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NORTH CAROLINA

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF  
THE NORTH CAROLINA STATE BAR  
04 DHC 21

WAKE COUNTY

The North Carolina State Bar,  
Plaintiff

v.

Michael H. McGee, Attorney,  
Defendant



Order of Discipline

This matter was heard on the 23<sup>rd</sup> day of July, 2004 before a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Elizabeth Bunting; and R. Mitchel Tyler. The defendant, Michael H. McGee, represented himself. The plaintiff was represented by David R. Johnson. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

**Findings of Facts**

1. The Plaintiff, 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 General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, Michael H. McGee (hereinafter Defendant), was admitted to the North Carolina State Bar on 14 August 1971, 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 all or a portion of the relevant periods referred to herein, Defendant was actively engaged in the private practice of law in the city of Charlotte, Mecklenburg County, North Carolina.

4. On or about 26 October 1999, Defendant filed a voluntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Western District of North Carolina (hereafter "bankruptcy case"). The case was assigned file number 99-32526. Defendant represented himself, pro se, in all proceedings with respect to his bankruptcy case.

5. Among his assets identified by Defendant in his petition for bankruptcy was a rental house located at 3725 Black Avenue, Charlotte, North Carolina (hereafter "rental house"). The Defendant represented in his bankruptcy petition that the fair market value of this rental house at the time of filing the bankruptcy petition was \$21,000. The Defendant also represented in his bankruptcy petition that there was a secured lien on the rental house in the form of a mortgage with a then-current balance of \$17,912. The Defendant claimed a \$3,100 exemption in the house under N.C. Gen. Stat. § 1C-1601(a)(2) in his bankruptcy petition. The Defendant signed his bankruptcy petition declaring that the information provided in it was true and correct under penalty of perjury.

6. At the time Defendant filed his bankruptcy petition, the Mecklenburg County tax officials had appraised the *ad valorem* tax value of the Defendant's

rental house at \$40,000. Defendant knew the tax value of the house at the time he filed his bankruptcy petition.

7. At the time Defendant filed his bankruptcy petition, Defendant had insured the rental house for casualty loss at \$60,000.

8. At the time Defendant filed his bankruptcy petition, Defendant knew that the fair market value of the rental house was greater than \$21,000. Defendant believed the fair market value of the rental house at the time of his bankruptcy petition was at least \$28,500. The Defendant's equity in the rental house based on the Defendant's own belief of the fair market value exceeded the Defendant's available wild card exemption of \$3,500 under the bankruptcy law in North Carolina. Defendant represented to the bankruptcy court in his bankruptcy petition that the equity in the rental house was less than his available wild card exemption.

9. By filing a Chapter 7 bankruptcy petition, the Defendant's rental house became property of the bankruptcy estate under the control of the trustee and the bankruptcy court. Defendant had no legal right to sell, pledge, or encumber this rental house until released from the bankruptcy estate by the bankruptcy court.

10. On or about 24 October 2001, the bankruptcy trustee in Defendant's bankruptcy case sent Defendant an email message informing Defendant that the trustee needed to resolve the status of the rental house in the bankruptcy estate. The trustee asked Defendant in that email to provide certain financial records concerning the rental house and submit any proposal he might have whereby Defendant would acquire the equity in the rental house from the bankruptcy estate.

11. Defendant refused the trustee's request in a reply email message on or about 3 November 2001. In his reply email, Defendant asked the trustee to ask the Court to relieve him as trustee and "close out this case."

12. On or about 30 January 2002, the bankruptcy trustee in Defendant's bankruptcy case served Defendant with a Turnover Motion asking the court to direct the Defendant to pay the rental income he had collected on the rental property since the filing of the bankruptcy petition to the estate and provide certain financial records.

13. On or about 13 March 2002, Defendant filed a response to the Trustee's Turnover Motion in the bankruptcy case. In his response, Defendant represented that the balance of the mortgage on the rental property as of 11 March 2002 was \$12,857. Defendant argued in his response that the trustee had abandoned the property and he should not be required to comply with the Turnover Motion requests. Defendant also moved the court to deem the rental house as abandoned property and release it from the estate. Further, Defendant presented a justification for his valuation of the property in his response that showed that he knew that the fair market value at the time he filed the petition was at least \$28,500.

14. On or about 9 April 2002, and while the Trustee's Turnover Motion and Defendant's abandonment motion were still pending before the court, Defendant obtained a new mortgage loan on the rental house in the amount of \$49,000 and executed a deed of trust on the rental house securing the loan (hereafter "new loan"). This deed of trust was recorded at the Mecklenburg County Register of Deeds on 10 April 2002.

15. At the time Defendant executed the new loan on the rental house on or about 9 April 2002, Defendant knew that the bankruptcy court had not released the rental house from the bankruptcy estate and that he needed to have the bankruptcy court release the property before he could exercise any rights to it.

16. By obtaining the new loan and executing the deed of trust on the rental house, Defendant represented to the lender that he had authority to use the rental house as security for the new loan at a time when he knew the property was still in the bankruptcy estate. Defendant obtained an appraisal of the rental property at the time of the loan that the fair market value of the rental property was \$72,000.

17. The Defendant did not disclose the new loan secured by a deed of trust on the rental property to the bankruptcy trustee or the bankruptcy court before or contemporaneously with the transaction.

18. Contemporaneously with the acquisition of the new loan on the rental house, Defendant used \$32,000 of the loan proceeds secured by the deed of trust on the rental house to purchase other real property, specifically, a residence for himself and his wife. The property was deeded to Defendant and his wife as tenants by the entireties.

19. On or about 10 April 2002, the bankruptcy trustee filed a motion with the bankruptcy court seeking authority to sell the rental house at a private sale on behalf of the bankruptcy estate in Defendant's bankruptcy case.

20. On or about 2 May 2002, Defendant filed a response to the trustee's motion to sell the rental house opposing the proposed sale. The Defendant did not disclose in his response his actions of 9 April 2002 to acquire a new loan on the equity value of the rental house using the rental house as security or using the net proceeds of the loan to purchase the residence for Defendant and his wife as entireties property.

21. On 16 May 2002, the bankruptcy court conducted a hearing on the various pending motions before it at which the Defendant revealed his actions of 9 April 2002 to acquire a new loan on the equity value of the rental house using the

rental house as security under examination by the trustee. Upon the revelation by Defendant, the court continued the hearing to give the Defendant and the trustee an opportunity to work out a settlement arrangement concerning rights to the property.

22. On or about 10 June 2002, Defendant filed a motion in the bankruptcy case to dismiss the trustee's motions and close the case.

23. On 11 July 2002, the bankruptcy court held another hearing at the end of which it found that Defendant had engaged in illegal conduct, but denied the trustee's pending motions as moot. The Court also denied Defendant's motions to deem the property abandoned and close the case.

24. The Defendant appealed the order of the bankruptcy court, but the appeal was dismissed. The trustee and the Defendant then entered into a consent agreement under which the trustee abandoned the rental house to the Defendant, but the Defendant's bankruptcy discharge was revoked.

25. The Defendant sold the rental property in December 2003 for \$77,000.

26. Knowingly making a false statement of value in a bankruptcy petition is a violation of federal criminal law, specifically 18 U.S.C. § 542. The Defendant violated federal criminal law by knowingly made a false statement of the value of his rental property in his bankruptcy petition.

27. Federal criminal law, specifically 18 U.S.C. § 543, prohibits any person who has access to property by virtue of his or her participation in a bankruptcy proceeding as a custodian, attorney, or officer of the court from knowingly and fraudulently appropriating the property for his or her own use or

transferring the property. Defendant violated federal criminal law by knowingly and fraudulently transferring a security interest in the rental property and appropriating the funds from a loan secured by the rental property at a time when he knew the property was still part of the bankruptcy proceeding to his own use to purchase property held as a tenancy by the entireties.

28. Federal criminal law, specifically 18 U.S.C. §547, prohibits a person from defrauding or attempting to defraud the bankruptcy court by making a false or fraudulent representation, claim, or promise. Defendant violated federal criminal law by making a false or fraudulent representation to the bankruptcy court by not disclosing his actions to encumber the rental house that was part of the bankruptcy estate at a time that he knew that he had no authority to do so.

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 Michael H. McGee 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) as follows:

(a) By declaring in his bankruptcy petition that the fair market value of the rental house was \$21,000 at a time when he knew that the tax value and insurance value of the property was at least \$40,000 and that the fair market value actually exceeded the amount he declared, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1) and engaged in conduct

involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

(b) By declaring in his bankruptcy petition under penalty of perjury that the fair market value of the rental house was \$21,000 at a time when he knew that the tax value and insurance value of the property was at least \$40,000 and that the fair market value actually exceeded the amount he declared, Defendant engaged in a criminal act that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b);

(c) By obtaining a loan on the equity of the rental house, using the rental house as security, and executing a deed of trust on the property at a time when Defendant knew that the property was part of the bankruptcy estate, Defendant engaged in a criminal act that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

(d) By using the proceeds of the loan secured by the rental house to purchase a residence in the entireties for he and his wife, Defendant converted assets that belonged to the bankruptcy estate for his own use and, thereby, engaged in a criminal act that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

(e) By failing to disclose to the trustee or the court that he had obtained a loan on the equity in the rental house and had executed a deed of trust encumbering

the rental house when he responded to the trustee's motion on 2 May 2002, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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 these additional

### **Findings of Fact Regarding Discipline**

1. The Defendant failed to produce documents pursuant to the Plaintiff's Request for Production of Documents under the Rules of Civil Procedure. The Defendant expressed the opinion that he did not have to produce any documents without a motion to compel.

2. The Defendant steadfastly refuses to acknowledge any wrongfulness in his conduct and has repeatedly asserted that the trustee and the Bar have engaged in wrongful conduct against him.

3. The Defendant continues to assert that the rental property belonged to him while it was part of the bankruptcy estate.

4. The Defendant has been licensed to practice law since 1971 and has represented at least 40 clients in bankruptcy matters before filing his own petition.

5. The Defendant stated that the reason he obtained the loan using the rental property as security without seeking approval by the bankruptcy court or waiting for its release from the bankruptcy estate was a desire to provide a larger home for his wife and him.

Based on the **Findings of Fact and Conclusions of Law** above and the additional **Findings of Fact Regarding Discipline**, the Hearing Committee makes the following:

**Conclusions with Respect to Discipline**

1. Defendant's misconduct is aggravated by the following factors:
  - (a) A dishonest or selfish motive;
  - (b) a pattern of misconduct;
  - (c) multiple offenses involving the misrepresentation of the value of the property, the illicit encumbering of the property when it was the property of the Bankruptcy Court, and the failure to disclose his conduct to the court until confronted by the trustee;
  - (d) bad faith obstruction of the disciplinary proceeding by failing to comply with the Rules of Civil Procedure;
  - (e) refusal to acknowledge the wrongful nature of the conduct; and
  - (f) substantial experience in the practice of law.
2. There are no mitigating factors involved with Defendant's misconduct.
3. The aggravating factors outweigh the mitigating factors.
4. Mr. McGee's false statement in his Bankruptcy Petition and his failure to disclose to the trustee or to the bankruptcy court his action to refinance the rental house when it was still a part of the bankruptcy estate violated the trust and honesty that all officers of the court owe to each other, causing significant harm to our system of jurisprudence.

5. Mr. McGee engaged in multiple violations of the Revised Rules of Professional Conduct in this matter without regard to the court or proper administration of the bankruptcy court to further his own personal interest.

6. The Hearing Committee concludes that there is a substantial risk to the public and that Mr. McGee would continue to engage in misconduct if allowed to continue in the practice of law; that the entry of an Order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Mr. McGee committed and would send the wrong message to the attorneys and the public regarding the conduct expected of members of The Bar in this State.

7. The protection of the public requires that Mr. McGee not be permitted to resume the practice of law until he demonstrates that he has reformed; that he understands his obligations to the courts; and that reinstatement would not injure the standing of the legal profession.

Based upon **Findings of Fact and Conclusions of Law**, the **Findings of Fact Regarding Discipline**, and the **Conclusions with Respect to Discipline**, the hearing committee hereby enters the following:

#### **Order of Discipline**

1. The Defendant's license to practice law is suspended for five years, effective thirty days after service of this order upon him.

2. Defendant shall submit his license and membership card to the Secretary of the N.C. State Bar no later than 30 days after service of this order upon Defendant.

3. Defendant shall comply with all applicable provisions of the N.C. State Bar Discipline & Disability Rules, including, but not limited to, the wind down provisions set out in 27 N.C. Admin. Code Tit. 1, Chapter B, Section .0124.

4. The Defendant shall pay the costs of this proceeding within 60 days after service of the statement of costs upon him.

5. Three (3) years after the effective date of the suspension of Defendant's law license, or any time thereafter, Defendant may seek a stay of the remaining term of suspension, upon filing a written petition with the Disciplinary Hearing Committee and demonstrating that he has complied with the following conditions:

- (a) The Defendant timely and properly submitted his license and membership card to the Secretary, complied with the winding down provisions of the rules, and paid the costs of this proceeding as set forth in paragraphs 2, 3, and 4 above;
- (b) The Defendant shows by clear, cogent, and convincing evidence that the Defendant has reformed and presently possesses the moral qualifications for admission to practice law and that permitting the Defendant to resume the practice of law will not be detrimental to the integrity and standing of the Bar, the administration of justice, or the public interest;
- (c) The Defendant has complied with all present and any future orders of the DHC;
- (d) The Defendant has not engaged in the unauthorized practice of law during the period of suspension;

- (e) The Defendant has not been found in contempt of any court or agency during the period of suspension;
- (f) The Defendant has not engaged in any conduct during the period of suspension that would constitute grounds for discipline under N.C. Gen. Stat. § 84-28;
- (g) The Defendant understands the then current Rules of Professional Conduct;
- (h) The Defendant paid all mandatory Bar dues and assessments, including State Bar and District Bar dues and Client Security Fund assessments, and fully complied with all requirements of the State Bar Continuing Legal Education Department that were due and owing at the time of suspension;
- (i) Defendant has kept his address of record with the North Carolina State Bar current, has accepted all certified mail from the North Carolina State Bar, and has responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication; and
- (j) Defendant has not violated any local, state, or federal laws, excluding traffic offenses for which appearance may be waived.

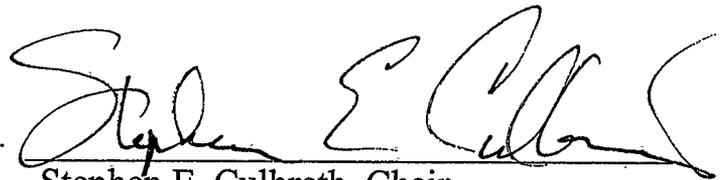
6. If the stay of suspension is denied, Defendant may not apply again for a stay until the expiration of one year from the date of denial.

7. If the stay of the suspension is granted, Defendant will comply with any conditions imposed by the DHC on granting the stay, including but not necessarily limited to compliance with provisions 5(c), (e), (f), (h), (i), and (j).

8. If the Defendant does not seek a stay of the suspension of his law license, or if the stay is revoked for any reason, the Defendant shall comply with the following conditions prior to seeking reinstatement at the end of the period of active period of suspension, Defendant shall comply with the provisions of paragraphs 2, 3, 4, and 5(b),(c),(d),(e),(f),(g),(h),(i), and (j) of this Order of Discipline.

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

This the 27<sup>th</sup> day of August, 2004.



Stephen E. Culbreth, Chair  
Disciplinary Hearing Committee