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NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 10

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
v. )  
ARTHUR K. BARTLETT, Attorney, )  
Defendant. )

CONSENT ORDER  
OF  
DISCIPLINE

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Chair; W. Steven Allen, Sr. and R. Mitchell Tyler. James F. Wyatt, III represented the defendant, Arthur K. Bartlett, and Thomas F. Moffitt represented the plaintiff. Defendant has agreed to waive a formal hearing in the above referenced matter. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. The defendant also stipulates that he waives his right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based upon the consent of the parties, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, Arthur K. Bartlett, (hereinafter "Bartlett" or "Defendant"), was admitted to the North Carolina State Bar in 2002, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During the times relevant to this Complaint, Bartlett actively engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

4. In April 2003, Bartlett was employed as an employment benefits attorney in the Charlotte office of the law firm of Kennedy, Covington, Lobdell & Hickman, LLP.

5. In April 2003, Bartlett was told by another attorney at his law firm that the firm was representing Lending Tree, Inc. ("Lending Tree") in connection with a pending transaction in which Lending Tree would be acquired by USA Interactive, another public company now known as InterActive Corp. In that same conversation, Bartlett was asked to perform legal research concerning a benefits plan issue for Lending Tree relevant to the transaction.

6. After learning about the pending transaction, while in possession of material non-public information about the transaction, and in breach of his fiduciary duties to Lending Tree, its shareholders and his law firm, Bartlett purchased 540 shares of Lending Tree common stock at \$13 per share. The purchase was made without disclosure to Lending Tree or Bartlett's law firm and was made in violation of his law firm's formal written policies on securities trading.

7. Bartlett knew or should have known that the information he learned about the pending transaction was confidential and non-public, and that he was forbidden to purchase or sell any securities of Lending Tree while possessing such information.

8. On May 5, 2003, prior to the opening of the stock market, Lending Tree and USA InterActive issued a joint press release announcing an agreement by which USA InterActive would acquire all of Lending Tree's outstanding capital stock in a stock-for-stock transaction. After the announcement, Lending Tree's stock price increased that day by \$6.03 (or 41%), closing at \$20.72 per share.

9. On May 5, 2003, after the acquisition agreement was announced, Bartlett sold all 540 shares of his Lending Tree stock, selling 240 shares at \$20.80 per share and 300 shares at \$21 per share thereby making a profit of \$4,272. The sales were made without disclosure to Lending Tree or to Bartlett's law firm and were made in violation of his law firm's formal written policies on securities trading.

10. In July 2003, the Securities and Exchange Commission (the "SEC") became aware of Bartlett's acts and omissions relating to the purchase and sale of his Lending Tree stock and brought an action against him in the United States District Court for the Western District of North Carolina (Civil Action No. 3:03CV463) based on violations of federal securities law.

11. As alleged in the SEC complaint, Bartlett traded his Lending Tree stock while in possession of material non-public information in violation of a fiduciary duty to withhold the information or refrain from trading in violation of § 10 (b) of the Securities and Exchange Act of 1934 [15 U.S.C. § 78j (b)] and SEC Rule 10b-5 [17 C.F.R. § 240.10b-5].

12. On October 9, 2003, a consent judgment was entered against Bartlett requiring him to disgorge the illicit profit he made on the purchase and sale of his Lending Tree stock, and, in addition, to pay a civil penalty in the amount of \$4,272, for a total payment of \$8,615. Bartlett paid the money to the United States government soon after the consent judgment was entered.

Based upon the foregoing Findings of Fact, the Committee enters the following:

### **CONCLUSIONS OF LAW**

1. All parties are properly before the Hearing Committee; and the Committee has jurisdiction over defendant, Arthur K. Bartlett, and the subject matter of this proceeding.

2. Bartlett's foregoing acts and omissions constitute grounds for discipline pursuant to N. C. Gen. Stat. § 84-28 (b)(2) in that he violated the Revised Rules of Professional Conduct by using material confidential information for personal profit in the purchase and sale of his Lending Tree securities as follows:

(a) Bartlett misappropriated entrusted property, in this case non-public confidential information he gained in the performance of legal services for his law firm's client, to obtain a personal benefit for himself contrary to his client's and law firm's interests, in violation of Revised Rules 8.4 (a), 1.7 and 1.15-2 (j).

(b) Bartlett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4 (c).

Based upon the consent of the parties, the Hearing Committee also enters the following:

### **FINDINGS REGARDING DISCIPLINE**

1. Defendant's misconduct is aggravated by the following factor:

(a) Dishonest or selfish motive.

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

(a) Absence of any prior disciplinary record,

(b) Timely and good faith efforts to make restitution or to rectify the consequences of his misconduct,

- (c) Full and free disclosure to the Hearing Committee or cooperative attitude toward the proceedings,
- (d) Imposition of other penalties and sanctions by the Securities and Exchange Commission, and
- (e) Remorse.

3. The mitigating factors outweigh the aggravating factor.

4. Bartlett's trading on misappropriated information threatened significant harm to the public because such misconduct undermines the integrity of and investor confidence in the securities markets. His misconduct also threatened significant harm to his client, the administration of justice, and the standing of the legal profession by undermining trust and confidence in lawyers and the legal system. However, the Hearing Committee finds and concludes that under the circumstances of this case the public will be adequately protected by suspending Bartlett's license, instead of disbaring him, and staying that suspension under the terms and conditions outlined below.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW and the FINDINGS REGARDING DISCIPLINE and with the consent of the parties, the Hearing Committee enters the following:

#### **ORDER OF DISCIPLINE**

1. The license of the defendant, Arthur K. Bartlett, is hereby suspended for two years from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years upon the following conditions:

- a. The Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension.
- b. Defendant will respond to all State Bar requests for information by the deadline stated in the communication or within thirty (30) days, whichever is earlier, as required by Rule 8.1 (b) of the Revised Rules of Professional Conduct.
- c. Defendant will timely comply with all State Bar membership and Continuing Legal Education requirements.
- d. Defendant shall pay all costs incurred in this proceeding, as assessed by the Secretary, within 30 days of service of the notice of costs upon him.

2. If, upon a motion by the State Bar, a Hearing Committee of the DHC finds that the defendant has violated any of the conditions in Section 1(a)-(d) of this Order of Discipline, the suspension of the defendant's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, the defendant must:

a. Comply with all provisions of State Bar Discipline & Disability Rule 27 NCAC 1.B, § .0125 (b).

b. Satisfy all the conditions set forth in section 1 (a)-(d) of this Order of Discipline.

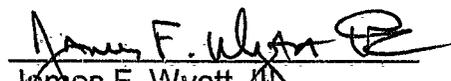
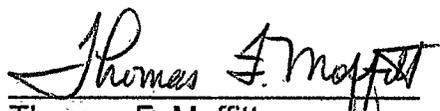
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

This is the 27 day of May, 2004.



Carlyn G. Poole, Chair  
Hearing Committee

WE CONSENT:

  
Arthur K. Bartlett, Defendant  
James F. Wyatt, III  
Attorney for Defendant  
Thomas F. Moffitt  
Attorney for Plaintiff