

12461

STATE OF NORTH CAROLINA

IN THE COURT OF GENERAL JUSTICE

COUNTY OF ORANGE

SUPERIOR COURT DIVISION

FILE NO. 99 SP 131

IN RE LICENSE OF BOYD LEE LAMBERT

ORDER OF DISCIPLINE
FINDINGS OF FACT, CONCLUSIONS OF LAW 2:36

JUN 28 1999
By [Signature]

This cause came on for hearing upon the court's notice to the respondent to appear and show cause why disciplinary action should not be taken against him. Upon call of the matter for hearing in Chatham County at the 7 June 1999 session, the respondent moved the court (1) to specify the charges, (2) to recuse, and (3) to dismiss.

The trial judge denied the motion to recuse, overruled the objection to jurisdiction, and specified violation of sections 5.3 and 5.4 of the Rules of Professional Conduct.

The respondent, Boyd Lee Lambert, was present and represented by his Attorney James B. Maxwell. The plaintiff for the underlying cause, Attorney R. Hayes Hoffer, was also present.

HISTORY OF THE PROCEEDING

1. An action entitled Stacey O. Carden v. B. Lee Lambert, 97 CVS 696, regularly appeared on the Orange County Superior Court trial calendar for 26 April 1999.
2. The undersigned Superior Court Judge regularly assigned to Orange County presided at the trial of the above-referred case, beginning 26 April 1999 and ending 5 May 1999. Attorney R. Hayes Hoffer represented the plaintiff. Attorney James B. Maxwell represented the respondent.
3. At the above-referred trial, the jury's verdict found a fiduciary relationship existed when Stacy O. Carden and Attorney B. Lee Lambert entered certain business transactions.
4. The jury also ruled in favor of the plaintiff by answering "No" to the issues: "Did the respondent B. Lambert act openly, fairly and honestly, and take no advantage of the plaintiff Stacey O. Carden?"
5. During all the times relevant B. Lee Lambert was actively engaged in the practice of law and maintained a law office in Durham, North Carolina.
6. After the jury verdict, the undersigned entered an order finding probable cause to believe the dealings and transactions of B. Lee Lambert violated one or more provisions of the North Carolina Rules of Professional Conduct.
7. The Court directed B. Lee Lambert to appear before the court at the Orange County Courthouse 10:00 A.M., Thursday 6 May 1999, and show why disciplinary action should not be taken against him as an attorney at law.

8. The Court notified the respondent that a written complaint was not required and that trial record in Harden v. Lambert properly discloses the subject of the inquiry. Having appeared and testified in the case, respondent Lambert had full notice.
9. The Court appointed attorney R. Hayes Hofler to present any available evidence not previously heard by the Court.
10. After discussion on the record, the court suggested that the trial court administrator schedule the hearing.
11. The trial court administrator scheduled this matter, without objection, in Chatham County at 2:00 P.M., Monday 7 June 1999.

FINDINGS OF FACTS

1. On 15 April 1991 William Terry Carden, died unexpectedly and untimely, leaving his widow, Stacy O. Carden, sole owner of Carden Investments Corporation. Carden Investments owned and operated the subject mobile home park.
2. Soon after the death of her husband, Ms. Harden received a letter from Attorney B. Lee Lambert. The letter referred to a traffic charge for an employee of the late Mr. Harden. In the letter Mr. Lambert also expressed his sympathy, and suggested that Ms. Carden contact him if she believed he could help her. Ms. Harden placed the letter aside.
3. After Mr. Harden's death, with no management experience, Ms. Carden undertook to manage the various business interests previously managed by her husband, including the mobile home park.
4. While dealing with complicated, unresolved grief/loss issues, Ms. Carden attempted to manage the multiple businesses and financial challenges suddenly thrust upon her by the death of her husband. Her education, training, and work experience did not qualify her to handle a bad situation. Her additions to the bad situation vastly expanded its scope. Additionally, she apparently received little assistance from the people she paid to help her.
5. Ms. Carden, under substantial stress from her financial reverses, was also emotionally fatigued from looking after her children and their psychological needs.
6. In less than two years from the death of her husband, that is, by the spring and early summer of 1993, Ms. Carden had spent approximately two million dollars. She recognized her need for professional assistance.
7. In May 1993 Wilkerson Contracting Company, Inc. filed an action against Carden Investments for \$41,810.52 incurred for the construction of water and sewer improvements on the mobile home park.
8. Desperately grasping for resolution of her mounting financial and legal problem, exacerbated by emotional distress affecting her ability or her thinking, Ms. Carden, by chance, came upon the respondent's letter. She feeling directed by divine intervention sought help from the respondent.

9. In late June or early July 1993 in her first meeting with the respondent, Ms. Carden surrendered, without consideration, 50% interest in her mobile home park to the respondent.
10. In his effort to create a paper trail suggesting consideration, the respondent drafted several paper writings reciting "consideration" in different amounts, each resulting from his musings on a plausible attorney fee. A fee based upon nothing but his bare assertion, resting on the authority of himself.
11. The respondent took advantage of his superior position by accepting 50% interest in Ms. Carden's park without adequate consideration, when he knew or should have known, she, under tremendous stress, would do almost anything for relief.
12. The respondent retained a lawyer to represent himself in the transfer of the property to the disadvantage of Ms. Carden. The lawyer provided advice and counsel to the respondent. For example, he explained to the respondent that the transfer could be made so that he, the respondent, could opt out anytime. Ms. Carden, relying on the respondent to represent her, had no such counsel and advice. In fact, her own lawyer, the respondent, threatened to sue her when she expressed misgivings about their arrangement.
13. Not satisfied with 50% interest, the respondent aggressively pursued greater interest and control.
14. Although Ms. Carden protested giving up 51% interest, she still trusted the respondent and believed then her sole option was to acquiesce; especially, after he threatened to sue her if she did not yield to his demands.
15. Simply stated, Ms. Carden essentially gave 51% of her park to her lawyer, who subsequently hired a manager to manage the park. The manager paid not from the respondent's funds but from park funds. After execution of all the new papers and transfers, Ms. Carden's liability was neither reduced nor shared by the respondent. Her home, park, and other property remained the primary collateral for the loans. The respondent then owned 51% park, directed, and controlled it, yet none of his property secured the old or new loans.
16. Although the respondent contends attorney fees constituted the consideration for the four proposed contracts, he maintained up until the jury charge conference that he was Ms. Carden's business partner, not her lawyer.
17. The respondent's individual endorsement of the bank note exposed him to only inconsiderable risk; his contrary contention is unfounded. Ms. Carden's property adequately secured the loans.
18. The value of the park has increased; however, a careful analysis of the accounting suggests the park was undervalued on the books of the new corporation, which would account for some of the "increase in value." Additionally, moneys furnished by the respondent were not infusions of additional capital but loans to the corporation.
19. The respondent increased his equity in the park by crediting loans due Ms. Carden by amounts paid by the park to her for her labor at the park.

20. The respondent caused Ms. Carden to execute the contract dated September 29, 1993, purporting to convey the mobile home park to the newly created corporation, Mobile Acres II, 51% of outstanding stock held by the respondent.
21. The respondent caused the articles of incorporation and stock certificates to be issued pursuant to incorporation of Mobile Acres II, Inc.
22. The respondent caused the preparation, execution, and filing of a general warranty deed conveying real property, subject mobile home park, from Carden Investments Corporation to Mobile Acres II, Inc., filed on January 31, 1994, in Book 1210, Pages 452-4554, Orange County Registry.
23. The respondent wrongfully threatened to institute legal proceedings with the intent to coerce an unfair transaction.
24. The contract to convey was entered, the transfer of corporate stock executed, and the transfer of mobile home park arose out of a relationship when B. Lee Lambert, Attorney was representing Stacy O. Harden as a client.
25. The respondent B. Lee Lambert did not act openly, fairly, and honestly, and did take advantage of Stacy O. Carden.

CONCLUSIONS OF LAW

The respondent Lambert's conduct constitutes grounds for discipline pursuant to NCGS 84-28(d)(2) as follows:

- a. By causing the execution of the contract dated September 29, 1993, purporting to convey the mobile home park to the newly created corporation known as Mobile Acres II, Lambert:
 - I. Acquired a proprietary interest in the cause of action or subject of litigation he conducted for his client in violation of Rule 5.3(a) of the Rules of Professional Conduct.
 - II. Entered into a business transaction with a client under any circumstances unfair to the client in violation of Rule 5.4(a) of the Rules of Professional Conduct.
- b. By causing the articles of incorporation and stock certificates to be issued pursuant to incorporation of Mobile Acres II, Inc., Lambert:
 - I. Acquired a proprietary interest in the cause of action or subject of litigation he conducted for his client in violation of Rule 5.3(a) of the Rules of Professional Conduct.
 - II. Entered into a business transaction with a client under any circumstances unfair to the client in violation of Rule 5.4(a) of the Rules of Professional Conduct.
- c. By causing the preparation, execution, and filing of a general warranty deed conveying real property, subject mobile home park, from Carden Investments Corporation to Mobile Acres II, Inc., filed on January 31, 1994, in Book 1210, Pages 452-4554, Orange County Registry, Lambert:

- I. Acquired a proprietary interest in the cause of action or subject of litigation he conducted for his client in violation of Rule 5.3(a) of the Rules of Professional Conduct.
- II. Entered into a business transaction with a client under any circumstances unfair to the client in violation of Rule 5.4(a) of the Rules of Professional Conduct.

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

FINDINGS OF FACT REGARDING DISCIPLINE.

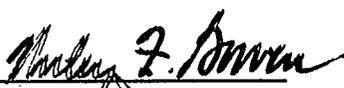
1. Lambert's misconduct is aggravated by the following factors:
 - I. vulnerability of victim;
 - II. substantial experience in the practice of law;
2. The following factor mitigates Lambert's misconduct:

The respondent invested time, energy, and effort toward the preservation of the mobile home park.
3. The aggravating factors outweigh the mitigating factor.

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

ORDER OF DISCIPLINE

1. The respondent Boyd L. Lambert is hereby disbarred from the practice of law effective immediately.
2. The respondent shall submit forthwith his license and membership card, if he has such, to the Secretary of the North Carolina State Bar.


Wiley F. Bowen
Judge Presiding

Date: 28 June 1999