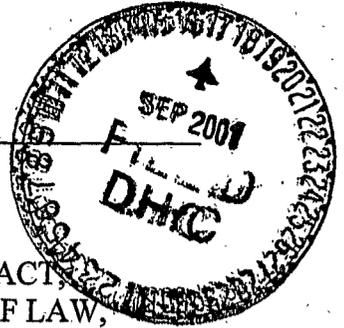


12168

WAKE COUNTY
NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
01 DHC 6



THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	CONSENT
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND ORDER OF DISCIPLINE
CHARLES E. HESTER, JR.)	
Defendant)	

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission composed of T. Paul Messick, Jr., Chair, W. Steven Allen, Sr., and Betty Ann Knudsen, pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereinafter "Bar Rules"). Douglas J. Brocker represented plaintiff. David B. Freedman and Dudley A. Witt appeared as counsel for defendant.

Both parties have agreed to waive a formal hearing in this matter and stipulate and agree to the following findings of fact and conclusions of law and to the discipline imposed. The Hearing Committee enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Charles E. Hester, Jr. (hereafter "Hester"), was admitted to the North Carolina State Bar on March 24, 1984 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 the times relevant to this complaint, Hester actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Selma, Johnston County, North Carolina.

Upon information and belief, the State Bar alleges:

4. Hester was the attorney and settlement agent for a real estate closing transaction on July 31, 2000 (hereafter, "closing").
5. The closing involved property located at US 70 business in Clayton, North Carolina (hereafter, "property").
6. Perry D. Perdue was the buyer and Rufus Brown was the seller of the property in the closing (hereafter referred to collectively as, "parties").
7. In connection with the closing, Hester prepared a HUD-1 settlement statement (hereafter, "original HUD-1").
8. In the original HUD-1 presented to the parties at closing on July 31, 2000, Hester correctly listed the contract sales price as \$75,000 and the amount paid by the buyer, Mr. Perdue, as \$7,291.36.
9. The closing was completed and the property was transferred from Mr. Brown to Mr. Perdue.
10. Sometime after the closing was completed, Perdue requested that Hester prepare an altered HUD-1 settlement statement (hereafter, "altered HUD-1").
11. Perdue asked Hester to increase the sales price by \$100,000 on the altered HUD-1 to indicate that the contract sales price was \$175,000.
12. Hester prepared an altered HUD-1 indicating that the contract sales price was \$175,000.
13. The altered HUD-1 prepared by Hester also indicated that Perdue paid \$107,453.86, which was over \$100,000 more than Perdue actually paid in cash to purchase the property.
14. At or before the closing on July 31, 2000, Hester received a copy of the offer to purchase and contract (hereafter, "contract") entered into by the parties on May 17, 2000. The contract listed the purchase price as \$75,000.
15. Hester, therefore, knew in August 2000 that the contract sales price for the property was \$75,000, not \$175,000.
16. Hester also received and disbursed the funds for the closing, including the amount paid by Perdue in cash to purchase the property.

17. Hester, therefore, knew that Perdue had paid approximately \$7,291.36 to purchase the property, not the \$107,453.86 indicated in the altered HUD-1.

18. At the time he provided the altered HUD-1 to Perdue in August 2000, Hester knew that the \$175,000 contract sales price and the \$107,453.86 cash paid by Perdue shown on the altered HUD-1 were misrepresentations and false statements of material fact.

19. Hester prepared and signed the altered HUD-1, certified it as a true copy, and gave it to Perdue in August 2000.

20. In August 2000, Perdue attempted to borrow between \$90,000 - \$100,000 from Steve Clark.

21. The loan from Clark to Perdue would have been secured by a deed of trust on the property involved in the closing.

22. On or about August 31, 2000, Perdue provided to Clark the altered HUD-1 prepared by Hester in connection with his attempt to obtain the loan from Clark.

23. Perdue sent Clark the altered HUD-1 prepared by Hester in an effort to fraudulently obtain the loan by misrepresenting the value of the property and the amount of equity Perdue had in the property.

24. The State Bar does not have clear, cogent, and convincing evidence that Hester was aware when he prepared the altered HUD-1 that Perdue was going to use it to attempt to fraudulently obtain a loan or for some other improper purpose.

25. Clark later discovered that the altered HUD-1 was false and did not make the loan to Perdue.

26. Hester was properly served with process.

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 defendant Charles E. Hester, Jr. 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) in that by preparing the altered HUD-1 settlement statement knowing that it contained misrepresentations and false statement of material fact, including an inflated sales price and cash amount paid by Perdue, signing it, certifying it as a true copy, and providing it to Perdue, Hester engaged

in conduct involving misrepresentation in violation of Rule 8.4(c) of the North Carolina Revised 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 additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - (a) substantial experience in the practice of law,
 - (b) use by a third party of respondent's violation to attempt to defraud a member of the public, and
 - (c) issuance of a letter of warning within three years immediately preceding the filing of the complaint
2. The defendant's misconduct is mitigated by the following factors:
 - (a) substance abuse and psychological problems, contributing to the violation,
 - (b) full and free disclosure to the hearing committee and cooperative attitude toward proceedings,
 - (c) remorse,
 - (d) absence of dishonest or selfish motive, and
 - (e) failure of respondent's violation to result in any harm to the public
3. The aggravating factors do not 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

I. Defendant, Charles E. Hester, Jr. is hereby suspended from the practice of law in the State of North Carolina for a period of one year from the date this Consent Order of Discipline is filed. The period of suspension is stayed for three years upon the following conditions:

- A. Hester shall enter into and comply with a Lawyers Assistance Program ("LAP") rehabilitation contract and actively participate in a 12 step rehabilitation program monitored by LAP, in which Hester shall:
 1. Totally refrain from the use of alcohol and all mind altering substances except as may be specifically prescribed and approved by Hester's personal physician. Prior to the use of any such

prescribed drugs Hester will inform his physician of his participation in LAP, communicate the identity of his physician to LAP and have his physician consult with LAP. Prior to the use of prescription medications, Hester shall provide LAP with adequate documentation from the prescribing physician indicating that the prescribing physician knows of Hester's dependence and has concluded that the use of such drug or drugs is nevertheless required.

2. Accept such person or persons as may be designated by LAP as monitor(s) of his performance under this Order and shall make at least one personal contact per week with said monitor or more frequently as prescribed by the monitor.

3. Provide the monitor with whatever substantiating documentation the monitor may require to assure compliance with this order.

4. Ensure that monthly monitor reports are submitted to LAP no later than the 15th day of the next month following each preceding month throughout the entire three-year stay.

5. Continue to see an addictions therapist, approved by LAP, every other week for the next six months and thereafter on such basis as the therapist and LAP determine is appropriate and necessary. Hester shall ensure that his addiction counselor forwards to LAP and to the State Bar a quarterly report certifying that Hester is in compliance with his addictions counseling. These reports shall be due no later than January 1, April 1, July 1, and October 1 for each year of the stayed suspension while Hester is being treated.

6. Attend at least four AA/NA meetings each week. Hester will keep a sign-up sheet signed by the leader of each meeting he attends to verify his attendance and provide this sheet to his monitor on a monthly basis. The number of meetings to be attended will be reviewed at the conclusion of the 120-day period following entry of this Order and may be decreased, maintained, or increased at the sole discretion of LAP, but shall in no event be less than three meetings per week.

7. Join a home group and attend its meetings every week. Hester will maintain a sponsor and an active relation with his sponsor at all times. The identity of his sponsor shall be communicated to LAP and Hester will authorize LAP to communicate with his sponsor regarding the status of his recovery. No confidential

information shared with the sponsor shall be sought by LAP except information as to status of recovery.

8. Arrange for and submit to random urine drug screens. Hester shall employ a drug screening service that provides a toll free number for him to call each day to determine if he is to be screened that day. The failure to call each day or the failure to report promptly for a screen shall be deemed a positive test result. The results of the drug screening or the failure to call or to report promptly for a screen shall be reported directly to LAP and the State Bar by the screening agency and Hester shall be responsible for seeing that this is done. Hester may use any testing service such as the National Confederation of Professional Services ("NCPS") (telephone 1-800-948-8589) or another similar service approved by LAP. Hester is responsible for all costs associated with this screening process.

9. Ensure that monthly reports are made to his LAP monitor and that LAP makes quarterly reports to the State Bar certifying that Hester is in compliance with each aspect of his rehabilitation contract and program set forth above. The quarterly reports regarding LAP compliance must be sent to the State Bar no later than January 1, April 1, July 1, and October 1, for each year of the stayed suspension.

10. Execute appropriate releases for urine or blood screens, breathalyzers, treatment center records, therapist records, and other written and verbal information needed for LAP and the State Bar to verify compliance with the terms of the rehabilitation contract and program.

11. Immediately notify his monitor if he uses any mind-altering substances, including alcohol, in violation of paragraph I.A.1 of this order.

12. Continue to be treated for any diagnosed psychiatric conditions by Leonard Handelsman, MD or another psychiatrist approved by LAP. Hester shall see the psychiatrist at least every other month for the first six months and thereafter on such basis as the psychiatrist and LAP determine is appropriate and necessary.

Hester shall ensure that the psychiatrist forwards to LAP and to the State Bar a quarterly report certifying that for the past three months: (1) he has followed all recommendations for treatment of any diagnosed psychiatric conditions, and (2) in the psychiatrist's opinion, Hester's psychiatric conditions will not prevent him from

adequately performing the responsibilities of an attorney or pose a threat to the public, if he is allowed to continue practicing law.

These reports shall be due no later than January 1, April 1, July 1, and October 1 for each year of the stayed suspension while Hester is being treated.

The failure of Hester to comply with any of the foregoing aspects of the program of rehabilitation set forth in Section I.A.1-12 above shall constitute a violation of the conditions of the stay and warrant activation of the suspension of Hester's license.

B. Hester shall not violate any provisions of the Revised Rules of Professional Conduct at any time during the three-year suspension.

C. Hester shall not violate any state or federal criminal laws at any time during the three-year suspension.

D. Hester shall pay the costs of this proceeding, including all deposition costs, as assessed by the Secretary, within 60 days of entry of this order.

E. Hester shall be solely responsible for compliance with all the conditions of this order. Under no circumstances shall the State Bar be responsible for payments or bills associated with Hester's compliance with the conditions of this Order.

II. If, upon a motion by the State Bar, a Hearing Committee of the DHC finds that Hester has violated any of the conditions in Sections I A-E of this Order, the suspension of Hester's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, Hester must:

A. Comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules; and

B. Complete a LAP rehabilitation contract and program as set forth in Section I.A.1-12 of this order prior to seeking reinstatement.

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

This the 14th day of SEPTEMBER, 2001.



T. Paul Messick, Jr.
Chair, Hearing Committee

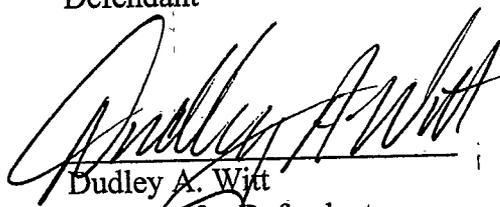
We Consent:



Douglas J. Brocker
Counsel for Plaintiff



Charles E. Hester, Jr.
Defendant



Dudley A. Witt
Attorney for Defendant