

WAKE COUNTY
NORTH CAROLINA



1888

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
00 DHC 4

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
JOHN H. HARMON, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on May 25, 2000, before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair; T. Paul Messick Jr., and Anthony E. Foriest. The defendant, John H. Harmon, was represented by Frank W. Ballance Jr. and Gilbert W. Chichester. The plaintiff was represented by Douglas J. Brocker. Based upon the pleadings and the evidence introduced at the hearing, 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. The defendant was admitted to the North Carolina State Bar on August 18, 1966 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 the defendant was actively engaged in the practice of law in the State of North Carolina, and maintained a law office in the city of New Bern, Craven County, North Carolina.

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

5. Louis Foy bought a parcel of real property from Norris Dillahunt on April 21, 1994 (hereafter "closing"). The property is located at 210 Lawson Street, New Bern, North Carolina (hereafter "Lawson Street property").

6. Harmon represented Foy, as well as Dillahunt, in connection with his purchase of the Lawson Street property.

7. Harmon prepared the deed for the transfer of the Lawson Street property from Dillahunt to Foy.

8. Harmon also agreed to perform a title examination and obtain title insurance for the Lawson Street property for Foy.

9. Harmon requested a preliminary commitment for title insurance for the Lawson Street property (hereafter "commitment") from Fidelity National Title Insurance Company of Pennsylvania (hereafter "Fidelity").

10. Fidelity issued a commitment on the Lawson Street property based on Harmon's request.

11. The commitment was contingent on a number of conditions, including Harmon forwarding the payment of a title insurance premium of \$50 and furnishing a final title opinion.

12. Harmon failed to satisfy the conditions of the commitment, including paying the \$50 policy premium and providing a final title opinion.

13. As a result of Harmon's failure to satisfy the conditions of the commitment, Fidelity did not issue a final title insurance policy for the Lawson Street property (hereafter "final title insurance policy"), and the commitment lapsed.

14. The City of New Bern had placed assessments against the Lawson Street property prior to the April 21, 1994 closing (hereafter "assessments"). The assessments were for abatements of a public nuisance. The assessments were forwarded to the record owner and in the City of New Bern Inspections Office prior to April 21, 1994. The assessments were not accessible to the public in the City of New Bern Tax Collector's Office until June 29, 1994.

15. The assessments amounted to over \$1,800 on a piece of land purchased for approximately \$8,500 dollars.

16. Foy was not aware of the assessments at the time of the April 21, 1994 transfer. Foy discovered the existence of the assessments after the April 21, 1994 transfer.

17. After he discovered the assessments, Foy requested that Harmon provide him with the final title insurance policy so he could make a claim against it for the assessments.

18. After discovering that Harmon failed to obtain the final title insurance policy, Foy filed a grievance against him.

19. The State Bar Grievance Committee (hereafter "State Bar") issued Harmon a Letter of Notice regarding Foy's grievance on February 10, 1999. The Foy Letter of Notice alleged in part that Harmon failed to obtain a final title insurance policy for the Lawson Street property.

20. In his initial response to Foy's grievance dated February 25, 1999, Harmon represented to the State Bar that he was hired by the grantor, Norris Dillahunt, solely to prepare a warranty deed to transfer the Lawson Street property to Foy.

21. Harmon also stated in the February 25, 1999 response, "I did not do a title examination which would have been necessary to get title insurance."

22. In a subsequent response dated March 30, 1999, Harmon reiterated, "As stated earlier, Mr. Foy never paid me any money to perform any services in this transaction."

23. In a subsequent response dated April 21, 1999, Harmon asserted, "let me state again that I did not do a title examination for Louis Foy or for anyone else in this case."

24. With his request for a title commitment, Harmon sent Fidelity a preliminary report on title ("title opinion"), a deed he prepared, and a survey done on the Lawson Street property.

25. In the title opinion, Harmon certified to Fidelity that he had performed a title search by reviewing all public records on the Lawson Street property for the past 40 years.

26. In his title opinion, Harmon also certified that there were no special assessments against the Lawson Street property.

27. Harmon's representations set forth in paragraphs 20 through 23 related to one of the two central allegations at issue of the Foy grievance, and, therefore, were material.

28. Harmon made no effort, other than reviewing the warranty deed in his file, to verify the accuracy of his representations on any of these three separate occasions.

29. Harmon's repeated representations that he had not been retained by Foy to do a title search and obtain a final title insurance policy on the Lawson Street property, at a minimum, were made with reckless disregard for their truth or falsity. Therefore, Harmon knowingly made false representations of material fact to the State Bar.

30. The Foy Letter of Notice also alleged that Harmon failed to account for the funds he received in connection with the transfer of the Lawson Street property.

31. In Harmon's February 25, 1999 initial response to the Foy grievance, Harmon denied that he received any funds from Foy. In this letter, Harmon represented, "I have checked my receipt book and have not found any record of giving him a receipt during the time in question."

32. The State Bar subsequently requested and obtained the relevant pages of Harmon's receipt journal from April and May, 1994.

33. Harmon's receipt journal includes a receipt to Foy on the same date as the Foy-Dillahunt closing - April 21, 1994. The receipt is in the amount of \$8,225 with a notation that it is for Norris Dillahunt.

34. Harmon failed to review his receipt book or personally take any other action to verify the accuracy of his representations before responding to the State Bar.

35. Harmon's representation related to one of the two central allegations at issue of the Foy grievance and, therefore, was material.

36. Harmon's representations that he had not collected funds in connection with the purchase of the Lawson Street property, at a minimum, were made with reckless disregard for their truth or falsity. Therefore, Harmon knowingly made a false or misleading representation of material fact to the North Carolina State Bar.

37. Joseph and Vivian Ollison sought an equity or refinancing loan (hereafter "Ollison loan") in 1996.

38. The Ollison loan was brokered by Fairway Mortgage and funded by Accredited Home Lenders (hereafter "Accredited").

39. The Ollison loan was supposed to be secured by a first lien priority deed of trust on property owned by the Ollisons at 310 Water Street in Bayboro, North Carolina (hereafter "Ollison property").

40. Harmon was retained in approximately July 1996 to conduct a title search, issue a title opinion, and obtain title insurance for the lender on the Ollison loan.

41. Harmon requested a title insurance commitment on the Ollison loan (hereafter "commitment") from Fidelity National Title Insurance Company of Pennsylvania (hereafter "Fidelity") on approximately July 9, 1996.

42. Fidelity issued a commitment to the lender based on Harmon's request.

43. Attorney Timothy Colgan conducted the closing for the Ollison loan on July 26, 1996, in Cary, North Carolina. The Ollisons live in Wake County.

44. After the closing, Colgan sent Harmon a letter dated July 31, 1996.

45. With the July 31, 1996 letter to Harmon, Colgan sent two checks: one for \$325 made payable to Harmon for services rendered, and a second one for \$84.00 made payable to Fidelity for the title insurance premium.

46. Colgan also sent Harmon the deed of trust, legal description, survey, and surveyor's report.

47. In the July 31, 1996 letter, Colgan requested that Harmon update the title, record the deed of trust, obtain the lender's final title insurance policy, and mail the policy to Accredited.

48. Harmon received the letter and checks from Colgan.

49. Harmon negotiated the check for \$325 to himself for attorney's fees.

50. Harmon, however, failed to forward the \$84 check for the title insurance premium to Fidelity:

51. Harmon also failed to send Fidelity a final certificate of title with the recorded deed of trust and a survey on the Ollison property.

52. Fidelity's issuance of a final title insurance policy was contingent on a number of requirements, including Harmon's payment of the \$84 premium and Harmon's furnishing of a final certificate of title with a copy of the recorded deed of trust and a survey on the Ollison property.

53. The commitment from Fidelity expired 180 days after it was issued.

54. Fidelity sent a letter to Harmon in November 1997 reminding him that he had not forwarded the premium or final opinion and providing him with another opportunity to obtain a final policy in the Ollison matter.

55. Even after receiving the letter, Harmon did not send the check for the title insurance or the other required documentation to Fidelity.

56. As a result of Harmon's failure to forward the premium and the required documentation, the commitment lapsed, and Fidelity did not issue a final title insurance policy on the Ollison property to Accredited.

57. Harmon sent a preliminary report on title (hereafter "title opinion") to Fidelity on July 9, 1996 with his request for a commitment on the Ollison property.

58. Harmon stated that his title opinion was updating the title opinion of attorney Kimberly Thomas.

59. Ms. Thomas's opinion was done for the previous 30 years up through March 11, 1996.

60. Harmon represented to Fidelity in his title opinion that he had updated the title from March 11, 1996 through the date of his report, July 9, 1996.

61. Harmon represented to Fidelity in his title opinion that there were no mortgages or deeds of trust on the Ollison property.

62. Fidelity relied on Harmon's representations in his title opinion in issuing a title insurance commitment to the lender on the Ollison's property.

63. Accredited relied on Harmon's representations in his title opinion, which assured it that it would have a first priority mortgage loan on the Ollison property, in giving final approval of the Ollison loan.

64. A deed of trust existed on the Ollison property prior to the closing on the Ollison loan. This prior deed of trust was given by the Ollisons to Alfred C. Perry on the same property that secured the loan made by Accredited (hereafter "senior deed of trust").

65. The senior deed of trust was recorded in the Pamlico County Register of Deeds office on April 18, 1996.

66. The senior deed of trust was recorded within the time period – from March 11, 1996 to July 9, 1996 – in which Harmon was supposed to update title to the Ollison property.

67. Harmon was named as trustee in the senior deed of trust.

68. The Ollisons defaulted on their loan to Accredited, and Accredited thereafter attempted to foreclose on the property.

69. The holder of the senior deed of trust and note previously had foreclosed on the Ollison property.

70. The Ollison property was sold for the outstanding amount of the senior deed of trust and the related expenses.

71. After it discovered that it had lost its security interest through the prior foreclosure by the holder of the senior deed of trust, Accredited made a claim with Fidelity for its losses.

72. Fidelity denied the claim because it never issued a final title insurance policy on the Ollison property and loan.

73. Accredited suffered a loss of at least \$40,000 as a result of Harmon's failure to obtain title insurance from Fidelity and his failure to discover or disclose the senior deed of trust in the preliminary report on title.

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, John H. Harmon, 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) & (3) as follows:

(a) By failing to obtain the final title insurance policy on the Lawson Street property for Foy, Harmon:

(i) failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(b)(3);

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

(iii) prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(a)(3).

(b) By falsely misrepresenting to the State Bar that he did not represent Foy and had not agreed to do a title search and obtain a final title insurance policy

Harmon knowingly made a false statement of material fact in connection with a disciplinary matter or charge of misconduct in violation of Revised Rule 8.1(a) and NCGS § 84-28(b)(3).

(c) By falsely misrepresenting to the State Bar that he had not received funds from Foy Harmon knowingly made a false statement of material fact in connection with a disciplinary matter or charge of misconduct in violation of Revised Rule 8.1(a) and NCGS § 84-28(b)(3)

(d) By failing to obtain the title insurance policy for Accredited on the Ollison property and loan, Harmon:

(i) failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(b)(3);

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

(iii) prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(a)(3).

(e) By failing to forward the check from Colgan to Fidelity for payment of the title insurance premium, Harmon failed to promptly pay or deliver funds he held in trust in violation of Rule 10.2(e) and Revised Rule 1.15-2(h).

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) Multiple offenses;
- (b) Prior disciplinary offenses;
- (c) Deceptive practices during the disciplinary process;
- (d) Substantial experience in the practice of law; and
- (e) Issuance of a Letter of Warning in the past three years.

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

- (a) Absence of a dishonest or selfish motive; and
- (b) 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, John H. Harmon, is hereby suspended from the practice of law for 5 years, effective 30 days from service of this order upon him (hereafter "effective date").

2. The period of suspension is stayed for five years upon the following conditions:

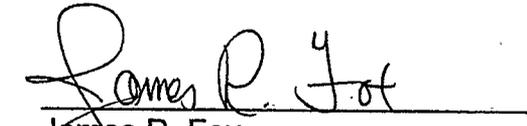
- a. Harmon attend and complete a Law Management Assistance Program approved by the State Bar. Harmon shall contact such a program, make any required advanced payment, and have a plan in place within 60 days of the effective date of this order. Harmon shall be responsible for paying all costs associated with attending and completing the program as a condition of the stayed suspension. Harmon shall send the State Bar quarterly progress reports from the program administrator until he satisfactorily completes the program. These quarterly reports shall be due no later than October 1, 2000, January 1, 2001, April 1, 2001, and July 1, 2001. Harmon also shall send the State Bar documentation that he has satisfactorily completed such a program no later than 1 year after the effective date of this order.
- b. Harmon pays all costs assessed by the Secretary in connection with this proceeding within 30 days of service of these costs by the Secretary;
- c. Harmon does not violated any federal or state laws;
- d. Harmon does not violate any provisions of the Revised Rules of Professional Conduct of the State Bar;
- e. Harmon pays restitution to Accredited Home Lenders in the amount of \$40,000.00, plus interest at a rate of 8% from the effective date of this order, no later than six months before the end of the stayed suspension; and
- f. Harmon shall not handle or represent any client in any matters involving loan closings or title searches during the period of the stayed suspension.

3. If Harmon fails to satisfy the conditions of the stay and his suspension is subsequently activated, Harmon must petition the DHC at the end of the five year suspension and establish by clear, cogent, and convincing evidence, compliance with

all of the conditions set forth in paragraph 2(a) through (f) above and that he has complied with all the requirements of Discipline Rules .0124 and .0125(b) before his license to practice law is reinstated.

Signed by the chair with the consent of the other Hearing Committee members.

This the 22 day of June 2000.


James R. Fox
Hearing Committee Chair