; 12-29-95.

19. At all periods when the balance in the defendant's Page Building Account dropped below \$3,500.00, this amount should have been in the account on behalf of Cramer since the defendant had not disbursed the money on Cramer's behalf.

20. The defendant misappropriated Cramer's \$3,500.00 and used the money for his own benefit without Cramer's knowledge or consent.

21. On December 27, 1995, the defendant deposited \$8,500.00 of his personal funds into the Cramer Rental Account. The defendant was replacing the money he took from the Cramer Rental Account on January 20 and February 1, 1995.

22. The defendant and Cramer agreed to form a partnership, Windy Hill Partnership, to develop properties owned by Cramer. Cramer had a one-half interest in Windy Hill Partnership and the defendant's three children had a one-half interest in the partnership. There was no written partnership agreement.

23. On June 9, 1994, the defendant opened a bank account at BB&T for Windy Hill Partnership, account number 5112879651. Only the defendant had signature authority on the Windy Hill Partnership bank account. The defendant never gave Cramer bank statements or other records concerning the Windy Hill Partnership bank account.

24. The defendant transferred a total of \$15,000.00 from the Cramer Rental Account to the Windy Hill Partnership account on July 5, 1994.

25. On August 18, 1994, the defendant wrote check number 1481 drawn on the Cramer Rental Account and made payable to Windy Hill Partnership in the amount of \$6,000.00. The name, Kendall H. Page, appears on the signature line of check number 1481. However, the defendant signed his daughter's name on the check.

26. Check number 1481 made payable to the Windy Hill Partnership in the amount of \$6,000.00 was not deposited into the Windy Hill Partnership bank account.

27. On August 18, 1994, the defendant deposited check number 1481 in the amount of \$6,000.00 into his personal bank account at Centura Bank, account number 0420300-116-0.

28. On August 11, 1994, the defendant wrote the following checks on his personal bank account at Centura Bank:

- a. check number 2518 in the amount of \$250.00 made payable to Centura;
- b. check number 2520 in the amount of \$2,500.00 made payable to Citibank; and
- c. check number 2521 in the amount of \$2,500.00 made payable to BB&T.

The defendant was paying personal loan obligations with check numbers 2518, 2520, and 2521. Check numbers 2518, 2520, and 2521 were paid by the defendant's bank after he deposited Cramer's \$6,000.00 into his personal bank account. 1994. The defendant did not have enough money in his personal bank account to cover

check numbers 2518, 2520, and 2521 until he deposited Cramer's \$6,000.00 into the defendant's personal bank account.

29. During the following periods, the balance in the defendant's personal bank account at Centura Bank dropped below \$6,000.00: 8-19-94 to 9-8-94; 9-12-94 to 9-27-94; 10-3-94 to 10-6-94; 10-10-94 to 11-4-94; 11-8-94 to 12-29-94.

30. At all periods when the balance in the defendant's personal bank account dropped below \$6,000.00, this amount should have been in the account on behalf of Cramer since the defendant had not disbursed the money on Cramer's behalf.

31. The defendant misappropriated Cramer's \$6,000 and used it for his own benefit without Cramer's knowledge or consent.

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 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 appropriating to his own use Cramer's funds, totaling \$14,500.00, which he held in a fiduciary capacity, the defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 1.2(c) of the Rules of Professional Conduct.

b. By failing to hold, maintain, and safeguard Cramer's funds that he received in a fiduciary capacity, the defendant misappropriated fiduciary funds in violation of Rule 10.1(a) of the Rules of Professional Conduct.

c. By depositing Cramer's funds into bank accounts which contained the defendant's personal funds, the defendant commingled fiduciary and personal funds in violation of Rule 10.1(a) of the Rules of Professional Conduct.

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's misconduct is aggravated by the following factors:
 - a. dishonest or selfish motive;
 - b. pattern of misconduct;
 - c. multiple offenses;
 - d. refusal to acknowledge wrongful nature of conduct;
 - e. vulnerability of victim; and
 - f. substantial experience in the practice of law.
2. The defendant's misconduct is mitigated by the following factors:
 - a. absence of a prior disciplinary record;
 - b. full and free disclosure to the hearing committee or cooperative attitude toward proceedings; and
 - c. good character or reputation.
3. The aggravating factors outweigh the mitigating factors.

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 is hereby disbarred from the practice of law beginning 30 days from service of this order upon the defendant.
2. The defendant shall submit his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon the defendant.
3. The defendant shall pay the costs of this proceeding, including the cost of his deposition taken by the State Bar, as assessed by the Secretary by October 31, 1998.
4. The defendant shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

Signed by the chair with the consent of the other hearing committee members, this
the 29 day of ~~August~~, 1998.

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Robert B. Smith Jr.
Robert B. Smith Jr.
Hearing Committee Chair