

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
23 DHC 4

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

HARRY C. MARSH, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

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, Harry C. Marsh ("Marsh"), was admitted to the North Carolina State Bar in 2010, 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 Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Marsh was engaged in the practice of law in the State of North Carolina and maintained a law office in Matthews, Mecklenburg County, North Carolina.

4. During all pertinent times, Marsh maintained a general attorney trust account at TowneBank, account number ending in digits x3274 ("TA 3274").

FIRST CLAIM FOR RELIEF
Embezzlement

5. Paragraphs 1 – 4 are incorporated as if fully set forth herein.

6. On October 11, 2019, TS4, LLC ("TS4") wired \$800,000.00 into TA 3274 for a loan to buyer/borrower S&B Real Estate Investments, LLC ("S&B") for the purchase of two

parcels of land located at 10440 and 10524 Brief Road, Charlotte, NC, tax parcels 197-271-09 and 197-131-01 (“the two parcels” or “the intended purchase”).

7. Marsh received TS4’s \$800,000.00 in a fiduciary capacity as settlement agent for S&B’s purchase of the two parcels.

8. TS4’s provision of this loan and sending of this \$800,000.00 wire were conditioned upon certain requirements, including that TS4 receive an executed promissory note, a recorded deed of trust, a fully executed settlement statement, and a final lender’s title insurance policy.

9. The above-listed requirements were communicated to Marsh’s paralegal on October 10, 2019 and again on October 11, 2019 by R. Melton (“Melton”) on behalf of TS4.

10. B. Haigler (“Haigler”) with S&B also communicated TS4’s requirements for TS4’s loan of \$800,000.00 to Marsh and Marsh’s paralegal.

11. The communications with Marsh and his office concerning TS4’s requirements included the following:

- a. On October 10, 2019 at 9:52am, Haigler responded to an e-mail from Marsh and stated “One lender on the big land deal is TS4. He is lending \$800k and his attorney is drafting those docs. He will be in third lien position on the land parcels only behind Dan Hayes and Patricia Boyer. They would like to see the title policy showing them in 3rd position.”
- b. On October 10, 2019 at 10:07am, Marsh’s paralegal, N. Davila (“Davila”), responded to Haigler’s 9:52am e-mail.
- c. On October 10, 2019 at 10:09am, Marsh responded to Davila’s e-mail, in the same e-mail chain.
- d. On October 10, 2019 at 1:32pm, Haigler responded to questions about funding in an e-mail to Marsh and his paralegals Davila and J. Brennan. In this e-mail Haigler stated in pertinent part, “These folks will have a deed of trust against the land: TS4 - \$800k – they are wiring funds tomorrow. There [sic] attorney (James Allen Lee) prepared the promissory note. He would like Harry to provide DOT and a copy of the title policy showing TS4 in 3rd position behind Dan Hayes and Patricia Boyer.”
- e. On October 10, 2019 at 3:44pm, Melton sent an e-mail to recipients including Marsh’s paralegal Davila, forwarding an e-mail from TS4’s attorney J. Lee stating TS4 needs a deed of trust, settlement statement, and title insurance commitment to fund.

- f. On October 10, 2019 at 4:49pm, Davila replied to Melton's e-mail with an e-mail that stated "Please see attached Settlement Statement and revised Commitment."
- g. On October 11, 2019 at 11:00am, Melton e-mailed Davila with a copy to Haigler stating that "in order [for TS4] to ACH the funds" they would require an original executed promissory note, an original recorded deed of trust, an original fully executed settlement statement, and a final title insurance lender policy.
- h. On October 11, 2019 at 2:13pm, Haigler forwarded Melton's October 11, 2019 11:00am e-mail with TS4's funding requirements to Marsh.
- i. On October 11, 2019 at 2:28pm, Marsh e-mailed Melton stating "ACH? ACH won't post to our account for 3-4 days[.] [W]ire instructions attached[.]"
- j. Marsh's October 11, 2019 2:28pm e-mail to Melton contained the subject line of "documents for funding" and had three attachments, one labeled "Ts4," one labeled "Signed HUD," and one labeled "2019 Wire Instructions Paragon Townebank."
- k. The "Ts4" attachment contained a promissory note for \$800,000.00 signed by Haigler and an unrecorded deed of trust securing TS4's \$800,000.00 with property identified as the two parcels.
- l. On October 11, 2019 at 2:32pm, Melton e-mailed Marsh back and said he meant wire and would take care of it now.

12. Pursuant to N.C. Gen. Stat. § 45A-4, the deed of trust could not be recorded by Marsh until Marsh had the funds necessary for the transaction.

13. Based upon Marsh's October 11, 2019 e-mail, the documents Marsh provided with that e-mail, and the documents provided to him by Marsh's paralegal the day prior, Melton was led to believe that S&B's purchase of the two parcels was proceeding on October 11, 2019 and that his requirements for lending \$800,000.00 to S&B for the purchase of the two parcels were being met and would be fulfilled.

14. On October 11, 2019 at 3:20pm, TS4, via Titan Stainless of SC, LLC ("Titan"), wired \$800,000.00 to TA 3274.

15. S&B's purchase of the two parcels did not occur in October 2019.

16. Marsh did not record the deed of trust for TS4 or return TS4's \$800,000.00.

17. On October 15, 2019, S&B proceeded with the purchase of a different parcel of land on Brief Road, located at 10450 Brief Road, tax parcel 197-271-16 (the "other parcel" or "other purchase").

18. After a \$750,000.00 loan from Metrolina Capital Group, LLC, S&B was required to provide an additional \$790,852.88 at closing to purchase the other parcel.

19. The HUD-1 Settlement Statement that Marsh or his staff prepared, that Marsh signed, that Marsh had signed by the parties, and that Marsh had distributed for the other purchase represented that S&B brought \$790,852.88 to the closing for the other purchase.

20. S&B did not bring \$790,852.88 to the closing.

21. Instead, Marsh allowed Haigler to use TS4's \$800,000.00, present in TA 3274 for S&B's purchase of the two parcels, to cover the \$790,852.88 required from S&B for the other purchase.

22. To fund S&B's purchase of the other parcel, Marsh disbursed from TA 3274 \$790,852.88 of the \$800,000.00 TS4 had entrusted to Marsh for the two parcels.

23. Marsh did not preserve in his trust account or return to TS4 the remaining \$9,147.12.

24. Marsh disbursed to Haigler the \$9,147.12 difference between the \$800,000.00 and the \$790,852.88.

25. Marsh did not discuss with Melton or anyone else on behalf of TS4 that the purchase of the two parcels did not proceed.

26. Marsh did not discuss with Melton or anyone else on behalf of TS4 the use of TS4's \$800,000.00 for the other purchase or for any other purpose.

27. TS4 did not authorize use of its \$800,000.00 to cover the \$790,852.88 that S&B needed to provide for the other purchase.

28. TS4 did not authorize disbursement of \$9,147.12 of its \$800,000.00 to Haigler.

29. Marsh did not create a subsidiary trust account ledger upon receipt into his trust account of the \$800,000.00 wire from Titan for TS4 showing the receipt of those funds.

30. Marsh did not provide TS4 with any accounting of the receipts and disbursements of TS4's \$800,000.00.

31. On June 10, 2021, the State Bar opened grievance file 21G0471 concerning Marsh's mishandling of TS4's \$800,000.00.

32. On June 16, 2021, the State Bar e-mailed Marsh a letter of notice in grievance 21G0471.
33. On June 23, 2021, Marsh accepted service of the letter of notice in grievance 21G0471.
34. In this letter of notice, the State Bar requested documents including the following:
- a. Any and all documentation pertaining to Marsh's receipt and/or disbursement of the \$800,000.00 from TS4, including but not limited to any and all related closing files;
 - b. Any and all communications with (to or from) TS4 regarding its \$800,000.00; and
 - c. All bank statements and instruments (including but not limited to wires and/or canceled checks) showing the receipt and disbursement of the \$800,000.00 and/or disbursing the funds.
35. Marsh's response to the letter of notice and the responsive documents were due to the State Bar no later than July 8, 2021.
36. Marsh did not provide his response and the requested documents by July 8, 2021.
37. On July 15, 2021, the State Bar e-mailed Marsh a letter noting his failure to respond and asked for his response by July 22, 2021, although it would be considered late.
38. On July 16, 2021, Marsh provided a response and certain e-mails referenced in his response. Marsh did not answer all of the items summarized in the State Bar's letter of notice and he did not provide the requested documents.
39. On July 30, 2021, the State Bar sent Marsh a letter noting his failure to provide the requested documents and his failure to respond to all of the items summarized in the letter of notice. The State Bar asked Marsh to provide the requested documents and responses to the inquiries in the letter by August 27, 2021.
40. Marsh did not respond to the State Bar's July 30, 2021 letter and did not provide the requested documents.
41. On September 7, 2021, the Chair of the Grievance Committee of the State Bar issued a subpoena to Marsh in grievance file 21G0471 requiring production by October 7, 2021 of the following:
- a. Any and all documentation pertaining to his receipt and/or disbursement of the \$800,000.00 from TS4, including but not limited to any and all related closing files;

- b. Any and all communications with (to or from) TS4 regarding its \$800,000.00, including attachments to any e-mails or letters;
- c. Client ledgers for any and all funds received from or for S&B, including but not limited to funds wired by TS4 and certain other specified individuals; and
- d. All bank statements and instruments (including but not limited to wires and/or canceled checks) showing the receipt and disbursement of the \$800,000.00 from TS4 and/or disbursing the funds.

42. Marsh accepted service of the subpoena on September 10, 2021.

43. On October 7, 2021, Marsh provided a narrative response to the State Bar's inquiries, but Marsh did not provide the subpoenaed documents.

44. On October 8, 2021, the State Bar sent Marsh an e-mail regarding the subpoenaed documents that Marsh had not produced.

45. On October 11, 2021 Marsh provided some responsive documents, but not all of the subpoenaed documents. Specifically:

- a. Marsh provided certain select documents but not all documentation pertaining to his receipt and/or disbursement of the \$800,000.00 from TS4, and did not produce the pertinent closing files;
- b. Marsh did not produce all e-mails with (to or from) TS4 regarding its \$800,000.00 and did not include attachments to all e-mails he did produce, including having failed to produce the attachments his paralegal Davila attached to her October 10, 2019 e-mail to Melton with TS4;
- c. The client ledgers produced did not identify any funds as received from the specified individuals; and
- d. Marsh did not produce all bank statements and instruments (including but not limited to wires and/or canceled checks) showing the receipt and disbursement of the \$800,000.00 from TS4 and/or disbursing the funds, indicating they had been previously produced.

46. On December 16, 2021, the State Bar sent Marsh a letter by e-mail and certified mail regarding the above-described failure to comply with the State Bar's subpoena issued in 21G0471 and requested that he cure his noncompliance no later than January 3, 2022.

47. Marsh did not provide any additional records responsive to the subpoena issued in 21G0471 by January 3, 2022.

48. Marsh did not provide any additional records responsive to the subpoena until the State Bar notified him in February 2022 that it would seek an injunction to prohibit him from handling entrusted funds and serving in a fiduciary capacity based in part upon his failure to have produced the subpoenaed documents.

49. In Marsh's narrative responses to the State Bar's inquiries in 21G0471, Marsh made false statements of material fact to the State Bar, including the following statements:

- a. "At the time of the funding of the \$800,000.00, our firm (and I would argue TS4) didn't know what address S&B was intending to purchase."
- b. "This didn't become a deal where TS4 lended [sic] in 3rd position until many months after the funding, where husband/wife took first and second position, after no other lenders other than TS4 were discovered."
- c. "When the \$800,000.00 was sent to us by TS4, our firm didn't have a contract for this property (or any property), let alone any other point of reference."
- d. "The funds were sent in advance of the 'deal' and they would figure details out, later."
- e. "Within the last day or two between execution of these documents [the promissory note and deed of trust he had S&B sign] and funding of the final documents, TS4 completely changed course and had an unknown attorney submit a separate DOT that encumbered their interest."
- f. "The funds [from TS4] were placed upon our office with no prerequisite requirements: only that Brian Haigler use them as he desired for purchase of any portion of this property as desired."
- g. There was "a single email from TS4 attorney that completely changed the landscape of the loan and requested a secured loan," he "admit[s] receiving this email but did not respond do [sic] it Instead, I operated under the many-month belief between the parties that I had previously created [referencing a trust concept that was not used]"

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline as follows:

- I. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
 - a) By disbursing TS4's \$800,000.00 for a purpose and to recipients not authorized by TS4 and without having met TS4's requirements for providing the \$800,000.00, Marsh misappropriated TS4's \$800,000.00 and used it for the benefit of S&B and Haigler, and thereby failed to properly maintain and disburse fiduciary funds in violation of Rule 1.15-2(a), (k), (n), committed a criminal act (embezzlement) that reflects

adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);

- b) By disbursing TS4's funds without having recorded the deed of trust required by TS4 for the transaction for which TS4 provided the funds, Marsh failed to properly maintain entrusted property and breached his fiduciary duties to TS4 in violation of Rule 1.15-2(a);
- c) By failing to provide TS4 with an accounting showing the receipt and disbursement of TS4's funds upon the complete disbursement of TS4's funds, Marsh failed to provide the required accounting of all transactions concerning the fiduciary funds to TS4 upon termination of the lawyer's professional fiduciary services in violation of Rule 1.15-3(f);
- d) By having prepared, signed, had signed by parties, and distributed a HUD-1 Settlement Statement for the other purchase that falsely stated S&B brought \$790,852.88 to closing when the funds used belonged to TS4, Marsh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);
- e) By misleading Melton to believe TS4's \$800,000.00 was being used for S&B's purchase of the two parcels through the e-mails and documents Marsh and his staff provided to Melton, Marsh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);
- f) By making false statements regarding the funds from TS4 in response to the inquiries of the State Bar in grievance 21G0471, Marsh knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);
- g) By failing to timely and fully respond to the inquiries and subpoena of the State Bar in grievance file 21G0471, Marsh knowingly failed to respond to a lawful demand for information from a disciplinary authority in a disciplinary matter in violation of Rule 8.1(b).
- h) By failing to create or have created a subsidiary trust account ledger upon receipt into his trust account of the \$800,000.00 wire from Titan for TS4 showing the receipt of those funds, Marsh failed to create a subsidiary trust account ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received upon the receipt of entrusted property in violation of Rule 1.15-3(b)(5); and

- II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct and for failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter.

SECOND CLAIM FOR RELIEF
Failure to Record Deed of Trust

50. Paragraphs 1 – 4 are incorporated as if fully set forth herein.

51. In May 2020, Marsh served as closing attorney for a transaction in which R. Holland, M. Holland, and G. Howell (“the sellers”) sold property located at 152 Vermillion Loop, Statesville, NC to CLTBuyers, LLC (aka CLT Buyers, LLC) (“CLT”).

52. The property was transferred subject to a deed of trust recorded in 2019 for the sellers’ mortgage loan.

53. This prior loan was not paid off and the 2019 deed of trust was not satisfied as part of the sale to CLT.

54. CLT executed a deed of trust acknowledging that the sellers advanced to CLT a sum equal to the unpaid principal balance of the sellers’ mortgage towards CLT’s purchase of the property, and securing the sellers’ interest with the 152 Vermillion Loop property.

55. The sellers were assured at closing that Marsh would record all documents that needed to be recorded.

56. R. Holland was aware that deeds of trust are documents that are recorded and expected Marsh to record the deed of trust from CLT to the sellers contemporaneously with recording the deed from the sellers to CLT for this transaction.

57. Marsh recorded the deed from the sellers to CLT.

58. Marsh did not record the deed of trust from CLT to the sellers by which the sellers’ interests were to be secured.

59. Marsh served as closing attorney for a transaction in July 2020 in which CLT conveyed the 152 Vermillion Loop property it had received from the sellers to a third party, M. Shanklin (“Shanklin”).

60. Marsh recorded a deed of trust for this transaction.

61. The deed of trust indicated that this was a seller-financed purchase, with Shanklin being indebted to CLT in the amount of \$215,000.00.

62. Marsh failed to report or pay excise tax for the deed he recorded from CLT to Shanklin.

63. In August 2021, R. Holland contacted Marsh concerning the failure to record the deed of trust for the sellers (R. Holland, M. Holland and G. Howell).

64. In response, Marsh stated to R. Holland that, if he recalled correctly, the documents for the transaction stated that the deed of trust would not be recorded.

65. On August 14, 2021, R. Holland e-mailed Marsh that he saw nothing in the documents stating that the deed of trust would not be filed and asked Marsh to review the original documents and to provide him with a page number for such a provision.

66. In response, Marsh asked, "didn't you already come to pick up these originals?"

67. R. Holland responded, "You should still have the originals so Just [sic] let me know when they will be ready for pickup."

68. After further communications, on August 24, 2021 Marsh told R. Holland that he would have the deed of trust recorded.

69. The State Bar opened grievance file 21G0710 concerning this matter and sent inquiries to Marsh for his response.

70. In Marsh's narrative responses to the State Bar's inquiries in 21G0710, Marsh made false statements of material fact to the State Bar, including the following statements: "This seller requested that we file the DOT after picking up the original DOT from our office. Our paralegals did not record it because we no longer had the original."

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline as follows:

- I. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
 - a. By recording the deed from the sellers to CLT without having contemporaneously recorded the deed of trust for the sellers, Marsh failed to properly maintain entrusted property and breached his fiduciary duties to the sellers in violation of Rule 1.15-2(a);
 - b. By failing to report and pay excise tax for the deed from CLT to Shanklin, Marsh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

- c. By making false statements regarding the deed of trust in response to the inquiries of the State Bar in grievance 21G0710, Marsh knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c); and
- II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct.

THIRD CLAIM FOR RELIEF
Bankruptcy Court

71. Paragraphs 1 – 4 are incorporated as if fully set forth herein.

72. Marsh was retained to conduct same-day closings in which R. Rorie ("Rorie") and C. Boykins ("Boykins") would sell property located at 6231 Monteith Drive, Charlotte to NTL Investments, LLC ("NTL"), a company owned by C. Suker ("Suker"), for \$65,000.00 (the A-B transaction) and NTL would sell the property to a third party (originally identified in the Agreement for Sale as G. Joseph ("Joseph") but ultimately the end buyer was W. On) (the B-C transaction).

73. Marsh prepared multiple versions of HUD-1 Settlement Statements for these closings that he provided to various parties.

- a. Marsh prepared one version of the HUD-1 Settlement Statement that falsely showed Joseph as the lender for the A-B transaction, and provided this to Y. Taylor ("Taylor"), counsel for Rorie, to provide to the Chapter 13 Trustee in Rorie's bankruptcy case pursuant to the Bankruptcy Court's October 30, 2017 order.
- b. When Marsh provided a copy of the HUD-1 Settlement Statement referenced in the preceding paragraph to Suker, Suker responded "This isn't right. This is a double close deal. Reginald->Me->George Joseph." In response, Marsh stated, "We can easily change the front page[.] There's no way that we can explain and get a double close approved through the bankruptcy court[.] It was hard enough to get this far :) Just have him wire \$[.]"
- c. In response, Suker asked Marsh to call Joseph, saying "Can you call George and explain this? He's a realtor and very 'by the books'. He said he needs to see a HUD to fund this and if I have it to him before noon today he can fund tomorrow."
- d. Marsh responded and asked Suker, "any worries about hiding what you're making on this?"

- e. After Marsh spoke with Joseph, he e-mailed Suker saying, "I spoke to him: sending HUD."
- f. Marsh then sent another e-mail to Suker saying, "Bah. Trying to fight too many figures[.] But I took the time to put together a 2nd HUD[.] I'll let you review it before I send it to george [sic]"
- g. The HUD-1 Settlement Statement that Marsh provided to Taylor for the bankruptcy case was version 16, as identified in the footer of the document.
- h. The version of the HUD-1 Settlement Statement corresponding to the disbursements Marsh made for the transaction was version 26, as identified in the footer.
- i. Version 26 included disbursements not listed on version 16 for city liens and for a partial attorney fee to Taylor.
- j. The extra disbursements in version 26 reduced the seller's proceeds due to Rorie by about \$2,000.00, from the \$17,688.50 shown on version 16 to \$15,306.45.
- k. It was expected that the proceeds due to Rorie would be used to pay off all claims in the bankruptcy case.
- l. The reduced proceeds to Rorie were insufficient to pay all claims in the bankruptcy case.

74. Marsh obtained title insurance for the B-C transaction.

75. The preliminary opinion on title submitted under Marsh's name by Marsh or someone under his supervision falsely represented to Investors Title that as of September 26, 2017 the property was owned by NTL.

76. As of September 26, 2017, however, the property was still owned by Rorie and Boykins, and would not be transferred to NTL until November 2017.

77. The title commitment issued by Investors Title contained this false owner information from Marsh's preliminary opinion of title.

78. To the extent Marsh relied upon others, whether nonlawyer assistants or another lawyer, to accomplish tasks associated with the creation and submission of the preliminary opinion of title set out in the preceding paragraphs, Marsh failed to ensure the firm had in effect measures giving reasonable assurance that their conduct was compatible with Marsh's professional obligations, and failed to make reasonable efforts to ensure that their conduct was compatible with Marsh's professional obligations.

79. When Marsh disbursed the proceeds from the transactions, he failed to disburse as instructed by the Bankruptcy Court's October 30, 2017 Order approving the sale, including as follows:

- a. The Order required him to disburse \$676.00 directly to Taylor and to disburse the remaining funds due to Rorie to the Chapter 13 Trustee.
- b. Instead, Marsh disbursed only \$181.00 to Taylor.

80. At about the same time period as the Monteith transaction, Marsh and Rorie were discussing another property, referred to as 600 Dobson.

81. In Marsh's communication with Rorie concerning the 600 Dobson property, Marsh suggested Rorie willfully not discover information pertinent to ownership, stating:

If we're pretty sure she doesn't have heirs, we should go with that story (my opinion)

If we try to find an heir, we might find one....
Which means that the heir would probably want money. Granted, the place might not be worth much
But they'd surely want \$5k or something

Without the heirs though, we don't have free/clear title. It isn't easy to sell it

But hell, I might be willing to deal with that and simply keep it as a rental. I wouldn't mind paying you for having found it

So, do you think there are heirs out there? Do the neighbors know of any heirs or kids or anything?

It's your rodeo, so I don't want to ask around without talking to you first. But it might be more valuable to believe that there are no heirs.

82. The State Bar opened grievance file 18G0491 concerning this matter and sent inquiries to Marsh for his response.

83. In Marsh's narrative responses to the State Bar's inquiries in 18G0491, Marsh made false statements of material fact to the State Bar, including the following statements: "I can only find one HUD[-1 Settlement Statement] that was provided to Debtor Counsel Yansea Taylor, for her to approve regarding the A to B contract. That never changed and all parties were explained [sic] that it could not change, due to the bankruptcy court." Marsh identified the HUD-1 Settlement Statement that was provided to Taylor as the file labeled "monteith HUD to yansea Oct 27" which is the one marked as version 16 in the footer of the documents.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline as follows:

- I. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
 - a. By providing an inaccurate HUD-1 Settlement Statement to the debtor's attorney for approval in the debtor's bankruptcy case for the A-B transaction that misrepresented the nature of the transaction, Marsh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
 - b. By failing to disburse the funds from the closing in accordance with the order from the Bankruptcy Court allowing the sale of the property, Marsh failed to properly disburse fiduciary funds in violation of Rule 1.15-2(a), (k), and (n) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
 - c. By submitting, or allowing to be submitted under his name, a false preliminary opinion of title that identified NTL as owner of the property when the property at that time was still owned by Rorie and Boykins, Marsh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and/or failed to ensure the firm had in effect measures giving reasonable assurance that the conduct of any lawyer or nonlawyer participating in the creation and submission of the preliminary opinion of title was compatible with Marsh's professional obligations, and failed to make reasonable efforts to ensure that their conduct was compatible with Marsh's professional obligations in violation of Rule 5.1(a) and (b) and/or 5.3(a) and (b);
 - d. By suggesting to Rorie in the 600 Dobson matter that Rorie should willfully not seek information pertinent to ownership of the property in order to more cheaply obtain the property from a named seller who appeared to not be capable of conveying 100% ownership interest in the property, Marsh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);
 - e. By making false statements regarding the HUD-1 Settlement Statement for the A-B transaction in response to the inquiries of the State Bar in grievance 18G0491, Marsh knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c); and
- II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct.

FOURTH CLAIM FOR RELIEF
Trust Account Audit

84. Paragraphs 1 – 4 are incorporated as if fully set forth herein.

85. Based upon information from documentation Marsh submitted in the 18G0491 grievance, the State Bar initiated an audit of Marsh's trust account.

86. In January 2021, the Chair of the Grievance Committee issued a subpoena for cause audit to Marsh.

87. The subpoena required production of trust account and operating account records from Marsh, including bank documents and client ledgers.

88. On January 21, 2021, Marsh accepted service of the State Bar subpoena for cause audit.

89. Marsh was required to produce the subpoenaed records to the State Bar by February 26, 2021.

90. Marsh did not provide any documents responsive to the subpoena issued in 18G0491 by the deadline of February 26, 2021.

91. On March 22, 2021, the State Bar e-mailed Marsh concerning his noncompliance. The State Bar asked him to remedy his noncompliance by producing specified subsets of the subpoenaed records by specified dates, the first being March 31, 2021.

92. Marsh provided no records until April 2021.

93. On April 23, 2021, Marsh provided bank statements for TA 3274 for the subpoenaed time period of January 2017 through December 2020. With those documents Marsh provided canceled checks for only three months, October through December 2020. Marsh did not provide any of the other subpoenaed documents.

94. On May 10, 2021, Marsh provided bank statements for his operating account ending in digits 9418 (later changed to a number ending in the digits 4181) for January 2017 through December 2020 but none of the other subpoenaed documents.

95. On May 28, 2021, the State Bar e-mailed Marsh regarding certain records that he had not produced and asked that he produce those records.

96. Marsh did not respond to the State Bar's May 28, 2021 e-mail or produce any records at that time.

97. On June 7, 2021, the State Bar e-mailed Marsh regarding his noncompliance. The State Bar asked Marsh to produce a specified subset of the subpoenaed documents by June 11, 2021, with the note that the outstanding deficiencies could be subsequently addressed.

98. Marsh provided no documents responsive to the subpoena by June 11, 2021.

99. On July 8, 2021, the State Bar e-mailed Marsh concerning his noncompliance. The State Bar specified a certain subset of documents for Marsh to produce by August 9, 2021, with the note that production of that subset of documents would not encompass all subpoenaed documents and would not constitute full compliance with the subpoena.

100. On August 6, 2021, Marsh provided some documents, but not all of the subpoenaed documents specified in the State Bar's July 8, 2021 e-mail.

101. On August 6, 2021, the State Bar e-mailed Marsh specifically regarding the client ledgers that had been subpoenaed but not produced and asked him to undertake the process of accessing the pertinent client ledgers in SoftPro, printing or saving them to .pdf, and providing them to the State Bar. Marsh did not do so.

102. On September 7, 2021, the State Bar e-mailed Marsh concerning his noncompliance, noting he had not provided any records since August 6, 2021. The State Bar asked Marsh to begin coming into compliance by producing client ledgers for all clients with funds in TA 3274 in October, November, and December 2020 by September 30, 2021.

103. On September 29, 2021, Marsh provided 240 client ledgers in apparent response to the State Bar's September 7, 2021 e-mail.

104. As of December 16, 2021, Marsh had provided no additional records responsive to the subpoena.

105. On December 16, 2021, the State Bar communicated with Marsh by letter sent to Marsh by e-mail and by certified mail regarding the above-described failure to comply with the State Bar's subpoena issued in 18G0491 and requested that he cure his noncompliance no later than January 3, 2022.

106. Marsh did not provide any additional records responsive to the January 2021 subpoena for cause audit by January 3, 2022.

107. Marsh did not provide any additional records responsive to the subpoena until the State Bar notified him in February 2022 that it would seek an injunction to prohibit him from handling entrusted funds and serving in a fiduciary capacity based in part upon his failure to have produced the subpoenaed documents.

108. The audit of Marsh's trust account showed improper handling of entrusted funds and failure to comply with the trust accounting rules, including the following:

- a. Disbursements in excess of funds in the trust account for a closing, including in the following matters:
 - 1) 19 Ebbri Lee, \$443.84 more disbursed for the client than was in the trust account for the client in December 2019; deficit remained until September 2020;
 - 2) 20 Golinski Refi, \$2,925.00 more disbursed for the client than was in the trust account for the client in May 2020; deficit remained until two deposits in July 2020; and
 - 3) 20 Martin Refi, \$823.13 more disbursed for the client than was in the trust account for the client in September 2020; deficit remained until December 2020.
- b. Items used to disburse attorney's fees and costs from Marsh's trust account to Marsh's operating account that failed to indicate on the item by client name, file number, or other identifying information the client from whose balance the item was drawn. Marsh "transferred" attorney's fees and attorney cost reimbursement from the trust account ledgers for closings to a ledger labeled for attorney's fees (e.g. "2021 ATTY FEES – DOGWOOD BANK") or a ledger labeled for cost reimbursement (e.g. "2021 RECORDING FEES – DOGWOOD"), and then periodically made electronic bank transfers from the trust account to his operating account of an aggregate of funds on the attorney's fees or costs ledger with no identification on the electronic bank transfer item of the specific clients' funds being transferred.
- c. Failure to create and/or maintain client ledgers for each client/source of entrusted funds, instead recording funds and disbursements for multiple clients on one ledger, including but not limited to ledgers labeled by month and year.
- d. Earnest money deposited into the operating account instead of the trust account, including but not limited to instances in 2018 that precipitated the audit and in October and December 2020.

109. To the extent Marsh relied upon nonlawyer assistants to accomplish tasks associated with the improper handling of entrusted funds and failure to comply with trust accounting rules set out in the preceding paragraph, Marsh failed to ensure the firm had in effect measures giving reasonable assurance that the nonlawyers' conduct was compatible with Marsh's professional obligations, and failed to make reasonable efforts to ensure that the nonlawyers' conduct was compatible with Marsh's professional obligations.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline as follows:

- I. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to timely respond to the subpoena of the State Bar in grievance file 18G0491, Marsh knowingly failed to respond to a lawful demand for information from a disciplinary authority in a disciplinary matter in violation of Rule 8.1(b);
 - b) By disbursing funds from his trust account for client matters in excess of the funds he had in the trust account for that matter, Marsh failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (k), and (n);
 - c) By making electronic bank transfers to pay attorney's fees and/or cost reimbursement to himself that did not identify on the bank item the client(s) from whose balance in the trust account the item was being drawn, Marsh disbursed attorney's fees and costs to himself by improper means in violation of Rule 1.15-2(h) and failed to maintain required records for transfers in violation of Rule 1.15-3(b)(3);
 - d) By failing to create or have created individual subsidiary trust account ledgers for each person or entity from whom and for whom funds were received into his trust account upon his receipt of such funds, Marsh failed to create a subsidiary trust account ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received upon the receipt of entrusted property in violation of Rule 1.15-3(b)(5);
 - e) By depositing earnest money into his operating account rather than his trust account, Marsh failed to deposit entrusted funds into his trust account in violation of Rule 1.15-2(b);
 - f) To the extent Marsh relied upon nonlawyer assistants to accomplish tasks associated with the improper handling of entrusted funds and failure to comply with trust accounting rules set out in the preceding paragraphs, Marsh failed to ensure the firm had in effect measures giving reasonable assurance that the nonlawyers' conduct was compatible with Marsh's professional obligations and failed to make reasonable efforts to ensure that the nonlawyers' conduct was compatible with Marsh's professional obligations in violation of Rule 5.3(a) and (b); and
- II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter.

FIFTH CLAIM FOR RELIEF
Failure to Promptly Disburse Funds

110. Paragraphs 1 – 4 are incorporated as if fully set forth herein.

111. On or about July 19, 2021, Marsh served as closing attorney for a transaction in which the Shoemakers sold property located at 10024 Willow Rock Drive, Charlotte, NC to the Mannings.

112. Marsh held \$5,113.30 from the Mannings from the funds for the closing in TA 3274 to pay the upcoming property tax bill.

113. On July 20, 2021, Marsh's office created a check through its software, check number 58942 to the Mecklenburg County Tax Collector, for property taxes in the amount of \$5,113.30 with a note of "hold for bill."

114. The tax bill was issued on or about August 2, 2021 and the amount of property tax due was \$4,655.81.

115. Marsh did not promptly pay the tax bill from the funds he held from the Mannings for that purpose.

116. On October 28, 2021, M. Manning e-mailed Marsh and his firm, noting that the closing was in July, that the firm was holding funds to pay the property taxes, and asking when the firm would pay the tax bill.

117. On October 28, 2021 at 1:38pm, Marsh responded to M. Manning's e-mail stating that, if a lender was involved, the lender would pay the tax bill or otherwise the Mannings would pay the tax bill.

118. On October 28, 2021 at 1:39pm, Marsh's assistant K. Wellman ("Wellman") responded to M. Manning's e-mail stating, "Looks like we were holding the check to wait on the bill to figure out the amount. We will get it sent to the County and processed next week for you."

119. On October 28, 2021 at 4:12pm, M. Manning responded to Wellman and stated:

The bill date was August 2, and the due date was September 1. The bill is due in the amount of \$4,655.81.

At closing we pre-paid \$5,113.30 for property taxes (I have confirmed that none of that was sent to the lender and was held by Harry Marsh law). Will you be sending us the overpayment of \$457.49 back at the same time?

120. On October 28, 2021 at 4:24pm, Marsh's assistant Wellman responded to M. Manning's October 28 4:12pm e-mail stating, "Yes, I will send the amount owed to the County and the difference to you."

121. Neither Marsh nor his staff made those disbursements for the Mannings the week following October 28, 2021.

122. M. Manning contacted Marsh's office again on November 11, 2021.

123. Wellman with Marsh's office responded to M. Manning with an e-mail that stated:

The lender forced us to collect taxes b/c they were "due within 60 days of closing".

We will get it taken care of. We have until Jan to pay the bill but I'll get it processed asap for you. I have a big stack of tax checks w/ this same thing needing to happen and have not had the time to get to them yet.

124. Two more weeks passed, and neither Marsh nor his office had made those disbursements for the Mannings.

125. M. Manning filed a grievance with the State Bar dated December 1, 2021.

126. M. Manning's grievance was received by the State Bar on December 6, 2021.

127. On December 9, 2021, Marsh's office voided trust account check 58942 in its software and issued trust account check 57657 to the Mecklenburg County Tax Collector in the amount of \$4,655.81 and trust account check 57658 to the Mannings for \$457.49.

128. Trust account checks 57657 and 57658 were sent to their designated payees.

129. On December 10, 2021, the State Bar opened grievance file 21G0923 concerning Marsh's failure to timely disburse the Mannings' funds.

130. On December 14, 2021, M. Manning reported to the State Bar that she eventually got a hold of the firm's operation manager and Marsh's firm had finally paid the taxes and sent the Mannings a check for the overage the prior week.

131. On December 14, 2021, trust account check 57658 to the Mannings for \$457.49 cleared TA 3274.

132. On December 17, 2021, trust account check 57657 to the Mecklenburg County Tax Collector for \$4,655.81 cleared TA 3274.

133. Marsh failed to promptly disburse the Mannings' funds to the tax office and to the Mannings.

134. To the extent Marsh relied upon nonlawyer assistants to accomplish tasks associated with the disbursement of the Mannings' funds, Marsh failed to ensure the firm had in effect measures giving reasonable assurance that the nonlawyers' conduct was compatible with Marsh's professional obligations, and failed to make reasonable efforts to ensure that the nonlawyers' conduct was compatible with Marsh's professional obligations.

135. On December 16, 2021, the State Bar e-mailed Marsh and requested he produce certain documents, including records related to the Mannings closing and his trust account, within 8 business days of the e-mail.

136. Marsh provided some but not all of the requested documents within the designated 8 business days.

137. On January 21, 2022, the State Bar e-mailed Marsh a letter of notice in grievance 21G0923.

138. On January 28, 2022, Marsh accepted service of the letter of notice in 21G0923.

139. Marsh's response to the letter of notice in 21G0923 was due on February 12, 2022.

140. Marsh did not respond to the letter of notice by February 12, 2022;

141. On March 1, 2022, the State Bar sent Marsh a letter noting his failure to respond and asked for his response by March 7, 2022, although it would be considered late.

142. Marsh provided his response on March 3, 2022.

143. In Marsh's narrative response to the letter of notice in 21G0923, Marsh made false statements of material fact to the State Bar, including the following statements:

K[.] Wellman cannot remember the exact date that she mailed this check, but believes it was on or near the middle of October [2021], after [M. Manning] had reached out to the firm. Our system shows that a check was created (number 58942) on July 20, 2021. After [M. Manning] contacted the firm in December, it was realized that this check must have been lost in the mail and we voided check #58492 and sent a replacement check to Mecklenburg County for \$4,655.81 and \$457.49 to [the Mannings] (the correct amount of the tax bill, which was now available).

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline as follows:

- I. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
 - a) By failing to provide all documents requested of him in December 2021 and by failing to timely respond to the letter of notice in 21G0923, Marsh knowingly failed to respond to a lawful demand for information from a disciplinary authority in a disciplinary matter in violation of Rule 8.1(b);
 - b) By making false statements about having mailed a check to the tax office for the Mannings near the middle of October 2021, Marsh knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);

- c) By failing to promptly disburse the funds due to the tax office and the remainder to the Mannings, Marsh failed to promptly pay or deliver to the client or to a third person as directed by the client entrusted property belonging to the client and to which the client was then entitled in violation of Rule 1.15-2(a) and (n);
 - d) To the extent Marsh relied upon nonlawyer assistants to accomplish tasks associated with the failure to promptly disburse funds for the Mannings, Marsh failed to ensure the firm had in effect measures giving reasonable assurance that the nonlawyers' conduct was compatible with Marsh's professional obligations and failed to make reasonable efforts to ensure that the nonlawyers' conduct was compatible with Marsh's professional obligations in violation of Rule 5.3(a) and (b); and
- II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter and for knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct.

SIXTH CLAIM FOR RELIEF
Conflict of Interest

144. Paragraphs 1 – 4 are incorporated as if fully set forth herein.
145. In August 2017, Marsh closed transactions by which property located at 7624 Coffey Creek Drive, Charlotte was transferred on the same date from the Williams to Clear Financial Concepts, LLC and from Clear Financial Concepts, LLC ("Clear Financial Concepts") to R. Morales ("Morales").
146. On August 28, 2017, Marsh wired or transferred \$86,818.10 from his operating account to his trust account which Marsh attributed to the Williams to Clear Financial Concepts transaction.
147. In response to the State Bar's request for explanation, Marsh stated, "I lended [sic] money to a friend for closing."
148. The \$86,818.10 provided by Marsh was used to fund Clear Financial Concepts' purchase of the property from the Williams.
149. On August 28, 2017, Marsh wired \$87,318.10 from his trust account to Protecting NC Homes, LLC which he attributed to the Clear Financial Concepts to Morales transaction.
150. Protecting NC Homes, LLC is a company owned by Marsh.
151. In August 2018, Marsh closed transactions by which the property located at 3219 Cedarhurst Drive, Charlotte, NC was transferred on the same day from the estate and heirs of P. Langdon to CAMDS Investments, LLC ("CAMDS") and from CAMDS to KJ Realty, LLC and G. John.

152. On August 23, 2018, Marsh wired or transferred \$84,845.73 from his operating account to his trust account which Marsh attributed to the Langdon to CAMDS transaction.

153. In response to the State Bar's request for explanation, Marsh stated the following:

I was the lender on this file. These were my funds CAMDS signed everything in advance and later notified us that they were not planning to independently fund their purchase. I loaned them my personal funds to help"

154. The \$84,845.73 provided by Marsh was used to fund CAMDS's purchase of the property from the estate and heirs of P. Langdon.

155. On August 23, 2018, Marsh wired or transferred \$84,845.73 from his trust account to his operating account attributed to the 3219 Cedarhurst Drive transactions.

156. Beginning in about 2019, Marsh and his wife owned a company called Ace Capital Finance, LLC.

157. Ace Capital Finance, LLC's services included providing "transactional funding" to people or entities buying property from the record owner and then selling the property to an end buyer on the same day or shortly thereafter. The funds from Ace Capital, LLC were used for the purchase of the property, and Ace Capital Finance, LLC was paid off with interest/fees when the property was sold to the end buyer.

158. Marsh and his wife offered the services of Ace Capital Finance, LLC to clients and potential clients to provide funding in transactions closed by Marsh and his firm.

159. NC Protecting Homes, LLC also provided funding in transactions closed by Marsh and his firm.

160. In closings for which Marsh's firm was the settlement agent and in which Ace Capital Finance, LLC or NC Protecting Homes, LLC provided transactional funding, Marsh received compensation as settlement agent and received interest/fees through Ace Capital Finance, LLC or NC Protecting Homes, LLC upon repayment of the transactional funding.

161. This personal financial compensation for lending services created a personal conflict of interest for Marsh, including as follows:

- a. Marsh's personal interest in having Ace Capital Finance, LLC or NC Protecting Homes, LLC be repaid and in receiving the interest/fees paid for the transactional loan upon repayment was in conflict with his duty to close the transaction only if it was in his client's best interest; and

- b. Marsh's personal financial interest in having clients utilize the services of Ace Capital Finance, LLC or NC Protecting Homes was in conflict with his duty to pursue the best interests of his clients, including the client choosing the lender and lending terms most beneficial to the client.

162. The Ethics Committee of the North Carolina State Bar has opined that these types of conflicts are nonwaivable conflicts of interest, too great to be allowed even with a client's informed consent, including in ethics opinions RPC 49 and 2009 FEO 14.

163. On July 10, 2021, the State Bar opened grievance file 21G0548 concerning matters including conflict of interest.

164. On August 4, 2021, the State Bar e-mailed Marsh a letter of notice in grievance 21G0548.

165. On August 4, 2021, Marsh accepted service of the letter of notice in grievance 21G0548.

166. Marsh's response to the letter of notice was due to the State Bar no later than August 19, 2021.

167. Marsh did not provide his response by August 19, 2021.

168. On September 8, 2021, the State Bar e-mailed Marsh a letter noting his failure to respond and asked for his response by September 15, 2021, although it would be considered late.

169. Marsh provided his response on September 15, 2021.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline as follows:

- I. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
 - a) By providing, or having his firm provide, services as closing attorney and settlement agent in transactions in which he had a personal financial interest due to funding provided for those transactions by himself, Ace Capital Finance, LLC, or NC Protecting Homes, LLC, Marsh engaged in representations involving a concurrent conflict of interest in violation of Rule 1.7(a)(2);
 - b) By failing to timely respond to the letter of notice in grievance file 21G0548, Marsh knowingly failed to respond to a lawful demand for information from a disciplinary authority in a disciplinary matter in violation of Rule 8.1(b); and
- II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter.

SEVENTH CLAIM FOR RELIEF
False Encumbrance on Title

170. Paragraphs 1 – 4 are incorporated as if fully set forth herein.

171. Marsh represented Modern Vision Properties, Inc. (“Modern Vision Properties”) with respect to Modern Vision Properties’ contract dated September 28, 2020 to purchase property from Y. Blakeney (“Blakeney”) located at 2827 and 2833 Dogwood Avenue, Charlotte, NC.

172. Blakeney was not represented by counsel for the transaction.

173. Pursuant to the contract, the transaction was required to close on or before October 30, 2020.

174. The transaction did not close on or before October 30, 2020.

175. No contract addendum was signed that extended the time to close.

176. On November 12, 2020, Marsh recorded with the Mecklenburg County Register of Deeds a Memorandum of Offer to Purchase (“Memorandum”) for Modern Vision Properties referencing the September 28, 2020 purchase contract with Blakeney.

177. The purchase contract was expired at the time the Memorandum was recorded.

178. Additionally, the Memorandum did not comply with the requirements of N.C. Gen. Stat. § 47-119.1 which specifies the content that “shall” be included in a memorandum for a contract to convey real estate that is to be recorded with the register of deeds, including but not limited to in the following ways: the Memorandum was not signed by all parties, the Memorandum failed to state the expiration date of the contract, and the Memorandum failed to include the closing date provided for in the contract.

179. The Memorandum falsely represented that there was a valid purchase contract in effect between Modern Vision Properties and Blakeney for the property located at 2827 and 2833 Dogwood Avenue, Charlotte, NC when there was not.

180. The Memorandum purported to be a valid encumbrance against the properties pursuant to N.C. Gen. Stat. §§ 119.1 and 120 when it was not.

181. Marsh did not believe the Memorandum to be a valid encumbrance against the property when he recorded it.

182. Based upon the improper Memorandum recorded by Marsh, Modern Vision Properties demanded that Blakeney authorize disbursement to it of the earnest money it had paid.

183. Modern Vision Properties had previously agreed the earnest money would be non-refundable when it signed the Addendum to Contract on October 1, 2020.

184. Modern Vision Properties also demanded from Blakeney an additional \$5,000.00 release fee to release the property from the purported encumbrance imposed by the recorded Memorandum.

185. On November 21, 2020, Blakeney e-mailed Marsh with questions regarding the earnest money and the demands being made by Modern Vision Properties based upon the recorded Memorandum.

186. Marsh e-mailed Blakeney back on November 21, 2020, stating the following:

You're correct: we hold any EMD and will not release it without both parties giving us authorization
I can confirm that we have the \$2,500
You do not have to pay them: you only need authorize us to return that \$2,500 to them
If they only want \$2,500 – it's the money that is probably due to them (since you didn't close). It would arguably be very friendly of them to release the lien and only take back their money.

187. In Marsh's November 21, 2020 e-mail quoted in the preceding paragraph, Marsh purported to advise Blakeney, an unrepresented person, regarding authorizing release of the \$2,500.00 earnest money to Modern Vision Properties.

188. At the time of Marsh's e-mail to Blakeney on November 21, 2020 quoted above, Marsh knew or reasonably should have known that the interests of Blakeney were in conflict with the interests of Modern Vision Properties.

189. Marsh falsely held out to Blakeney that the Memorandum was a valid lien in the above e-mail with Blakeney.

190. By recording the improper Memorandum of Offer to Purchase and by falsely holding it out to Blakeney as a valid encumbrance on title when she contacted him, Marsh assisted Modern Vision Properties in its attempt to misuse the Memorandum to extract money from Blakeney.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By advising Blakeney that Modern Vision Properties was probably due the earnest money since the transaction did not close when he knew or reasonably should have known that the interests of Blakeney were in conflict with the interests of Modern Vision Properties, Marsh gave legal advice to an unrepresented person in violation of Rule 4.3(a);

- b) By recording the improper Memorandum such that it purported to be a valid encumbrance on title when he knew it failed to comply with the requirements of the applicable statute and did not constitute a valid encumbrance on title, Marsh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer 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
- c) By falsely representing to Blakeney that the recorded Memorandum was a valid encumbrance on title when she contacted him, Marsh assisted Modern Vision Properties in its attempt to misuse the Memorandum to extract money from Blakeney and thereby engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

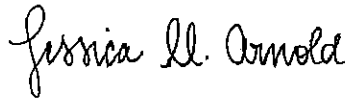
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28 as the evidence on hearing may warrant;
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the 12th day of January 2023.



Jennifer A. Porter
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Signed pursuant to 27 N.C. Admin. Code
1B.0113(m) and 1B.0105(a)(10).

Kevin Williams

Kevin G. Williams, Chair
Grievance Committee