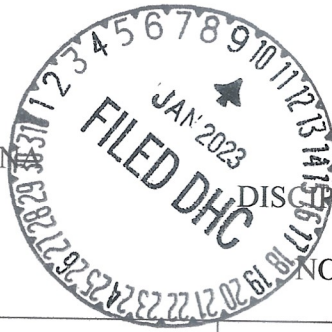


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
23 DHC 2

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

KATHIE L. WILLARD, 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, Kathie L. Willard, ("Defendant" or "Willard"), was admitted to the North Carolina State Bar in 1994, 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, Willard was engaged in the practice of law in Raleigh, Wake County, North Carolina.

4. Triangle Real Estate Investors Association, Inc., ("Association"), a nonprofit real estate investment association, was formed in 2003 to provide educational and networking benefits to its membership.

5. At all times relevant to this complaint, Defendant was a member of the Board of Directors of the Association.

6. On or about April 28, 2020, Association board members John Ford and Chris Kisgen, derivatively on behalf of the Association, filed a lawsuit, *John Ford and Christopher Kisgen, derivatively on behalf of Triangle Real Estate Investors Association, Inc., v. Carl Arnold Jurgens, Jr., Kathie Russell, Triangle Real Estate Investors Association, LLC and TREIA Foundation, INC.*, 20CVS4896 (Wake County) ("lawsuit").

7. Defendant (known as Kathie Russell at the time the lawsuit was filed) and fellow Association board member and longtime President of the Association, Carl Arnold Jurgens (“Jurgens”), were named co-defendants in the lawsuit.

8. The lawsuit alleged, *inter alia*, that Willard and Jurgens improperly redirected control of the Association’s assets, including its membership, to two newly-formed entities: Triangle Real Estate Investors Association, LLC, a for-profit entity (“LLC”), and TREIA Foundation, Inc., (“Foundation”) a nonprofit corporation established for charitable purposes.

9. During the lawsuit, the parties engaged in discovery.

10. As a result of discovery produced by Defendant, plaintiffs in the lawsuit filed a motion for sanctions alleging, *inter alia*, that Defendant fabricated emails and backdated the fabricated emails to use as evidence in the lawsuit.

11. The fabricated emails (referred to collectively as the “Laramie emails”) were created by Defendant to cover-up Defendant’s self-dealing as a member of the LLC in conducting a real estate rehabilitation project known as the “Pilot Program.”

12. In 2019, the LLC marketed the Pilot Program as an educational opportunity for Association members who were interested in learning how to buy and sell houses for profit.

13. Participants of the Pilot Program ultimately selected a residence on Laramie Court in Cary, N.C. for its rehabilitation project.

14. Prior to being selected as the Pilot Program’s rehabilitation project, the Laramie Court property had been brought to Defendant’s attention by A.C. Johnson (“Johnson”), president of Defendant’s client, NuCapital Associates, Inc. (“NuCapital”).

15. At that time, Johnson proposed that he and Defendant purchase the residence on Laramie Court as an investment.

16. Defendant and Johnson agreed to form an entity, AK Partners Real Estate (“AK Partners”), to purchase the Laramie Court property.

17. In or about July 2019, Defendant decided to use the Laramie Court property for the Pilot Program.

18. When Defendant presented the Laramie Court property to participants of the Pilot Program as a rehabilitation project, she told participants of the Pilot Program that NuCapital would “wholesale” the property to them.

19. Defendant did not disclose her personal financial interest in the property when presenting the Laramie Court property as the rehabilitation project for Pilot Program participants.

20. AK Partners purchased the Laramie Court property from the seller, Johnson's cousin, subject to a tax lien on the property, for \$28,676.55.

21. AK Partners then sold the Laramie Court property to the Pilot Program participants for \$69,718.00.

22. The Laramie emails were created by Defendant on or about December 28, 2020, to support her denial of self-dealing.

23. The Laramie emails were backdated to make it appear that they were sent on or about July 10, 2019, well before the lawsuit began.

24. The Laramie emails were fabricated by Defendant to defraud the plaintiffs and the court as the lawsuit proceeded through the legal system.

25. The Laramie emails reflect a fabricated email exchange in which Defendant purported to "give up [her] half" of AK Partners so that Johnson individually could then sell the Laramie Court property to the participants in the Pilot Program, thereby avoiding any conflict of interest.

26. The Laramie emails included a statement by Defendant to Johnson saying, "I know we made the offer in the name of AK Partners but I can just sign my half of the partnership over to you and I will step out of it. If you are willing...I would stay out of it to avoid conflicts."

27. Defendant then drafted Johnson's response to the email in paragraph 26 above, stating, "Call me. I'm willing."

28. On February 26, 2021 and again on March 15, 2021, Defendant, through counsel, produced the Laramie emails in response to plaintiff's discovery requests in the lawsuit.

29. Defendant provided copies of the Laramie emails to Johnson, who produced the emails to plaintiffs in response to a subpoena.

30. Despite requests from plaintiff's counsel, Defendant did not produce a native copy of the Laramie emails.

31. On February 16, 2022, Judge Julianna Theall Earp, Special Superior Court Judge for Complex Business Cases, found in an Order and Opinion on Plaintiffs' Motion for Sanctions that Defendant had created and backdated the fabricated emails to counter allegations of self-dealing.

32. The court sanctioned Defendant by, *inter alia*, ordering her to pay the costs incurred by the plaintiffs related to the motion for sanctions.

33. The costs Defendant was ordered to pay totaled \$93,620.75.

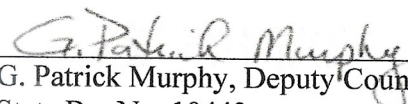
THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

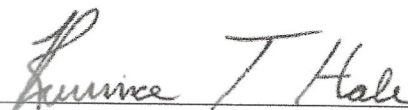
- (a) By creating fabricated emails and producing them as evidence in litigation discovery, Defendant falsified evidence in violation of Rule 3.4(b); offered evidence she knew to be false in violation of Rule 3.3(a)(3); committed a criminal act (obstruction of justice) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b); engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (b) By giving fabricated emails to Johnson, Defendant committed a criminal act (conspiracy and soliciting obstruction of justice) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b); engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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 10th day of January 2023.


G. Patrick Murphy, Deputy Counsel
State Bar No. 10443


Tessa Hale, Deputy Counsel
State Bar No. 49671

Attorneys for Plaintiff
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620

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

A handwritten signature in dark ink, appearing to read "Kevin G. Williams", written over a horizontal line.

Kevin G. Williams, Chair
Grievance Committee