

WAKE COUNTY
NORTH CAROLINA



18356

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
00 DHC 12

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
GARRY D. OWENS, Attorney,)
Defendant)

CONSENT ORDER OF DISCIPLINE

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Michael L. Bonfoey and Charles Barnes, pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereinafter "Bar Rules"). The defendant, Garry D. Owens, represented himself. Douglas J. Brocker represented plaintiff. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. Garry D. Owens ("Owens") was admitted to the North Carolina State Bar on August 23, 1991 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto Owens was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Grandy, Currituck County, North Carolina.

4. Owens was properly served with process.
5. Owens waived his right to a formal hearing.
6. On February 1, 1996, Owens opened a trust account at The Bank of Currituck, account number 224876211, (hereinafter "trust account"). The opening of the trust account corresponded with the opening of Owens' solo law practice.
7. On May 28, 1998, Owens personally issued trust account check number 2368 payable to himself in the amount of \$500.
8. Owens did not make any notation or indication on check number 2368 from which client balance the payment was being drawn.
9. Owens endorsed and negotiated check number 2368 on May 29, 1998.
10. At the time Owens issued and negotiated check number 2368, he did not have sufficient earned fees or personal funds in his trust account to cover the check to himself.
11. The funds used to pay check number 2368 to himself were funds that Owens was supposed to be holding in trust for his clients.
12. Owens did not have permission to use any part of the \$500 he held in trust for these clients.
13. Owens appropriated clients' funds by issuing and negotiating check number 2368.
14. During this same month – May 1998 – Owens issued trust account check number 2367 directly to his landlord, Gerald Bunch, in the amount of \$1,500.
15. Owens used fees earned in connection with another client matter to pay check number 2367 to Bunch.
16. On approximately November 5, 1998, Owens issued trust account check number 2546 to the Currituck County Clerk of Court's office in the amount of \$80.
17. On the same day, Owens issued trust account check number 2559 to himself in the amount of \$100.
18. Check numbers 2546 and 2559 indicated that they were for a client "Parker."

19. Check number 2546 was negotiated on November 9, 1998.
20. Check number 2559 was negotiated on December 2, 1998.
21. Owens never deposited any funds into the trust account for any client named Parker.
22. At the time Owens issued and negotiated check numbers 2546 and 2559, there were no earned fees or personal funds in his trust account to cover the checks to himself or the clerk's office.
23. The funds used to pay check number 2559 to himself and check number 2546 to the clerk's office were funds that Owens was supposed to be holding in trust for his clients.
24. Owens did not have permission to use any part of the \$180 he held in trust for these clients.
25. Owens appropriated client funds for his own use by issuing and negotiating check number 2559.
26. Owens used other clients' funds to pay the clerk's office for a different client, Parker, by issuing and negotiating check number 2546.
27. Owens conducted real estate closing transactions (hereafter "closings") in his law practice.
28. In connection with these real estate closings, Owens received funds in a fiduciary capacity for payment to third parties.
29. Between March 1996 and October 1998, Owens repeatedly failed to pay fiduciary funds to third parties.
30. The specific closings referred to in paragraph 29 are set forth in Exhibit A to this consent order. Exhibit A sets forth the settlement date, client name, and identification number for each closing referred to in paragraph 29.
31. In over 50 different closings set forth in Exhibit A, (lines 1-6, 8-9, 11-16, 19-26, 28-30, 33-34, 36-38, 40-60, 63-67, and 69-70, inclusive) Owens:
 - a. was responsible for obtaining title insurance on the property;
 - b. received funds to pay the title insurance premium; but

c. failed to pay the title insurance premium and issue a final title opinion to the relevant title insurance company.

32. As a result of Owens' failure to pay the title insurance premium and issue a final title opinion to the relevant title insurance company, no final title insurance policy was issued on the properties in the closings set forth in paragraph 31.

33. All the title insurance commitments for the closings set forth in paragraph 31 have expired.

34. For at least 35 of the closings set forth in paragraph 31, the relevant title insurance company, Investors Title, no longer will issue a title insurance policy.

35. Owens' clients have been injured by his failure to pay the title insurance premiums, forward final title opinions, and obtain final title insurance policies before the commitments expired.

36. In connection with the closings set forth in Exhibit A, Owens also received funds for payment to other third parties or to his clients.

37. For example, on approximately October 2, 1997, Owens closed a loan for Anne McNair.

38. In connection with the closing, Owens received funds to pay property taxes on the property McNair purchased.

39. Owens retained approximately \$754.20 from the closing in his trust account to pay those taxes.

40. Owens failed to promptly pay those taxes from the funds held in his trust account.

41. Owens did not pay the property taxes until after McNair received a tax bill from Currituck County on November 17, 1997.

42. Owens also failed to disburse funds due to McNair and has not done so to date.

43. Owens also retained funds in his trust account from the closings set forth in Exhibit A that should have been paid to other clients (lines 1, 10-12, 17-18, 30, and 68).

44. Owens also retained funds in his trust account from the closings set forth in Exhibit A that should have been paid to other third parties, such as financial institutions (lines 7, 27, 39, 53, 59, and 61-62).

45. As of May 31, 1999, Owens should have been holding over \$13,000 in his trust account for payment of the above-mentioned obligations.
46. As of May 31, 1999, there were insufficient funds in Owens' trust account for payment of the above-mentioned obligations.
47. In June 1999, the State Bar provided Owens with a copy of Exhibit A, or a substantially similar document, and requested that he disburse these funds.
48. Owens forwarded to the State Bar on approximately July 8, 1999 duplicate copies of checks to the appropriate payees for all the files identified in Exhibit A.
49. In his July 7, 1999 cover letter forwarding the duplicate checks, Owens stated that he would forward the bank statements indicating that the checks cleared and thereby implied that he had sent out all the checks.
50. On approximately July 9, 1999, the Currituck County tax office received and negotiated checks from Owens for the three properties in Exhibit A in which Owens was holding funds in his trust account for payment of taxes.
51. On approximately August 3, 1999, First Union Bank also received and negotiated checks from Owens for at least two properties in Exhibit A in which Owens was holding funds in his trust account for payment to First Union Bank.
52. None of the title insurance companies, however, ever received any of the checks or final title opinions from Owens for the closings identified in Exhibit A.
53. Owens, with knowledge that the funds had not been paid, again failed to forward these checks or otherwise pay the title insurance premiums or send the final title policies.
54. In May 2000, the State Bar was forced to seek the appointment of an independent trustee to disburse the funds remaining in Owens trust account, file number 00CVS 86 in Currituck County Superior Court.
55. Owens failed to reconcile the trust account balances of funds belonging to clients at least quarterly between March 1996 until June 1999.
56. Owens' acts and omissions set forth in paragraphs 6-54 above were grossly negligent and committed in reckless disregard of his obligation to handle client and fiduciary funds under the Rules and Revised Rules of Professional Conduct.

57. Anne McNair filed a grievance with the North Carolina State Bar as a result of Owens' failure to timely pay the taxes on the property she purchased as set forth above.
58. Owens was served with a copy of the Letter of Notice on February 3, 1998 by registered mail.
59. Owens was required to respond to the letter of notice within 15 days.
60. Owens failed to respond to the Letter of Notice within 15 days of its receipt.
61. Owens received a follow-up letter from the State Bar requesting him to respond to the Grievance Committee by March 27, 1998.
62. Owens failed to respond by March 27, 1998.
63. Because of his failure to respond, Owens was subpoenaed to appear at the State Bar on April 28, 1998 and produce documents regarding the grievance filed by Anne McNair.
64. Owens was served by registered mail with the subpoena on April 23, 1998.
65. On April 27, 1998, Owens forwarded a copy of the canceled check paying the taxes on the McNair property and promised to provide other documents and information regarding that transaction within a week.
66. Approximately two months later, Owens still had not produced all the requested documents regarding the McNair transaction.
67. Based on his failure to produce all these records, a subpoena for cause audit was issued requiring Owens to appear at the State Bar on July 10, 1998 and produce documents regarding his handling of client funds beginning in 1997.
68. Owens appeared in response to the subpoena but failed to produce all the subpoenaed records.
69. The State Bar sent Owens a follow-up letter on July 13, 1998, itemizing the records that he failed to produce in response to the subpoena and requested that he produce them within two weeks.
70. Owens failed to forward the subpoenaed records within two weeks.

71. The State Bar sent Owens another follow-up letter on August 11, 1998, attached the July 13 letter, and requested that he forward the subpoenaed records within 5 days.
72. Owens again failed to forward the subpoenaed records.
73. As a result, Owens was subpoenaed for a third time to appear at the State Bar offices on September 24, 1998.
74. Owens was served personally with the subpoena by the Currituck County Sheriff's office on September 4, 1998.
75. Owens failed to appear in response to the subpoena but again sent part, but not all, of the subpoenaed documents.
76. The State Bar subsequently obtained some of the subpoenaed records Owens did not produce by issuing a subpoena to the Bank of Currituck.
77. The State Bar still has not received from Owens some of the subpoenaed records not available through the bank, such as settlement statements from the closings set forth in Exhibit A, quarterly bank reconciliations, and Owens' cash receipt journal.

Based upon the consent of the parties and 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 Owens and the subject matter of this proceeding.
2. Owens's conduct, as set out in the Findings of Fact 1-15 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) by failing to preserve funds received in a fiduciary capacity in a trust account separate and apart from his funds and by using client funds in issuing and negotiating check number 2368 to himself, Defendant violated Revised Rule 1.15-1(a) and (d);
 - (b) by issuing check number 2367 to his landlord, Gerald Bunch, Owens issued a check from his trust account for payment of fees directly to a third party in violation of Revised Rule 1.15-2(f)

3. Owens's conduct, as set out in Findings of Fact 16-26 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) as follows:

by issuing and negotiating check number 2559 to himself and issuing and negotiating check number 2546 to the clerk's office, Owens failed to preserve funds received in a fiduciary capacity in a trust account separate and apart from his funds in violation of Revised Rule 1.15-1(a) and (d).

4. Owens's conduct as set out in Findings of Fact 27-56 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) as follows:

(a) By failing to pay the title insurance premiums, forward final title opinions, and obtain final title insurance policies before the commitments expired, Owens:

(1) failed to act with reasonable diligence and promptness in violation of Rule 6(b)(3) and Revised Rule 1.3;

(2) intentionally failed to carry out a contract for professional services entered into with his clients in violation of Rule 7.1(a)(2); and

(3) intentionally prejudiced or damaged his clients during the course of the professional relationship in violation of Rule 7.1(a)(3) and Revised Rule 8.4(g).

(b) By failing to promptly disburse fiduciary funds for payment of title insurance, taxes, and to clients, and others, Owens violated Rule 10.2(e) and Revised Rule 1.15-2(h);

(c) By failing to reconcile the trust account balances of funds belonging to clients at least quarterly between March 1996 and June 1999, Owens violated Rule 10.2(d) and Revised Rule 1.15-2(g); and

(d) By stating or implying to the North Carolina State Bar that he had sent out the checks to the title insurance companies when he had not done so, Owens failed to disclose a fact necessary to correct a misapprehension known by him to have arisen in the matter in violation of Revised Rule 8.1(b).

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5. Owens's conduct as set out in Findings of Fact 57-77 above, constitutes grounds for discipline pursuant to NC Gen. Stat. §84-28(b)(2) & (3) as follows:

by repeatedly failing to produce records regarding the handling of client funds, failing to appear in response to the September 24, 1998, subpoena, and failing to respond to requests for information regarding the McNair grievance, Owens violated NCGS Sec. 84-28(b)(3) and Revised Rule 8.1(b).

Based upon the consent of the parties, the hearing committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Owens's misconduct is aggravated by the following factors:
 - (a) a pattern of misconduct;
 - (b) multiple offenses;
 - (c) substantial experience in the practice of law;
 - (d) indifference to rectify the consequences of his repeated failure to disburse funds in his trust account and to obtain final title policies for his clients.
2. Owens's misconduct is mitigated by the following factor:

absence of a prior disciplinary record
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing findings of fact and conclusions of law and the findings regarding discipline and based upon the consent of the parties, the hearing committee enters the following:

ORDER OF DISCIPLINE

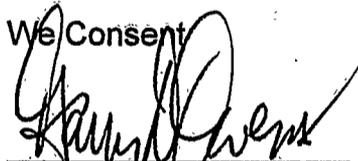
1. Garry D. Owens is hereby disbarred from the practice of law effective 30 days from service of this order upon him.
2. Owens shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon him.
3. Owens shall pay the costs of this proceeding as assessed by the Secretary no later than thirty days after receipt.
4. Owens shall pay all costs associated with the appointment of the trustee to disburse the funds from his trust account, as assessed by the Court or the Secretary no later than thirty days after assessed. These cost shall include, but not be limited to, any fees and expenses incurred by the trustee in disbursing the funds remaining in Owens trust account. Owens must pay these fees as a pre-condition to any future petition for reinstatement.
5. Owens 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.

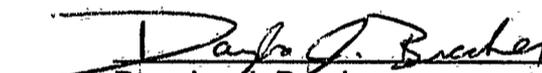
Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 5th day of June 2000.


Richard T. Gammon, Chair
Hearing Committee

We Consent


Garry D. Owens
Defendant


Douglas J. Brocker
Attorney for Plaintiff

GARRY D. OWENS							
TRUST ACCOUNT SUMMARY							
May 31, 1999							
	A	B	C	D	E	F	G
No.	Settlement Date	Client	Client Name	Ledger Balance	Explanation	Ck No	Amount
1	3/6/96	C961005	Richardson/Conn	250.00	Investors Title	1026	237.50
		C961005	Richardson/Conn		Gregory Conn	1027	12.50
2	4/12/96	C961079	Sanders	137.00	Investors Title	1079	137.00
3	5/14/96	C961114	Heunman/Berry/Falls	100.00	Investors Title	1149	100.00
4	6/10/96	C961148	Pace	141.40	Investors Title	1295	141.40
5	8/2/96	C961174	Bentoni/Peterson	60.00	Investors Title	1415	60.00
6	11/13/96	C961201	Kuntz	44.00	Investors Title	1554	44.00
7	10/31/96	C961232	Hall	25.00	First Union Bank	1522	25.00
8	11/1/96	C961245	Mallonée/King	157.00	Investors Title	1532	157.00
9	1/31/97	C971001	Drewry/Newbern	40.00	Investors Title	1681	40.00
10	1/29/97	C971014	Griffin-Harris/Styons	15.50	Due Client	1686	15.50
11	2/4/97	C971017	Sutherlin	912.78	Investors Title	1687	272.90
		C971017	Sutherlin		Harry Sutherlin	1689	639.88
12	2/10/97	C971018	Dall'Acqua	224.00	Chicago Title	1695	112.00
		C971018	Dall'Acqua		Fairfax Co. VA	1700	110.00
		C971018	Dall'Acqua		Due Client		2.00
13	2/18/97	C971020	Moody/Ducan&Fisher	50.00	Chicago Title	1710	50.00
14	2/18/97	C971021	Wells	80.00	Chicago Title	1716	80.00
15	3/24/97	C971042	Suttles/Parker	116.00	Investors Title	1743	116.00
16	4/1/97	C971044	Cason	50.00	Investors Title	1747	50.00
17	5/19/97	C971050	Eddie Moore	9.17	Due Client		9.17
18	5/13/97	C971051	A&Dcorp/Lane	84.00	Due Client		84.00
19	4/30/97	C971052	Balance	88.60	Investors Title	1795	88.60
20	5/27/97	C971067	Randolph/Newell	254.61	Investors Title	1854	83.00
		C971067	Randolph/Newell		Currituck Co. Tax	1855	171.61
21	6/30/97	C971084	Moore	50.00	Investors Title	1865	50.00
22	6/3/97	C971087	Britton/Ray	159.20	Investors Title	1838	43.14
		C971087	Britton/Ray		Currituck Co. Tax	1841	116.06
23	7/11/97	C971090	Shifferly	59.00	Investors Title	1886	59.00
24	7/1/97	C971105	Ivan/Ambrose	24.76	Investors Title	1869	24.76
25	7/28/97	C971113	Morris, Mary	10.00	Investors Title	1920	10.00
26	1/2/98	C971120	Hasiak/Loveland	60.00	Investors Title	2088	60.00
27	8/11/97	C971112	Williams	84.00	BB&T Services	1940	84.00
28	12/17/97	C971127	Peach	385.00	Colonial Title	2139	385.00
29	8/20/97	C971129	Vance	103.60	Investors Title	1960	103.60
30	8/25/97	C971135	Braxton	200.05	Investors Title	1966	44.00
		C971135	Braxton		Due Seller		156.05
31	10/6/97	C971150	McNair/Provo	24.25	Due Client		24.25
32	10/1/97	C971152	Houtz	94.84	Due Borrower		94.84
33	9/29/97	C971155	Ivan/Banks	22.00	Investors Title	2037	22.00
34	9/29/97	C971156	Ivan/McCandless	26.00	Investors Title	2044	26.00
35	9/26/97	C971157	Hunter	1,209.34	Currituck Co. Tax	2032	1,209.34
36	10/6/97	C971158	Kukacka/Gibbs	20.00	Investors Title	2075	20.00
37	10/6/97	C971159	Dotson/Gibbs	20.00	Investors Title	2080	20.00
38	11/26/97	C971192	Pumphary/Johnson	165.60	Investors Title	2114	165.60
39	11/26/97	C971195	Weikel	18.50	First Union Bank	2108	18.50



