

10236

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
'04 DHC 39



THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
JANESE M. BALILES, 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, T. Richard Kane, and Lorraine Stephens. Margaret Cloutier represented plaintiff. Defendant was represented by Alan M. Schneider. Defendant has agreed to waive a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant also stipulates that she waives her right to appeal this consent order or challenge in any way the sufficiency of the findings, conclusions of law or order of discipline by consenting to the entry of this order.

Based on the consent of the parties, the Hearing Committee hereby enters the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Janese M. Baliles (hereinafter "Baliles"), was admitted to the North Carolina State Bar on August 21, 1982 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Baliles actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Asheville, Buncombe County, North Carolina.

4. In or about March 2002, Matthew J. Revis (hereinafter referred to as "Revis") engaged Baliles to close a loan Revis obtained to refinance real property owned by him. Baliles was to perform services and prepare documents as required by Revis's lender, including obtaining a commitment for title insurance before the closing and a final title insurance policy after the closing.

5. Before the closing, Baliles obtained a commitment for title insurance from Stewart Title Guaranty Company (hereinafter referred to as "Stewart Title") and received an invoice in the amount of \$103 from Stewart Title. The invoice was for the premium for the final title insurance policy and was to be paid by Baliles from the proceeds of the loan. The final title insurance policy would be issued by Stewart Title after the closing upon receipt of the premium amount and final title opinion prepared and signed by Baliles.

6. The Revis loan closing took place on or about March 26, 2002 and Baliles deposited the loan proceeds into her trust account. Baliles deducted \$103 from the loan proceeds for the title insurance premium and issued check number 7981, dated March 28, 2002, made payable to Stewart Title.

7. Baliles did not send check number 7981 to Stewart Title or provide Stewart Title a final title opinion within a reasonable time after Revis's March 26, 2002 loan closing.

8. Revis's lender, Alternative Mortgage Corp., called Baliles and contacted her by letter sent certified mail inquiring about the status of the title insurance policy. Baliles did not respond to those inquiries.

9. On or about February 27, 2003 Baliles provided a final title opinion and the premium to Stewart Title, obtained the final title insurance policy from Stewart Title and sent it to Revis's lender.

10. In or about March 2002, Janet E. Henry (hereinafter referred to as "Henry") engaged Baliles to close a loan Henry obtained to purchase real property. Baliles was to perform services and prepare documents as required by Henry's lender, including obtaining a commitment for title insurance before the closing and a final title insurance policy after the closing.

11. Before the closing, Baliles obtained a commitment for title insurance from Stewart Title and received an invoice in the amount of \$197.90 from Stewart Title. The invoice was for the premium for the final title insurance policy and was to be paid by Baliles from the proceeds of the loan. The final title insurance

policy would be issued by Stewart Title after the closing upon receipt of the premium amount and final title opinion prepared and signed by Baliles.

12. The Henry loan closing took place on or about March 28, 2002 and Baliles deposited the loan proceeds into her trust account. Baliles deducted \$197.90 from the loan proceeds for the title insurance premium and issued check number 7974, dated March 28, 2002, made payable to Stewart Title.

13. Baliles did not send check number 7974 to Stewart Title or provide Stewart Title a final title opinion within a reasonable time after Henry's March 28, 2002 loan closing.

14. Henry's lender, Alternative Mortgage Corp., called Baliles and contacted Baliles by letter sent certified mail inquiring about the status of the title insurance policy. Baliles did not respond to those inquiries.

15. On or about March 10, 2003 Baliles provided a final title opinion and the premium to Stewart Title, obtained the final title insurance policy from Stewart Title and sent it to Henry's lender.

16. From August 1992 until March 30, 2003 various clients engaged Baliles to close real property transactions for the clients for purchase or refinance real property. For each such closing Baliles was to perform services and prepare documents as required by the lender, when a lender was involved, including obtaining a commitment for title insurance before each closing and a final title insurance policy after each closing. In cash purchase transactions in which a lender was not involved Baliles performed services and prepared documents needed to complete a property transfer and as a habit of her practice collected a premium for title insurance in order to obtain a policy of owner's title insurance for the purchaser.

17. For each real property transaction referred to in Paragraph 16 above, Baliles deposited the loan proceeds or cash funds into her trust account and deducted a specific sum from such funds for the title insurance premium, then issued a check in that amount made payable to a title insurance company.

18. Between August 1992 and March 30, 2003, Baliles conducted 132 closings for which she did not send the checks for payment of premiums or provide final title opinions to the title companies. The checks issued as set forth in Paragraph 17 above, listed by date, number, amount and title insurance company, are itemized in Exhibit 1 attached hereto and incorporated herein as if set forth in full. The funds for each check listed in Exhibit 1 remained in Baliles' trust account as of September 30, 2003.

Based on 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 and the subject matter of this proceeding.

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that he violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

a. by failing to obtain final title insurance policies in the 132 closings listed in Exhibit 1 and failing to obtain the final title insurance policies within a reasonable time after the Revis and Henry closings, Baliles did not act with reasonable diligence and promptness in representing clients in violation of Rule 1.3 and former Rule 6(b)(3), and

b. by holding in her trust account the funds payable to title insurance companies in the 132 closings listed in Exhibit 1 and the Revis and Henry closings, Baliles did not promptly pay or deliver entrusted property to third persons as directed by her clients in violation of Rule 1.15-2(m) (Rule 1.15-2(h) before the May 4, 2000 revision) and former Rule 10.2(e).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee also enters the following

## FINDINGS REGARDING DISCIPLINE

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

- a. absence of a prior disciplinary record;
- b. absence of a dishonest or selfish motive;
- c. full and free disclosure to the hearing committee and cooperative attitude toward proceedings;

- d. personal difficulties and incidents of office damage leading to disruption in the operation of defendant's law practice; and
- e. good reputation in the legal community.

3. Defendant's conduct in failing to obtain title insurance policies in more than 132 instances threatened significant harm to all of those clients and their lenders in that, had claims been made against the properties, the clients and lenders could have been unprotected by insurance policies they thought they had purchased. The Hearing Committee finds and concludes that under the circumstances of this case, given the number of clients affected, the public will not be adequately protected by a censure and that a stayed suspension is necessary to allow implementation of conditions to ensure the protection of the public and defendant's future clients.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, and upon consent of the parties, the Hearing Committee enters the following

#### ORDER OF DISCIPLINE

1. The license of defendant, Janese M. Baliles, is hereby suspended for six months from the date this Order of Discipline is served upon her. The period of suspension is stayed for two years upon the following conditions:

a. No later than December 15, 2004 defendant shall contract with a licensed North Carolina attorney who maintains a private law practice in the judicial district in which defendant maintains her practice to serve as a practice monitor. Defendant will first secure the approval of her proposed practice monitor to the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Defendant will personally meet with her practice monitor at least once each quarter beginning in January 2005 during the period of stayed suspension. Defendant will keep the monitor apprised of all open and pending client matters and the status of all such matters. Within 15 days after the end of each calendar quarter of each year of the stayed suspension, defendant will deliver to the Office of Counsel written reports signed by the practice monitor confirming that the meetings are occurring and that the defendant is reporting on the status of defendant's client matters to the practice monitor and that the practice monitor is satisfied with the status of such client matters. Defendant will be solely responsible for all costs associated with the monitoring of her law practice.

b. Defendant shall complete within the first twelve months of the stay, at her own expense, a course of training in law office

management approved by the North Carolina State Bar, and expressly waive any rights she might otherwise have to confidential communications with persons associated with the management training program in regard to the prescribed course of training.

c. Defendant shall provide to the offices of the North Carolina State Bar within 15 days of the end of each calendar quarter, beginning with the quarter ending in March 2005, reports of any and all trust account funds maintained by defendant prepared by a certified public accountant engaged at defendant's own expense. Defendant shall provide such certified public accountant the necessary information to satisfactorily submit such quarterly reports.

d. Defendant shall successfully complete eight hours of the 12 hours required of each lawyer per year of continuing legal education from a sponsor approved by the North Carolina State Bar on the topic of real property issues and report same to the Office of Continuing Legal Education of the North Carolina State Bar.

e. By November 15, 2004, defendant shall provide to the North Carolina State Bar documentation satisfactory to the Office of Counsel that defendant has appropriately disbursed the funds for each of the 132 instances listed in Exhibit 1, either for obtaining policies of title insurance or for some other appropriate purpose including refund of the premiums to the client when requested by the client.

f. Defendant shall not violate any state or federal laws or any provisions of the Revised Rules of Professional Conduct during the period of the stayed suspension.

g. Defendant shall respond to all State Bar requests for information by the deadline stated in the communication or within 30 days, whichever is earlier, as required by Rule 8.1(b) of the Revised Rules of Professional Conduct.

h. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements.

i. 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 defendant.

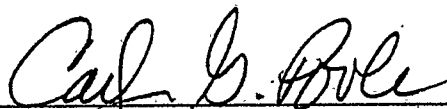
2. If, upon a motion by the State Bar, a hearing committee of the DHC finds that the defendant has violated any of the conditions in Paragraphs 1(a)

through (i) of this Order of Discipline, the suspension of defendant's license shall be activated. If the suspension is activated, prior to seeking reinstatement of her license, defendant must:

a. Comply with all provisions of State Bar Discipline and Disability Rules, 27 N.C.A.C. §1B .0125(b); and

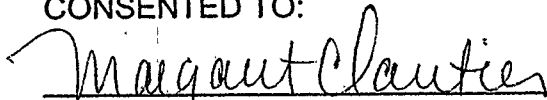
b. Satisfy all the conditions set forth in Paragraphs 1(a) through (i) of this Order of Discipline

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 11 day of October, 2004.



CARLYN G. POOLE, CHAIR  
HEARING COMMITTEE

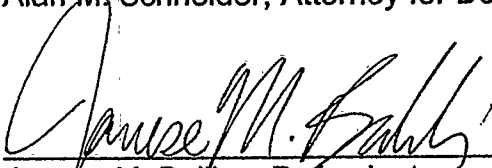
CONSENTED TO:



Margaret Cloutier, Deputy Counsel  
Attorney for Plaintiff



Alan M. Schneider, Attorney for Defendant



Janese M. Ballles, Defendant

*Exhibit 1*

	DATE	CHECK NUMBER	CHECK AMOUNT	PAYEE
1	08/31/92	198	69.60	Commonwealth
2***	09/01/92	227 correction made to check number	50.00	Commonwealth
3	09/02/92	478	72.00	Commonwealth
4	09/03/92	605	25.00	Commonwealth
5	09/04/92	829	96.60	Commonwealth
6	09/05/92	885	66.80	Commonwealth
7	02/17/93	1115	100.00	Commonwealth
8	02/21/93	1445	25.00	Commonwealth
9	02/24/93	1845	25.00	Commonwealth
10	02/25/93	1850	68.00	Stewart
11	02/01/94	2064	44.80	Commonwealth
12	02/25/94	2113	34.60	Stewart
13	05/23/94	2278	50.00	Stewart
14	09/23/94	2448	50.00	Stewart
15	12/07/94	2639	100.00	Stewart
16	03/15/95	2705	86.00	Stewart
17	04/10/95	2735	450.00	To Refund to Client
18	04/10/95	2738	100.00	To Refund to Client
19	05/18/95	2778	25.00	Commonwealth
20	05/30/95	2827	30.00	Commonwealth
21	08/30/95	2963	54.50	Stewart
22	08/30/95	2974	50.00	Stewart



23	10/05/95	3053	180.00	Stewart
24	03/15/96	3277	70.00	Stewart
25	03/26/96	3281	66.00	Stewart
26	06/21/96	3486	62.00	Stewart
27	06/21/96	3497	180.00	Stewart
28	06/28/96	3508	50.00	Stewart
29	07/02/96	3521	70.00	Stewart
30	07/26/96	3576	34.00	Commonwealth
31	*** 08/26/96	3618	68.00	Stewart
	<i>Correction to \$68.00 from incorrect amount of \$668.00</i>			
32	08/30/96	3625	162.00	Stewart
33	09/05/96	3672	240.00	Stewart
	<i>Deleted</i>	3750	25.00	<i>First Union</i>
	<i>This is not a title insurance check</i>			
34	10/02/96	3751	50.00	Stewart
35	10/31/96	3797	50.00	Stewart
36	12/03/96	3860	80.00	Stewart
37	12/16/96	3873	34.00	Stewart
38	01/23/97	3954	72.00	Stewart
39	05/16/97	4195	33.00	Stewart
40	06/16/97	4251	206.00	Stewart
41	07/10/97	4323	256.00	Stewart

Page Three

42	07/17/97	4331	268.00	Commonwealth
43	07/31/97	4365	118.00	Commonwealth
44	08/05/97	4385	25.00	Commonwealth
45	08/12/97	4399	25.00	Commonwealth
46	08/25/97	4410	92.00	Stewart
47	09/26/97	4475	124.00	Stewart
48	09/30/97	4478	142.00	Stewart
49	10/02/97	4488	152.00	Stewart
50	11/03/97	4532	120.00	Stewart
51	11/07/97	4544	164.90	Stewart
52	11/18/97	4569	128.00	Stewart
53	12/08/97	4639	124.00	Stewart
54	12/10/97	4647	98.00	Stewart
55	12/23/97	4726	110.00	Stewart
56	01/09/98	4777	70.00	Stewart
57	01/12/98	4781	214.00	Stewart
58	01/21/98	4819	214.00	Stewart
59	03/02/98	4922	152.00	Stewart
60	03/31/98	4984	170.00	Stewart
61	06/26/98	5398	80.00	Stewart
62	07/07/98	5423	484.85	Stewart
63	07/23/98	5536	100.00	Stewart

Page Four

64	08/31/98	5623	174.85	Stewart
65	09/25/98	5698	288.00	Stewart
66	10/09/98	5731	75.00	Stewart
67	12/16/98	5935	146.00	Stewart
68	12/29/97	5982	73.00	Stewart
69	01/28/99	6027	78.00	Stewart
70	02/19/99	6081	300.00	Stewart
71	03/31/99	6199	124.00	Stewart
72	03/31/99	6200	26.00	Stewart
73	04/05/99	6209	76.00	Stewart
74	07/16/99	6445	173.00	Stewart
75	01/27/99	6493	148.00	Stewart
76	01/30/99	6515	66.00	Stewart
77	08/19/99	6576	218.00	Stewart
78	09/02/99	6599	118.00	Stewart
79	10/20/99	6684	297.50	Stewart
80	10/28/99	6733	218.00	Stewart
81	11/12/99	6750	632.00	Stewart
82	11/19/99	6758	50.00	Stewart
83	11/24/99	6767	144.00	Stewart
84	11/30/99	6788	176.00	Stewart
85	12/02/99	6775	267.00	Stewart

Page Five

86	12/14/99	6826	90.00	Stewart
87	12/16/97	6848	52.00	Stewart
88	03/01/00	6928	50.00	Stewart
89	03/01/00	6932	126.00	Stewart
90	03/02/00	6938	156.00	Stewart
91	03/22/00	6957	70.00	Stewart
92	03/28/00	7000	146.35	Stewart
93	04/07/00	7019	200.00	Stewart
94	04/17/00	7038	60.00	Stewart
95	04/18/00	7040	50.00	Stewart
96	06/15/00	7118	205.00	Stewart
97	06/28/00	7143	128.00	Stewart
98	06/28/00	7166	156.00	Stewart
99	06/22/00	7172	224.00	Stewart
100	07/06/00	7180	117.00	Stewart
101	07/26/00	7202	50.00	Stewart
102	08/25/00	7249	200.00	Stewart
103	09/20/00	7268	172.00	Stewart
104	10/16/00	7287	50.00	Stewart
105	11/09/00	7331	270.35	Stewart
106	11/10/00	7338	188.00	Stewart
107	12/22/00	7381	58.00	Stewart

Page Six

108	12/28/00	7389	80.00	Stewart
109	04/11/01	7484	50.00	Stewart
110	06/27/01	7556	156.20	Stewart
111	07/06/01	7576	72.00	Stewart
112	07/06/01	5073	50.00	Stewart
113	08/16/01	7659	164.00	Stewart
114	11/16/01	7810	150.00	Stewart
115	12/05/01	7857	84.00	Stewart
116	12/12/01	7865	153.00	Stewart
117	01/03/01	7910	60.00	Stewart
118	01/31/02	7938	175.00	Stewart
119	01/31/02	7948	300.00	Stewart
120	03/05/02	7965	176.00	Stewart
121	06/03/02	8044	262.00	Stewart
122	06/25/02	8074	138.40	Stewart
123	06/28/02	8081	226.25	Stewart
124	11/26/02	8216	268.00	Stewart
125	11/26/02	8225	120.00	Stewart
126	02/04/03	8311	218.00	Stewart
127	02/13/03	8320	269.50	Stewart
128	02/18/03	8324	60.00	Stewart
129	02/20/03	8329	81.20	Stewart

*Page Seven*

130	02/24/03	8348	105.25	Stewart
131	03/12/03	8362	134.00	Stewart
132	03/14/03	8376	121.50	Stewart