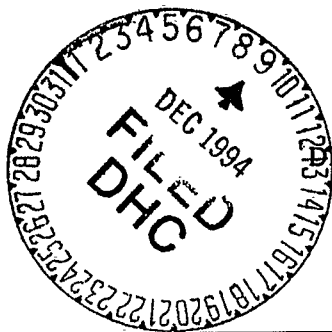


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
94 DHC 110

THE NORTH CAROLINA STATE BAR,  
Plaintiff

**VS.**

ALAN JAY BLAKE, ATTORNEY  
Defendant

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER coming on to be heard and was heard on Friday, Dec. 9, 1994 by a Hearing Committee of the Disciplinary Hearing Commission North Carolina State Bar composed of Stephen T. Smith, Chair, Paul L. Jones, and Frank Boushee. The Plaintiff, the North Carolina State Bar, was represented by Carolin Bakewell. The Defendant, Alan Jay Blake, did not appear and was not represented by counsel. Based upon the pleadings herein and the evidence introduced at trial the Hearing Committee makes the following:

## 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, Alan Jay Blake, (hereafter, Blake), was admitted to the North Carolina State Bar in 1984, and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the relevant periods referred to herein prior to June 30, 1994, Blake was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Town of Hope Mills, Cumberland County, North Carolina.

4. The State Bar filed its complaint herein on June 30, 1994.

5. On June 30, 1994, David J. Frederick, an investigator for the North Carolina State Bar, notified Blake by telephone that the State Bar had filed a complaint against him regarding Blake's handling of funds belonging to Walter and Joyce Fleming. Blake refused Frederick's request to meet Frederick and accept service of the summons and complaint.

6. On or about July 1, 1994, the Cumberland County Sheriff's Department attempted to serve Blake with a copy of the summons and complaint, but was unsuccessful.

7. Thereafter, the North Carolina State Bar sent copies of the summons and complaint herein to Blake by certified mail at his last known address on file with the North Carolina State Bar. The summons and complaint were unclaimed and were ultimately returned to the North Carolina State Bar.

8. On or about Aug. 20, 1994, Blake mailed his North Carolina law license to the N.C. State Bar, along with a letter indicating that he had "neither the need nor the desire" to practice law in the State of North Carolina.

9. On Aug. 26, 1994, counsel for the North Carolina State Bar sent a letter to Blake by regular mail at his last known address on file with the North Carolina State Bar. Counsel indicated that Aug. 20, 1994 could not be treated as a surrender of Blake's license, as it did not comply with the Discipline & Disbarment Rules. Counsel further stated that the pending disciplinary action against Blake would proceed, absent receipt from him of a consent to disbarment which complied with the North Carolina State Bar's Discipline & Disbarment Rules. Counsel's Aug. 26, 1994 letter has not been returned to the N.C. State Bar.

10. Blake was served with the summons and complaint herein by publication on Sept. 23, Sept. 30, and Oct. 7, 1994 in a newspaper of general circulation in the area where Blake is believed to reside, according to Blake's last known address on file with the North Carolina State Bar.

11. Blake's answer was due no later than Nov. 3, 1994.

12. Blake failed to file any answer to the summons and complaint.

13. On Nov. 7, 1994, the North Carolina State Bar, through counsel, filed its motion for entry of default, based upon Blake's failure to file an answer to the complaint herein.

14. On Nov. 7, 1994, the Secretary of the North Carolina State Bar entered an order of default in Blake's case.

15. Prior to February 1992, Blake undertook to represent Walter and Joyce Fleming (hereafter, the Flemings), regarding the refinancing of property which the Flemings had previously

purchased from Vera Hubert.

16. As of February 12, 1992, Chrysler First Corporation (hereafter, Chrysler First), held a note and deed of trust securing the original loan which the Flemings were refinancing.

17. On or about Feb. 18, 1992, Blake received a check in the amount of \$43,000 on behalf of the Flemings, which represented the proceeds of their new loan from Wachovia Mortgage Co.

18. On or about Feb. 18, 1992, Blake deposited the \$43,000 check which he had received on behalf of the Flemings into his attorney trust account number 041 536151 at Southern National Bank (hereafter SNB trust account).

19. The Flemings directed Blake to use \$39,015.29 of the loan proceeds to pay off the note held by Chrysler First.

20. On or about March 10, 1992, Blake issued check number 14033 drawn on his SNB trust account in the amount of \$29,015.29 and payable to Chrysler First.

21. Blake did not disburse any other sums to Chrysler First, despite the Flemings' instructions.

22. Between Feb. 18, 1992 and March 10, 1992, Blake disbursed six checks drawn on the SNB trust account in the total amount of \$3,984.71 to the Flemings, himself and various creditors of the Flemings.

23. As of March 10, 1992, a total of \$10,000 of the \$43,000 in closing proceeds which Blake received for the Flemings remained undisbursed.

24. At all times on and after March 10, 1992, a total of \$10,000 should have remained in Blake's SNB trust account on behalf of the Flemings.

25. The balance in Blake's SNB trust account dropped below \$10,000 on several occasions between March 12, 1992 and April 18, 1992.

26. On or about Feb. 18, 1992, Blake wrote check number 14304 in the amount of \$10,000 drawn on his SNB trust account to Southern National Bank. The \$10,000 check was presented for payment to Southern National Bank on or about April 18, 1992.

27. All or a portion of check number 14034 was funded with sums belonging to the Flemings.

28. The proceeds of check number 14304 referred to in paragraph 27 were used by Blake for the benefit of FJW Investments.

29. FJW Investments is a real estate investment company owned by Blake and Fairley J. Grimes.

30. Blake did not have the permission of the Flemings to use any portion of the \$10,000 for the benefit of FJW Investments, Blake, or for any third parties other than the Flemings.

31. Blake used all or part of the \$10,000 for the benefit of himself, FJW Investments or third parties other than the Flemings without the Flemings' knowledge or consent.

32. On or about Feb. 10, 1994, the N.C. State Bar established a grievance file based upon allegations that Blake had misappropriated funds belonging to the Flemings.

33. On or about Feb. 16, 1994, Blake was served with a letter of notice from the N.C. State Bar, which directed him to file a full and fair response within 15 days of service of the letter of notice, to the allegations that he had misappropriated funds belonging to the Flemings.

34. Blake failed and refused to file a full and fair response to the letter of notice served upon him by the N.C. State Bar regarding the Flemings' matter.

Based upon the foregoing Findings of Fact, the Hearing Committee hereby makes the following:

#### CONCLUSIONS OF LAW

1. Blake had actual notice of the filing of the complaint herein no later than June 30, 1994.

2. The North Carolina State Bar complied with the Rules of Civil Procedure and the Discipline & Disbarment Rules regarding service of the summons and complaint herein on Blake by publication.

3. The Secretary of the North Carolina State Bar properly entered Blake's default herein on Nov. 7, 1994.

4. By misappropriating \$10,000 belonging to the Flemings and using it for his own benefit or the benefit of third parties other than the Flemings without the Flemings' knowledge and permission, Blake committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of Rule 1.2(B), engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(C), prejudiced a client in violation of Rule 7.1(A)(3) and failed to properly pay or deliver to the client or third persons as directed by the client those funds, securities or properties belonging to the client to which the client is entitled in the possession of the lawyer, in violation of Rule 10.2(E).

5. By failing to maintain the \$10,000 owed to the Flemings in his SNB trust account at all times following March 10, 1992 Blake failed to hold and maintain client property separately from the lawyer's property, in violation of Rule 10.1(A) and prejudiced a client in violation of Rule 7.1(A)(3).

6. By failing to file a full and fair response to the State Bar letter of notice served upon him, Blake failed to respond to a lawful demand for information from a disciplinary authority, in violation of Rule 1.1(B).

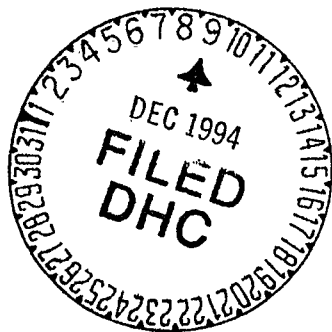
Signed by the undersigned Chair of the Disciplinary Hearing Committee with the full knowledge and consent of the other Hearing Committee members, this the 9 day of December, 1994.



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Stephen T. Smith, Chair  
Disciplinary Hearing Committee

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
94 DHC 10

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

ALAN JAY BLAKE, ATTORNEY  
Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law entered herein and the evidence presented at the second phase of the hearing, the Hearing Committee, composed of Stephen T. Smith, Chair; Paul L. Jones and Frank Boushee, enter the following:

FINDINGS OF FACT RELATING TO DISCIPLINE

1. The Defendant, Alan J. Blake, falsely told the N.C. State Bar's investigator, Donald H. Jones, that Blake did not know what FJW Investments was. Blake failed to reveal to Jones that FJW Investments was a company in which Blake had a personal ownership interest.

2. The Hearing Committee finds that the Defendant's misconduct is aggravated by the following factors:

- a. Blake engaged in bad faith obstruction of the disciplinary process.
- b. Blake failed to cooperate with the N.C. State Bar in the investigation of this matter and made a false or misleading statement to the Bar's investigator regarding FSW Investments.
- c. Blake has been disciplined by the Disciplinary Hearing Commission on two prior occasions.
- d. Blake's misconduct was motivated by a selfish or dishonest motive.
- e. The misconduct which is the basis of the current order and the misconduct for which Blake has previously been disciplined constitute a pattern of misconduct.

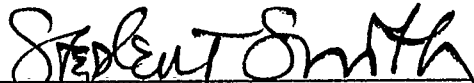
Based upon the Findings of Fact & Conclusions of Law and the foregoing additional Findings of Fact Relating to Discipline, the Hearing Committee enters the following

ORDER OF DISCIPLINE

1. The Defendant, A. J. Blake, is hereby DISBARRED.
2. The Defendant shall pay the costs of this action.

Signed by the Undersigned Chair of the Disciplinary Hearing Committee with the consent of all Committee members.

This the 9 day of December, 1994.

  
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Stephen T. Smith, Chair  
Disciplinary Hearing Committee