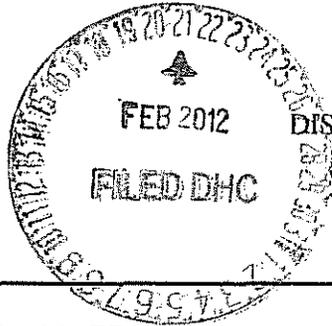


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
11 DHC 7

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
EDWARD V. ZOTIAN, Attorney, )  
Defendant )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND  
ORDER OF DISCIPLINE

This matter was heard on December 2, 2011 by a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair; Robert F. Siler and Joseph Barlow Herget. A. Root Edmonson represented the North Carolina State Bar. David B. Freedman represented the defendant. Based upon the stipulations entered into by the parties and the evidence presented at the hearing, the panel finds the following facts were established by clear, cogent and convincing evidence:

FINDINGS OF FACT

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, Edward V. Zotian (hereinafter, "Zotian"), was admitted to the North Carolina State Bar on July 1, 1979, and at all times mentioned herein, was 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. After a hearing on August 18, 2004, Zotian was suspended from the practice of law in North Carolina for five years by an order of discipline entered on September 3, 2004 and served upon Zotian on September 15, 2004 in 04 DHC 1. The effective date of the 2004 order of discipline and the start of Zotian's suspension was October 15, 2004.
4. Zotian was suspended from the practice of law in North Carolina for an additional five years by an order of discipline entered on October 20, 2006 and served upon Zotian on October 26, 2006 in 06 DHC 8 for conduct that occurred after the effective date of the 2004 order of discipline. The effective date of the 2006 order of discipline was at the expiration of the suspension imposed in the 2004 order of discipline, i.e. October 15, 2009.

5. At no time since the effective date of the 2004 order of discipline was Zotian reinstated to the active practice of law in North Carolina.

6. In January 2008, Winston-Salem lawyer Harry A. Boles (hereinafter, "Boles"), a solo practitioner, hired Zotian as an independent contractor paralegal to do research and draft documents for Boles' review on a case-by-case basis.

7. In December 2008, Michael Salimbene (hereinafter, "Salimbene") contacted Zotian for assistance and advice in regard to Salimbene's desire to purchase a Ferrari dealership in Georgia in association with the dealership's sales manager, R. Steven Eckhoff (hereinafter, "Eckhoff").

8. After being contacted by Salimbene, Zotian asked Boles if he would agree to represent two clients interested in purchasing an automobile dealership in Georgia.

9. Boles discussed with Zotian the possibility of his firm representing the clients interested in buying the Georgia dealership in an attempt to reach some understanding of the terms upon which his firm would become engaged.

10. Boles communicated to Zotian that he would have to meet the clients and enter into a retainer agreement before his firm would undertake any role in the representation of the prospective buyers of the Georgia automobile dealership.

11. Boles was never retained to represent either Salimbene or Eckhoff.

12. Zotian was aware that Boles had not been retained to represent Salimbene or Eckhoff.

13. Zotian undertook to represent Eckhoff himself in his effort to purchase the Georgia Ferrari dealership from Edward Wettach III (hereinafter, "Wettach"), President of S & W Sports Cars, Inc.

14. Zotian never revealed his representation of Eckhoff to Boles.

15. In February 2009, Zotian drafted a Confidentiality Agreement for Eckhoff to sign and send to Wettach.

16. Zotian sent the Confidentiality Agreement to Eckhoff by email on February 24, 2009.

17. The Confidentiality Agreement was a legal document that Zotian prepared without any supervision from Boles or any other lawyer.

18. In March 2009, Zotian drafted a Letter of Intent for Eckhoff to send to Wettach setting out the non-binding understandings and the binding agreements between Wettach and Eckhoff (on behalf of the purchasers) concerning the prospective sale of the dealership.

19. Zotian sent a draft of the Letter of Intent to Eckhoff and Salimbene by email on March 19, 2009.

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20. On April 1, 2009, Zotian sent the final version of the Letter of Intent to Eckhoff by email with instructions on what to do with the Letter of Intent.

21. The Letter of Intent was a legal document that Zotian prepared. Boles may have reviewed the Letter of Intent, but did not direct that it be sent to Eckhoff.

22. In addition to drafting the Confidentiality Agreement and the Letter of Intent, Zotian provided other services, including travelling to Texas to meet with prospective investors to structure the capital necessary for the acquisition of the dealership, negotiating with Wettach on securing a lease of the dealership's real estate and the purchase S & W Sports Cars, Inc.'s assets, reviewing and revising the business plan for the acquisition of the Ferrari dealership and reviewing the manufacturer's requirements for an application for the prospective buyers' acquisition of the Ferrari dealership.

23. The services that Zotian was providing to Eckhoff that are listed in paragraph 22 above were legal services that Zotian provided without any supervision from Boles or any other lawyer.

24. Zotian has never been licensed to practice law in Georgia.

25. The committee is unable to determine whether or not the legal services that Zotian provided to Eckhoff were services that should only have been provided by a lawyer licensed in Georgia.

26. Zotian misled Eckhoff into believing that the legal work he was doing for Eckhoff was work that he was authorized to do. Any legal work that Zotian performed that was not supervised by Boles was not authorized.

27. Zotian did not mislead Salimbene because Salimbene was aware of Zotian's suspended status and was seeking business advice rather than legal advice.

28. On December 7, 2009, after the prospective purchase of the Ferrari dealership fell through, Zotian sent Eckhoff by email a "Summary Invoice" for \$16,468 for the legal services he had provided to Eckhoff relating to the attempt to purchase the Ferrari dealership.

29. Zotian's "Summary Invoice" was not an invoice authorized or approved by Boles or any other lawyer. It was Zotian's attempt to bill Eckhoff for the legal services Zotian alone had performed for Eckhoff.

BASED UPON the foregoing Findings of Fact, the panel makes the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before this panel of the Disciplinary Hearing Commission and the Disciplinary Hearing Commission and this panel have jurisdiction over Zotian and the subject matter.

2. Zotian's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Zotian violated the Rules of Professional Conduct in effect at the time as follows:

- (a) by continuing to engage in the practice of law on behalf of Eckhoff after the effective date of his suspension from the practice of law in North Carolina, Zotian practiced law in a jurisdiction (North Carolina) where doing so violated the regulation of the legal profession in that jurisdiction in violation of N.C.G.S. §84-4, a Class I misdemeanor, and Rule 5.5(a);
- (b) by falsely representing to Eckhoff that he was authorized to provide legal services for Eckhoff because the Boles' law firm was representing Eckhoff when Zotian was providing all of the legal services himself without the knowledge, consent or supervision of Boles, Zotian engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Zotian knowingly continued to practice law after he was disciplined for that very same offense in his 2006 order of discipline.
2. Zotian's decision to represent Eckhoff while knowing that Boles had not undertaken to have his firm represent Eckhoff was motivated by personal gain.
3. Zotian has shown a flagrant and total disregard of two previous orders of the Disciplinary Hearing Commission.
4. Zotian refused to acknowledge that he was practicing law on behalf of Eckhoff and that he was not being supervised by Boles while he was practicing law.
5. Zotian's conduct significantly and substantially harmed the administration of justice and the legal profession. His disregard of the previous orders of discipline could only have a negative impact on the public's perception of the legal profession.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following:

#### CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w) (1), (2) and (3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

**General Factors** from 27 N.C.A.C. 1B §.0114(w) (3):

- a. Zotian had two prior disciplinary offense in this state;

- b. Zotian had a dishonest or selfish motive;
- c. Zotian exhibited a pattern of misconduct; and
- d. Zotian refuses to acknowledge the wrongful nature of his conduct.

**Suspension and Disbarment Factors from 27 N.C.A.C. 1B §.0114(w) (1):**

- a. Zotian intended to commit acts where the resulting harm or potential harm was foreseeable;
- b. The circumstances reflect Zotian's lack of honesty, trustworthiness and integrity;
- c. Zotian's conduct had a negative impact on the public's perception of the legal profession; and
- d. Zotian engaged in acts of dishonesty and deceit.

**Disbarment Factor from 27 N.C.A.C. 1B §.0114(w) (2):**

- a. Zotian engaged in acts of dishonesty, misrepresentation, and deceit.
2. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, censure or suspension of Zotian's license would not be sufficient discipline because of the gravity of the actual harm Zotian's conduct caused to the public, the administration of justice and the legal profession, and because of the gravity of the significant potential harm to the public, the administration of justice, and the legal profession if Zotian were permitted to continue practicing law.
3. The hearing panel finds that discipline short of disbarment would not adequately protect the public, the legal profession or the administration of justice for the following reasons:
- a. Zotian's five year suspension in the 2006 order of discipline was for virtually the same misconduct. The maximum suspension ordered in the 2006 case was not enough to deter Zotian from again engaging in the practice of law;
  - b. Misconduct involving misrepresentations and deceit are among the most serious that any attorney can commit. Zotian was found to have engaged in making false statements or misrepresentations in each of his three disciplinary cases. Such offenses demonstrate that Zotian is not trustworthy. The public should be able to assume that all lawyers are trustworthy; and
  - c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Zotian committed and would send the wrong message to
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attorneys and to the public regarding the conduct expected of members of the Bar of this state.

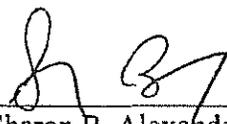
4. Protection of the public, the legal professional and the administration of justice requires that Zotian not be permitted to resume the practice of law until he demonstrates the following:
  - a. That he has reformed;
  - b. That he understands his obligations to his clients, the public, the legal profession and the administration of justice; and
  - c. That permitting him to practice law will not be detrimental to the public, or the integrity and standing of the legal profession or the administration of justice.

Based upon the foregoing Findings of Fact, Conclusions of Law, and the Findings and Conclusions Regarding Discipline, the hearing panel enters the following

#### ORDER OF DISCIPLINE

1. Edward V. Zotian is hereby DISBARRED from the practice of law, effective 30 days from the date of service of this order upon him.
2. Zotian is taxed with the costs and administrative fees of this action, including the deposition costs, as assessed by the Secretary which shall be paid within ninety (90) days of service of the notice of costs upon him.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other panel members, this the 21 day of February, 2012.

  
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Sharon B. Alexander, Chair  
Disciplinary Hearing Panel