

3387

WAKE COUNTY  
NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION  
OF THE NORTH CAROLINA STATE BAR  
01 DHC 18



|                               |   |                             |
|-------------------------------|---|-----------------------------|
| THE NORTH CAROLINA STATE BAR, | ) |                             |
| Plaintiff                     | ) |                             |
|                               | ) | CONSENT ORDER OF DISCIPLINE |
| v.                            | ) |                             |
|                               | ) |                             |
| RICHARD M. PEARMAN,           | ) |                             |
| Defendant                     | ) |                             |

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of T. Paul Messick, Jr., Chair; Stephen E. Culbreth, and Betty Ann Knudsen, pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar. Edward C. Winslow III and Reid L. Phillips represented defendant, Richard M. Pearman. 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. 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 hereunder.

2. Defendant, Richard M. Pearman, (hereafter "Pearman"), was admitted to the North Carolina State Bar on August 14, 1970 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, Pearman actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Greensboro, Guilford County, North Carolina.

4. Pearman is subject to the personal and subject matter jurisdiction of this body and voluntarily waived his right to a formal hearing.

#### **First Claim for Relief**

5. First Republic Mortgage Company (hereafter, "First Republic Mortgage") is a North Carolina corporation engaged in the business of brokering loans for real estate transactions.

6. Freedom Insurance Company (hereafter, "Freedom Insurance") is a North Carolina corporation engaged in the business of providing title insurance for real estate transactions.

7. Since 1992, First Republic Mortgage and Freedom Insurance have been owned by a trust for the benefit of Pearman's daughter, the Amanda L. Pearman trust number 2.

8. First Republic Mortgage and Freedom Insurance are located in the same office building and floor as Pearman's law office.

9. Employees of Pearman's law office also were employed simultaneously by First Republic Mortgage and Freedom Insurance.

10. The only corporate director for First Republic Mortgage between March 1992 and September 1999 was Pearman's employee and legal secretary. She also was an officer of First Republic Mortgage during this time period.

11. The corporate directors and officers of Freedom Insurance from March 1992 through 1995 were either Pearman's law office employees or his fiancé.

12. Pearman deposited his personal funds into accounts for both First Republic Mortgage and Freedom Insurance.

13. Pearman received funds from the accounts of First Republic Mortgage and Freedom Insurance.

14. Since at least 1992, Pearman has acted as closing attorney for loan closing transactions brokered by First Republic Mortgage, and for which Freedom Insurance provided the title insurance.

15. Pearman received attorney's fees in connection with these transactions.

16. First Republic Mortgage received brokerage commissions on these transactions closed by Pearman.

17. Freedom Insurance received premiums for title insurance on these transactions closed by Pearman.

18. Since at least 1992, Pearman regularly has provided legal services to First Republic Mortgage and Freedom Insurance and received payment for those services, apart from the loan closings discussed above.

#### **Second Claim for Relief**

19. Dependable Housing Inc. was a North Carolina Corporation that engaged in the business of manufactured homes sales in Roxboro, North Carolina from approximately 1993-98.

20. Dependable Housing also acted as general contractor to provide set-up and related construction services, such as electrical, plumbing, masonry, and carpentry work, for the homes it sold.

21. Dependable Housing was owned by a trust for the benefit of Pearman's daughter, the Amanda L. Pearman trust number 2.

22. Pearman was the President of Dependable Housing from approximately 1994 until 1997.

23. Dependable Housing used the same post office box mailing address as First Republic Mortgage and Freedom Insurance. This post office box was in Greensboro, where Pearman's law office was located, not in Roxboro, where its sales office was located.

24. Employees of Pearman's law office also were employed and paid by Dependable Housing to perform bookkeeping and other services for the company.

25. Pearman deposited his personal funds into accounts for Dependable Housing.

26. Pearman received funds from the accounts of Dependable Housing.

27. Pearman provided legal services to Dependable Housing and received payment for those services, apart from conducting loan closings to which it was a party, as set forth below.

28. Pearman acted as closing attorney for loan closing transactions, in which Dependable Housing was the seller of a home (hereafter, "Dependable Housing loan closings").

29. In the Dependable Housing loan closings, Pearman received attorney's fees.

30. Dependable Housing also received a sales profit from the loan closings.

31. In at least one of the Dependable Housing loan closings that Pearman handled, First Republic Mortgage brokered the loan and received a brokerage commission, and Freedom Insurance received a premium and provided the title insurance.

32. In the Dependable Housing loan closings in which Freedom Insurance provided the title insurance, Pearman issued the title opinion upon which the title insurance was issued.

33. In the Dependable Housing loan closings that Pearman handled, Pearman received the loan funds and disbursed them to the parties, including funds paid to Dependable Housing.

34. A portion of the loan funds were for certain specified costs to set-up the manufactured homes ("set-up costs").

35. Pearman was supposed to disburse the set-up costs to Dependable Housing as seller and general contractor once that work was completed.

36. In some closings, the set-up work had not been completed at the time of closing.

37. Some of the subcontractors who performed the set-up work on these homes were not paid by Dependable Housing.

38. As a result, some of the subcontractors who performed the set-up work on these homes and were not paid filed notice of claims of liens against the homes and filed civil actions against Dependable Housing and the borrowers.

39. In at least one instance, Pearman executed an escrow agreement between a borrower and Dependable Housing for a closing he was

handling. Pearman, the borrower, and a representative of Dependable Housing executed the Escrow Agreement on the day of closing.

40. The Escrow Agreement stated that certain improvements had not been completed by Dependable Housing and provided that Pearman was to hold funds in his escrow to assure seller's completion of such improvements.

41. Pearman did not hold the funds in escrow and disbursed the funds for such improvements to Dependable Housing on the date of closing.

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 Pearman and the subject matter of this proceeding.

2. Pearman'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 Pearman committed the following violations of the North Carolina Rules of Professional Conduct (hereafter, "Rules") or Revised Rules of Professional Conduct (hereafter, "Revised Rules") as follows:

a. By conducting real estate closings involving corporations, First Republic Mortgage and Freedom Insurance and Dependable Housing, in which at least his daughter had a beneficial interest and which he represented on other matters, Pearman represented clients in matters in which his representation may have been materially limited by his responsibilities to other clients, or by his own interest, in violation of Rule 5.1(b) and Revised Rule 1.7(b).

b. By issuing title opinions on property insured by Freedom Insurance, in which at least his daughter had a beneficial interest and which he represented on other matters, Pearman represented clients in matters in which his representation may have been materially limited by his responsibilities to other clients, or by his own interest, in violation of Rule 5.1(b) and Revised Rule 1.7(b).

c. By indicating that he would act as escrow agent between the borrowers and Dependable Housing, in which at least his daughter had a beneficial interest and which he represented on other matters, Pearman represented clients, the borrowers, in matters in which his representation may have been materially limited by his responsibilities to

another client, or by his own interest, in violation of Rule 5.1(b) and Revised Rule 1.7(b).

d. By immediately disbursing the escrow funds to Dependable Housing, Pearman disbursed the escrow funds contrary to the terms of the escrow agreement in violation of Rule 10.2(e), Revised Rule 1.15-2(h), RPC 66, and 98 F.E.O. 11.

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

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
  - a. a pattern of misconduct,
  - b. multiple offenses, and
  - c. substantial experience in the practice of law
2. The defendant's misconduct is mitigated by the following factors:
  - a. absence of a prior disciplinary record,
  - b. cooperative attitude toward proceedings, and
  - c. delay in disciplinary proceedings
3. The aggravating factors do not 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. Defendant, Richard M. Pearman, is hereby suspended from the practice of law for three years, effective 30 days from service of this order upon him. The suspension is STAYED for a period of three years, upon compliance with the following terms and conditions during all three years of the stayed suspension:

- (a) Pearman shall not act as closing attorney or otherwise provide any legal service or representation in any real estate or loan closing transactions that involve in any manner First Republic Mortgage, Freedom Insurance, or any other entity owned or controlled by Pearman or his relatives, including any entities

owned by a trust for the benefit of himself or his relatives, by blood or marriage, such as the Amanda L. Pearman trusts.

Prior to the effective date of the suspension, Pearman shall provide the State Bar with a written list of all entities owned or controlled by Pearman or his family, including any entities owned by a trust for the benefit of himself or his relatives, by blood or marriage, such as the Amanda L. Pearman trusts, as of May 1, 2001. Pearman shall notify the State Bar during the term of the stayed suspension of any change in ownership of any company identified above, immediately upon his knowledge that such a change has occurred. The prohibition set forth above regarding Pearman shall apply to any entity identified by Pearman that subsequently changes ownership during the term of stayed suspension.

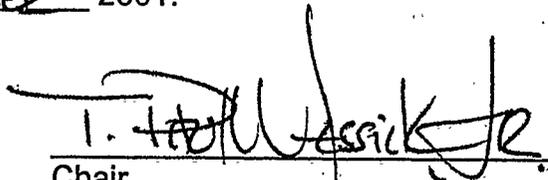
Pearman also shall be responsible for submitting, on a semi-annual basis, a written, sworn certification indicating whether he has complied with the terms of this condition. Pearman shall submit such certifications to the State Bar no later than July 1 and January 1 of each year of the stayed suspension.

- (b) Pearman shall not violate any provisions of the Revised Rules of Professional Conduct.
- (c) Pearman shall not violate any state or federal criminal laws.
- (d) Pearman shall pay the costs of this proceeding as assessed by the Secretary within 30 days of service of this order on him.
- (e) Pearman shall attend 3 hours of continuing legal education ("CLE") on general ethics or the Revised Rules of Professional Conduct during each of the three years of the stayed suspension. The 3 hours of general ethics CLE shall be in addition to all Pearman's normal CLE requirements. Pearman shall attend these additional hours and provide proof of his compliance with this condition to the State Bar no later than July 31, 2002, July 31, 2003, and July 1, 2004.

2. If Pearman's suspension is activated, he shall 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 satisfy conditions 1(d) and (e) of this order, prior to seeking reinstatement of his license.

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

This the 17<sup>th</sup> day of OCTOBER 2001.

  
Chair  
Hearing Committee

  
Richard M. Pearman  
Defendant

  
Edward C. Winslow III  
Attorney for Defendant

  
Douglas J. Brocker  
Attorney for Plaintiff