

1446

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
98 BCR 2

IN RE REINSTATEMENT PETITION)	FINDINGS OF FACT
OF CALVIN BANKS FINGER)	CONCLUSIONS OF LAW
)	AND RECOMMENDATION
)	TO COUNCIL

This matter came on to be heard and was heard on Friday, Feb. 12, 1999 on the Petitioner's motion for reinstatement of his law license, before a hearing committee of the Disciplinary Hearing Commission composed of Fred H. Moody, Jr., Chair; Vernon Russell and Catharine Sefcik. The Petitioner, C. Banks Finger, was represented by James B. Maxwell. Carolin Bakewell represented the N.C. State Bar.

Based upon the pleadings filed herein, the pretrial stipulations and the evidence produced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The Petitioner, C. Banks Finger (hereafter, Finger), was licensed to practice law in North Carolina in 1950.

2. Between 1950 and his disbarment in 1992, Finger spent much of his professional career working within and for the insurance industry. For a substantial period of time between 1950 and 1971, he lived out of the State of North Carolina.

3. Between 1971 and 1983, Finger engaged in the practice of law in Boone, North Carolina and was a founder in a law firm then known as Finger, Watson, DeSanti and McGee. Because of his ties to the insurance industry, a substantial portion of his initial practice was in representation of insurance companies and/or their insured. Over the years, his practice evolved into one in which a substantial portion was in the area of real estate matters.

4. In 1983, Finger left the full-time practice of law and moved to Winston-Salem to work for American Institute of Management Services, Inc. (hereafter, AIMS).

5. In 1984, Finger purchased AIMS and operated the company until it ceased operation in November 1989. At all times between 1984 and October 1992, Finger owned at least 90% of the stock of AIMS.

6. After AIMS ceased operation in November 1989, up through October 1992, Finger again engaged in the private practice of law in Boone.

7. AIMS was a third party administrator. As a third party administrator, AIMS administered insurance policies on behalf of several insurance companies, including Continental American Insurance Company (hereafter, Continental), which became one of AIMS' largest clients.

8. As a third party administrator, AIMS received premiums paid by policyholders on behalf of AIMS' insurance-company clients. Pursuant to AIMS' contract with the insurance companies, the premiums were to be held in trust and then remitted to the insurance companies once each month. The premium payments which AIMS collected were placed in accounts at Triad Bank which were referred to as the premium accounts.

9. The insurance premiums which AIMS received were fiduciary funds and could not be used, even temporarily, for the benefit of persons or entities other than the insurance companies themselves.

10. Pursuant to its contract with Continental and the other insurance companies, AIMS was entitled to deduct a portion of the premiums which it collected as an administrative fee. In the case of Continental, AIMS was entitled to retain approximately 23% of the premiums which it collected from Continental's policy holders as a fee.

11. While he was a majority shareholder of AIMS, Finger was also involved in another company called Specialty Retail Concepts, Inc., (hereafter, Specialty Retail), which operated stores in a number of shopping malls across the country.

12. AIMS and Specialty Retail both began to experience serious financial difficulties by 1987.

13. Finger liquidated most of his substantial personal holdings and borrowed money from relatives and other sources to attempt to shore up AIMS and his other business ventures.

14. By 1987, Finger had also begun to misappropriate funds which should have been held in trust for AIMS' insurance company clients. The misappropriations continued through November 1989.

15. The funds taken from the premium accounts were used to pay for the on-going expenses and operations of AIMS, its staff and employees, and for the personal obligations of Finger.

16. The misappropriation of insurance premiums was accomplished under the direction and responsibility of Finger, who directed and allowed his staff to withdraw amounts from the premium accounts, despite the fact that he knew the funds were the property of the insurance company and even on occasion when his staff objected to the use of the funds in this manner.

17. Finger directed his staff to file false reports with Continental to conceal his wrongdoing.

18. AIMS ceased operations in November 1989 when it was unable to make the November 1989 payment to Continental. AIMS was unable to make the November 1989 payment to Continental because more than \$837,000 was missing from the premium accounts which should have been held on Continental's behalf.

19. The collapse of AIMS and the shortfall in the premium accounts led to criminal investigations by various state and federal insurance and banking agencies.

20. Following the collapse of AIMS, Finger and his wife filed for bankruptcy and sought to discharge more than \$6 million in obligations, including a claim filed by Continental.

21. Continental objected to the dischargeability of its claims against Finger and an adversarial proceeding was held in bankruptcy court in November 1992. At the conclusion of those proceedings, the bankruptcy court found that Finger's debt to Continental was nondischargeable and entered judgment against Finger in favor of Continental in the amount of \$886,068.70, plus interest.

22. In July 1992, Finger was charged in the U.S. District Court for the Middle District of North Carolina with making a false bank loan application in violation of 18 U.S.C. § 1014.

23. The federal charge arose out of a transaction on Nov. 4, 1987. On that date, Finger applied for a \$220,000 bank loan with Triad Bank. Finger needed the loan because there were insufficient funds on hand in the premium accounts to make the November 1987 payment to AIMS' insurance company clients.

24. The loan application documents listed as collateral for the loan "all . . . insurance premiums payable" to AIMS. The loan application documents did not reveal that approximately 76% of the premiums payable to AIMS were the property of AIMS' insurance company clients. This document was prepared by agents of the bank, but signed by Banks Finger.

25. On July 21, 1992, Finger signed a plea agreement in the federal case acknowledging that he was guilty of filing a false bank loan application in violation of 18 U.S.C. § 1014.

26. Following a sentencing hearing in federal court, Finger was placed on probation for three years and ordered to perform 250 hours of community service during each year of probation.

27. On Oct. 20, 1992, Finger was charged in Forsyth County Superior Court with embezzling \$600,000 in insurance premiums. Later that same month, Finger entered an Alford plea to the state embezzlement charge. The state charge arose out of Finger's misuse of premiums which AIMS had received and should have held in trust for Continental and other insurance company clients of AIMS.

28. Following a hearing in state court, Finger was sentenced to three years in prison, which term was suspended for five years. Finger was also ordered to perform 100 hours of community service.

29. In October 1992, Finger surrendered his law license to the Council of the N.C. State Bar and was disbarred.

30. On April 28, 1998, Finger filed a petition for reinstatement of his license to practice law in North Carolina.

31. Finger filed a timely and proper Notice of Intent to Seek Reinstatement in the State Bar Journal.

32. Finger did not file the affidavit required by 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the Discipline & Disbarment Rules of the N.C. State Bar at the time of disbarment. Finger did file the affidavit prior to filing his reinstatement petition. The Hearing Committee does not find that Finger's failure to file a timely affidavit is a sufficient basis, in this case, to recommend denial of Finger's reinstatement petition.

33. Finger has complied with all orders of the state and federal courts relating to his criminal convictions and disbarment.

34. Finger's citizenship has been restored.

35. Finger presented the following evidence respecting his competence and understanding of the law and the Revised Rules of Professional Conduct:

a) Since his disbarment, Finger has completed 64 hours of continuing legal education, including two three-hour courses on ethics.

b) Since his disbarment, Finger has read and reviewed advance sheets of the North Carolina appellate courts.

c) Since his disbarment, Finger has read North Carolina Lawyers Weekly Newspaper.

d) Several witnesses testified, either in person or by letter, that Finger was a well-respected, competent lawyer prior to his disbarment.

36. Finger presented the following evidence regarding his present good moral character:

a) A number of witnesses testified, in person and by letter, that Finger was of good moral character, that he had expressed remorse for his wrongdoing and that he had accepted full responsibility for his criminal acts;

b) Several witnesses also testified that Finger's religion had become of increasing importance to him since his disbarment, that he attended church regularly and that he had participated actively in his church, especially his Sunday School class.

c) Several witnesses testified that Finger had been involved in the Watauga Hunger Coalition since his disbarment. Finger has recently been elected President of the Hunger Coalition and has assisted the Coalition's efforts to establish a mobile pharmacy service in the Watauga County area.

d) Finger has been employed in several capacities since his disbarment, including working for Ken Wilcox and members of his family. Finger handled the company checkbook for a period of time and was also entrusted with collecting sums owed to the company. Wilcox testified that he had never experienced any problems with Finger's handling of these funds. Carroll Garland also testified that Finger worked for him, had handled relatively large sums of money for him and his family, and had kept his checkbook from time to time.

37. Finger presented the following evidence respecting whether reinstatement would be detrimental to the integrity and standing of the bar, administration of justice or the public interest:

a) Several witnesses testified in person or by letter, that they believed the people in Finger's community would welcome him back as an attorney if he were reinstated;

b) Several witnesses also testified that they would not think less of the legal profession if Finger were reinstated as an attorney;

c) One article has appeared in a newspaper in Watauga County regarding Finger's service with the Hunger Coalition;

d) A number of attorneys and public officials testified in person or by letter in support of Finger's reinstatement petition.

38. Finger failed to present any evidence of steps that he has taken to demonstrate reformation in the Winston-Salem area, where his criminal offenses took place.

39. Finger admitted that he had made no efforts to make restitution to the victims of his misconduct and presented no evidence that he had notified Continental of his petition for reinstatement.

40. Finger and his wife still live in the house in Boone which they owned prior to Finger's disbarment. The house has a substantial amount of equity built up. After his disbarment, Finger transferred his interest in the house to his wife.

41. Finger has been gainfully employed since his disbarment and had the ability to pay at least some amount to the victims of his misconduct.

Based upon the foregoing Findings of Fact, the Hearing Committee hereby enters the following:

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has jurisdiction over the subject of this proceeding and over the person of the Petitioner, C. Banks Finger.

2. Finger has demonstrated by clear, cogent and convincing evidence that he has reformed and that he possesses the moral qualifications required for admission to practice law in North Carolina, taking into account the gravity of the misconduct which led to the order of disbarment.

3. Finger has failed to demonstrate by clear, cogent and convincing evidence that he understands the Revised Rules of Professional Conduct and that he has the competency and learning in the law required to practice law in North Carolina.

4. Finger has failed to demonstrate by clear, cogent and convincing evidence that reinstatement of his license to practice law would not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which led to the order of disbarment.

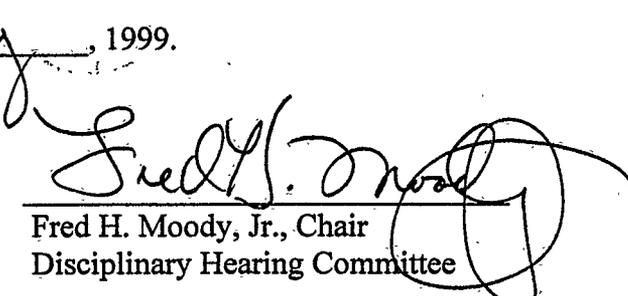
RECOMMENDATION TO THE COUNCIL

1. The Hearing Committee hereby unanimously recommends that the Council of the N.C. State Bar deny the petition of C. Banks Finger Jr. for reinstatement of his law license.

2. Finger shall pay the costs of this proceeding, including deposition costs incurred by the N.C. State Bar.

Signed by the Chair with consent of all Committee members.

This the 14 day of May, 1999.


Fred H. Moody, Jr., Chair
Disciplinary Hearing Committee