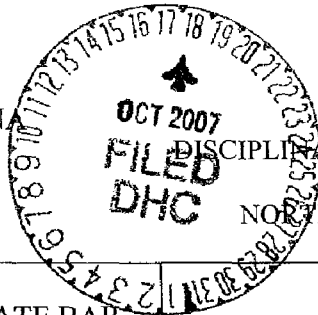


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 8

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID R. SHEARON, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

This matter was heard on October 8, 2007 before a hearing committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, and members T. Richard Kane and H. Dale Almond. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Defendant, David R. Shearon, appeared and represented himself *pro se*. Based upon the pleadings and the admissions considered pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f), the hearing committee hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

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, David R. Shearon (hereinafter "Shearon" or "Defendant"), was admitted to the North Carolina State Bar in 1970, 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 Revised Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Shearon was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.
4. Shearon was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.
5. The Complaint in this action was filed on April 16, 2007.

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6. Defendant accepted service of the Summons and Complaint on June 19, 2007.

7. Defendant failed to file an answer or any responsive pleading by the deadline established by 27 N.C. Admin. Code 1B § .0114(e) and Rule 4 of the North Carolina Rules of Civil Procedure.

8. Upon Plaintiff's motion, default was entered against Defendant by the Secretary of the State Bar on August 14, 2007.

9. Plaintiff filed a Motion for Default Judgment on August 14, 2007.

10. Plaintiff's motion was granted and Default Judgment filed on October 2, 2007. The Default Judgment entered findings of fact and conclusions of law and reserved as the sole issue for hearing what discipline, if any, should be imposed.

11. Shearon represented Timothy O. Hankins (hereinafter "T. Hankins") and his wife Sardia M. Hankins (hereinafter "S. Hankins") in the closing on a parcel of real estate located at 411 Loop Road, Garner, North Carolina (hereinafter "the Loop Road property").

12. The closing on the Loop Road property was scheduled for July 2004.

13. Prior to closing, T. Hankins discovered a septic tank problem on the Loop Road property.

14. T. Hankins notified Shearon of the septic tank problem prior to the closing.

15. On the day of the closing, Shearon notified T. Hankins that the seller had agreed to pay to repair the environmental damage.

16. Shearon indicated to T. Hankins that he had the seller's agreement to pay for environmental repairs in writing.

17. Shearon's representations to T. Hankins regarding notification to the seller and the seller's agreement to pay for repairs were false.

18. The Hankins paid approximately \$170,000.00 at closing and borrowed \$50,000.00 from the seller, George William Thomas, Jr. (hereinafter "Thomas"), to purchase the Loop Road property. S. Hankins executed a promissory note in favor of Thomas, which was secured with a deed of trust on the Loop Road property.

19. Under the terms of the note and deed of trust, the Hankins were to pay the remaining \$50,000.00 on or before December 31, 2004.

20. In September 2004, T. Hankins notified Shearon that he was ready to have Thomas repair the environmental damage on the Loop Road property.

21. Shearon subsequently told T. Hankins that he had notified Thomas and the Thomas' attorney that T. Hankins was ready to have Thomas repair the environmental damage by certified mail but received no response.

22. Shearon told T. Hankins to have the repairs done and the cost would be deducted from the \$50,000.00 balance owed to Thomas.

23. Based on Shearon's communication to him prior to closing that Thomas had agreed to pay for the environmental repair expenses, T. Hankins expected Shearon to negotiate with Thomas and determine a balance for Hankins to pay after deduction of the repair costs.

24. In about November and the beginning of December 2004, T. Hankins spent approximately \$30,000.00 to repair environmental damage.

25. Shearon's first communication with Thomas regarding Thomas paying for environmental repair expenses was in October 2004.

26. Shearon sent Thomas a letter dated October 6, 2004 stating that the Hankins had learned of environmental problems needing repair on the property and that Thomas was obligated under federal law to pay for these expenses.

27. Thomas retained the services of F. Bryan Brice, Jr.'s firm to represent him in the matter of his obligation to pay environmental repair expenses as claimed by Shearon.

28. Heather L. Spurlock (hereinafter "Spurlock"), an attorney with Brice's firm, wrote a letter dated November 21, 2004 to Shearon.

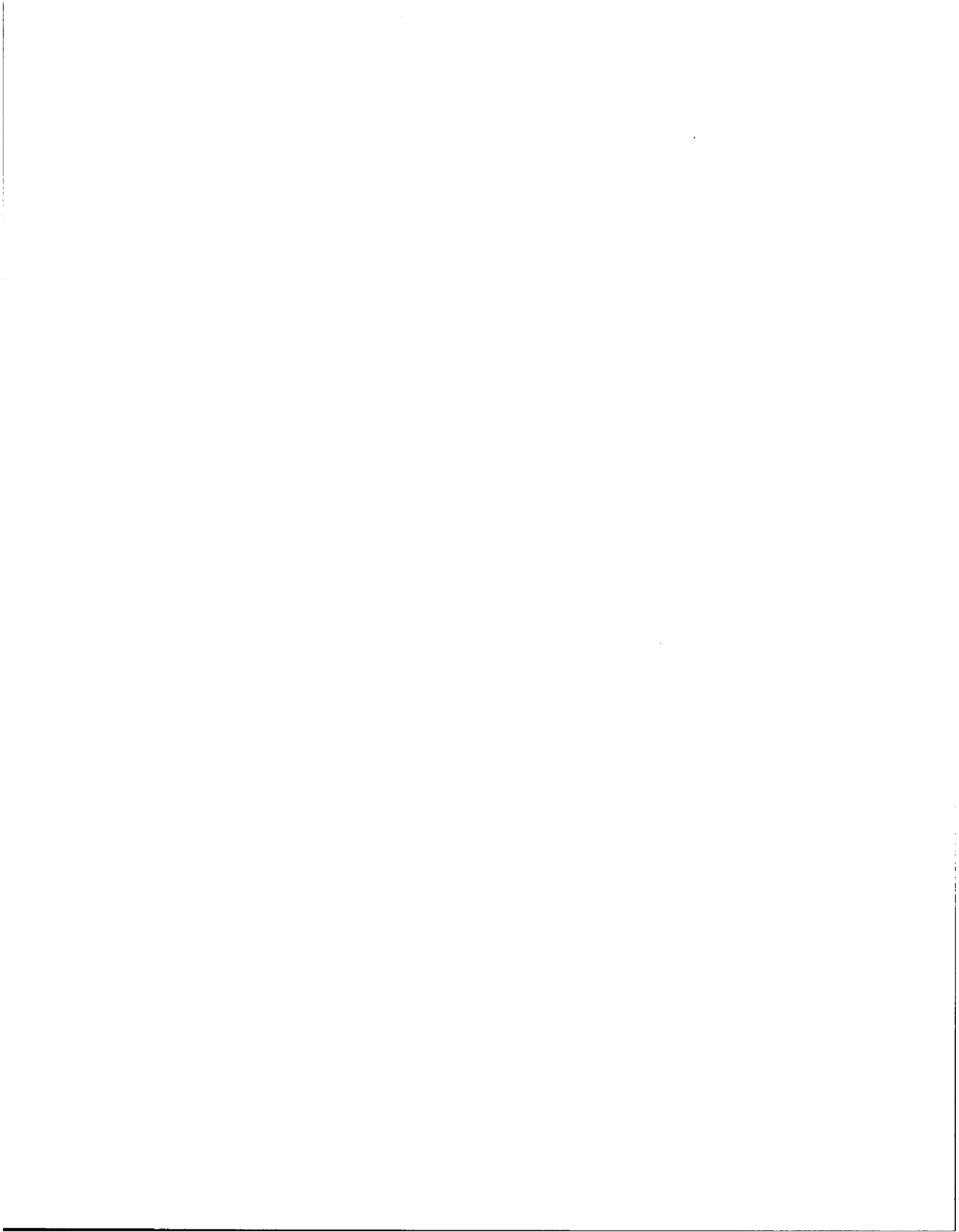
29. The letter notified Shearon of their position that applicable law did not require Thomas to pay for the environmental repair expenses and that he would not do so.

30. Shearon did not notify the Hankins of this communication from Thomas' attorney or of Thomas' refusal to pay for any amount of the environmental repairs.

31. Shearon wrote Spurlock a letter dated December 28, 2004 in which he stated his position that Thomas was responsible for the costs of the environmental repairs and proposed that the Hankins pay \$18,500.00 in full and complete satisfaction of the note and deed of trust.

32. On January 18, 2005, Shearon received a letter dated January 13, 2005 from Spurlock in which Spurlock denied that Thomas had any obligation to bear any of the costs for the environmental repair and rejected the offer Shearon made on behalf of the Hankins to pay \$18,500.00 in full satisfaction of the \$50,000.00 note.

33. In the January 13, 2005 letter, Spurlock noted that the Hankins' payment of the \$50,000.00 was overdue and expressly demanded payment in full. Spurlock stated that Thomas was willing at that time to accept payment of \$50,000.00 and forgo the



interest that was accruing under the note as full satisfaction of the note if the payment was made within five days from Shearon's receipt of the letter.

34. Shearon did not communicate the contents of this letter, including but not limited to Thomas' denial of any obligation to pay for any amount of the environmental expenses and the grace period for the Hankins to pay the \$50,000.00 without interest by the deadline stated in the letter, to the Hankins.

35. Based on his conversations with Shearon, it was T. Hankins' understanding during the fall of 2004 and in January 2005 that Thomas and Thomas' attorneys would not respond to Shearon regarding the environmental repairs and a reduced final payment amount.

36. The Hankins received notice of Thomas' intent to pursue foreclosure on the deed of trust in about February 2005.

37. T. Hankins subsequently contacted Shearon for advice.

38. Shearon did not advise T. Hankins to make the payment necessary to satisfy the note at that time but rather advised T. Hankins that they would resolve the set off issues and pay the balance due at the foreclosure hearing.

39. In reliance on this advice from Shearon, the Hankins did not make any payment on the note prior to the foreclosure hearing.

40. The foreclosure hearing occurred on April 13, 2005.

41. Shearon attended the hearing on behalf of the Hankins.

42. Shearon did not present any written documentation of any agreement by Thomas to pay for environmental damage repair to the Loop Road property at the hearing.

43. At the foreclosure hearing, the Assistant Clerk found that the environmental issues were not a matter for consideration in the foreclosure hearing. He found that the requirements for holding a foreclosure sale had been met and he entered an order authorizing the foreclosure sale.

44. The foreclosure sale was set for Wednesday, May 18, 2005.

45. Between the date of the foreclosure hearing and the date set for the sale, T. Hankins had several conversations with Shearon seeking advice and information about the status of the matter.

46. Shearon advised T. Hankins that he would obtain judicial review of Thomas' obligation to pay for the environmental expenses.



47. Shearon did not advise T. Hankins to make the payment necessary to satisfy the note at that time.

48. In reliance on this advice from Shearon, the Hankins did not make any payment on the note prior to the date of the foreclosure sale.

49. When Shearon's report of the status had not changed as of the first week of May 2005, T. Hankins decided to obtain a refinance loan to secure money with which to satisfy the note.

50. On Friday, May 13, 2005, the Hankins obtained a refinance loan from which they received about \$55,000.00 in proceeds.

51. Shearon closed this refinance loan and the proceeds were in his trust account. The HUD-1 Settlement Statement prepared by Shearon for this loan contained a disbursement date of May 18, 2005.

52. T. Hankins' instruction to Shearon at this point was to disburse the money to Thomas to satisfy the note.

53. Shearon did not disburse the Hankins' \$55,000.00 to Thomas' attorney on May 18, 2005 nor did Shearon contact the Hankins on that date to notify them that he could not do so or that doing so would not be sufficient to satisfy the note on the property.

54. Between May 18 and May 26, 2005, T. Hankins contacted Shearon on multiple occasions to ask if Shearon had disbursed the money to Thomas.

55. Shearon told T. Hankins that he had not done so but that they had time to do so because a bid had been made on the property through the foreclosure sale.

56. In each conversation, T. Hankins told Shearon to disburse the money at that time.

57. Shearon did not disburse the Hankins' \$55,000.00 to Thomas' attorney between May 18 and May 26, 2005 nor did Shearon communicate to the Hankins that he could not do so or that doing so would not be sufficient to satisfy the note on the property.

58. T. Hankins went to Shearon's office on or about May 26, 2005 in an effort to get Shearon to pay the money to Thomas.

59. When Shearon met with T. Hankins on or about May 26, 2005, Shearon informed T. Hankins that additional funds were needed to pay the note in full.

60. T. Hankins gave Shearon the additional money Shearon indicated was needed on that date.

61. T. Hankins' instruction to Shearon at that time was to disburse the money to Thomas.

62. Thomas' attorney did not receive any money from Shearon for the Hankins until May 31, 2005.

63. T. Hankins complained to the North Carolina State Bar about Shearon's conduct.

64. The State Bar established a Grievance Committee file for the alleged neglect of the Hankins' legal matter. This file was assigned file number 05G1247.

65. Shearon was served with the letter of notice in grievance file 05G1247 by certified mail on or about December 12, 2005.

66. Shearon had fifteen days from receipt of the letter of notice to respond.

67. Shearon failed to respond to the letter of notice in file 05G1247.

68. Shearon closed a real estate transaction in which the property located at 2908 Broadlands Drive, Raleigh, NC (hereinafter "the Broadlands Drive property") was transferred from the seller, Stephanie Link (hereinafter "Link"), to the buyer, Tiffany Ann Goodman (hereinafter "Goodman").

69. Goodman made arrangements to receive a loan (hereinafter "the Goodman loan") from Wells Fargo Bank, N.A. (hereinafter "Wells Fargo") for use in purchasing the Broadlands Drive property.

70. Although Link and Goodman had agreed that Link would pay a certain amount in closing costs, Goodman's lender, Wells Fargo, restricted the amount Goodman could receive from the seller in closing costs.

71. The restriction on the amount that the seller could pay in closing costs was stated in Wells Fargo's loan commitment letter for the Goodman loan in the section listing conditions to be satisfied at the time of closing.

72. Shearon received Wells Fargo's loan commitment letter for the Goodman loan listing conditions to be satisfied before and during the closing of the loan.

73. Shearon received loan closing instructions from Wells Fargo for the Goodman loan.

74. Shearon had a duty to follow the instructions in Wells Fargo's loan commitment letter for the Goodman loan that were to be satisfied at the time of loan closing.

75. Shearon had a duty to follow Wells Fargo's loan closing instructions for the Goodman loan.

76. Shearon did not notify Wells Fargo that he would not represent it in the closing of the Goodman loan.

77. Shearon did not notify Wells Fargo that he would not follow the instructions given by Wells Fargo in its loan commitment letter or its loan closing instructions for the Goodman loan.

78. Shearon prepared a HUD-1 Settlement Statement for the closing on which the closing cost allocation complied with Wells Fargo's restriction on the closing costs that could be paid by the seller.

79. Shearon provided this HUD-1 Settlement Statement to Wells Fargo.

80. Through a legal assistant acting with Shearon's authorization and permission, Shearon certified to Wells Fargo that he had complied with the lender's closing instructions on the Goodman loan.

81. Shearon's certification to the lender included the certification that "no additional disbursements to the borrower(s) or the seller(s) have been made without prior approval of the lender."

82. According to this HUD-1 Settlement Statement, Link was to receive \$42,986.30 in proceeds from the sale.

83. Link and Goodman signed this HUD-1 Settlement Statement.

84. Shearon did not disburse to Link the full \$42,986.30 listed on the HUD-1 Settlement Statement when he disbursed the funds for the closing on the Broadlands Drive property.

85. Shearon only disbursed \$41,256.30 to Link when he disbursed the funds for the closing on the Broadlands Drive property.

86. Shearon gave the remaining \$1,730.00, which was the difference between what Goodman and Link had agreed Link would pay in closing costs and the lesser amount the lender allowed Link to pay in closing costs, to the buyer, Goodman.

87. At no time subsequent to signing the HUD-1 Settlement Statement did Link consent to receiving less than was listed on the HUD-1 Settlement Statement she signed.

88. Shearon did not notify Wells Fargo that he was disbursing \$1,730.00 more to Goodman and \$1,730.00 less to Link than the HUD-1 Settlement Statement indicated.

89. Shearon did not obtain consent or approval from Wells Fargo to make the additional disbursement of \$1,730.00 to Goodman.

90. Link complained to Shearon about the lesser amount disbursed to her.

91. Link demanded Shearon deliver the remaining \$1,730.00 to her.
92. Shearon responded to Link and stated he would pay her the \$1,730.00 if she signed the release he sent to her at that time and returned it to him.
93. The release Shearon sent to Link would have required that Link not file any complaints or grievances against Shearon with any State or Federal agency.
94. The release Shearon sent to Link would have prohibited Link from filing a grievance concerning allegations of misconduct by Shearon to the North Carolina State Bar, a state agency under N.C. Gen. Stat. § 84-15.

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over Defendant and the subject matter of this proceeding.
2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Revised Rules of Professional Conduct in effect at the time of the actions as follows:
 - (a) By failing to obtain a written agreement from Thomas to pay for environmental damage repairs prior to closing, Shearon failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
 - (b) By failing to advise the Hankins and/or make arrangements for the Hankins to pay the \$50,000.00 to Thomas either before the December 31, 2004 due date or within the grace period extended to the Hankins in January 2005, and by failing to disburse the Hankins' \$55,000.00 to Thomas' attorney when so directed by T. Hankins with no communication to the Hankins that he could not do so or that doing so would not be sufficient to satisfy the note on the property, Shearon failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
 - (c) By telling T. Hankins that he had obtained an agreement from Thomas to pay for environmental repairs when he had not, by failing to tell T. Hankins of communications received by counsel for Thomas, by failing to tell T. Hankins of Thomas' refusal to pay for the repairs prior to December 31, 2004, and by failing to tell T. Hankins of the grace period extended by counsel for Thomas in January 2005, Shearon failed to keep the Hankins reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);



- (d) By making a false statement to T. Hankins that he had obtained an agreement from Thomas to pay for environmental repairs when he had not, Shearon engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (e) By failing to disburse the funds he held for the Hankins in trust as directed by T. Hankins, Shearon failed to pay or deliver to a third person as directed by the client entrusted property belonging to the client in violation of Rule 1.15-2(m);
- (f) By not responding to the North Carolina State Bar's letter of notice in grievance file 05G1247, Shearon failed to respond to an inquiry by the Bar in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct and N.C. Gen. Stat. § 84-28(b)(3);
- (g) By disbursing the funds collected as a fiduciary for the Broadlands property closing in a manner contrary to the conditions placed by Wells Fargo on its agreement to make the Goodman loan and contrary to the HUD-1 Settlement Statement provided to Wells Fargo, Shearon used entrusted property for the personal benefit of a person other than the legal or beneficial owner of that property in violation of Rule 1.15-2(j) and failed to promptly pay entrusted funds belonging to the client to third persons as directed by the client in violation of Rule 1.15-2(m);
- (h) By submitting a HUD-1 Settlement Statement to Wells Fargo that did not accurately show how the funds from the closing were disbursed and by submitting a certification to Wells Fargo certifying that no additional disbursements had been made to the borrower without the prior approval of Wells Fargo when he had made such an additional disbursement, Shearon engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and
- (i) By attempting to have Link sign a release under which she would be prohibited from reporting Shearon's alleged misconduct to the North Carolina State Bar in order to receive the \$1,730.00 Shearon had failed to disburse to her from the closing, Shearon engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the



hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Shearon's misconduct is aggravated by the following factors:
 - a. Prior disciplinary offenses, to wit: an admonition issued on August 17, 1999, a reprimand issued on May 26, 2001, and an admonition issued on May 13, 2004.
 - b. A pattern of misconduct;
 - c. Multiple offenses;
 - d. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
 - e. Refusal to acknowledge the wrongful nature of his conduct;
 - f. Substantial experience in the practice of law; and
 - g. Indifference to making restitution.
2. Shearon's misconduct is mitigated by the following factor:
 - a. Absence of a dishonest or selfish motive.
3. The aggravating factors substantially outweigh the mitigating factor.
4. Shearon's conduct resulted in significant harm to the profession. Shearon's neglect, failure to communicate, and false communication to Hankins caused Hankins to feel his trust had been betrayed. Hankins expressed a sense of distrust of the legal profession in general due to Shearon's conduct.
5. Shearon's conduct resulted in potential significant harm to the profession. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and otherwise participate in this self-regulation. Shearon's failure to participate in this self-regulation jeopardizes the profession's ability to remain self-regulating.
6. Shearon's conduct resulted in significant harm to his client, Hankins, by depriving Hankins of the opportunity to settle the outstanding debt owed to

Thomas for \$50,000.00 in January 2005 and instead ultimately placing Hankins in the position of having to pay \$60,000.00 to settle that debt and protect his ownership of the Loop Road property.

7. Shearon's conduct included conduct prejudicial to the administration of justice, to wit: his condition of repayment of the funds he withheld from Link and paid to Goodman upon Link's execution of a release under which she would be prohibited from reporting his conduct to the State Bar.

8. The hearing committee has considered lesser sanctions and finds that discipline short of suspension would not sufficiently protect the public for the following reasons:

- a. Shearon has engaged in multiple violations of the Revised Rules of Professional Conduct over a substantial period of time and his misconduct was not the result of a mistake, nor did it appear to be an aberration;
- b. Shearon's conduct caused substantial harm to his client, substantial harm and potential harm to the profession, and included conduct prejudicial to the administration of justice;
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Shearon committed, would be inconsistent with the order of discipline entered by this body in similar cases, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE

1. The Defendant, David R. Shearon, is hereby suspended from the practice of law in North Carolina for three years, beginning 30 days from the date of service of this order upon the Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of

the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. The costs of this action are taxed to Defendant.

5. After serving twelve months of the active suspension of his license, Defendant may apply to have the remainder of the suspension stayed by filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him;
- c. That he paid restitution to Mr. and Mrs. Hankins in the amount of \$10,000.00;
- d. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address;
- e. That he has responded to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- f. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state; and
- g. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension. The State Bar does not send membership and CLE notices to members who are suspended so it is Defendant's obligation to contact the appropriate departments on a timely basis, ascertain his financial and CLE obligations during his suspension and to timely satisfy those obligations.

6. The procedures of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b) shall govern Defendant's petition for a stay of the remainder of the suspension of his law license.

7. If the Secretary finds that Defendant has proven compliance with the conditions of this order by clear, cogent, and convincing evidence, the Secretary shall put into effect the stay of the remaining period of suspension provided for in this Order by reinstating Defendant to active status subject to the terms, conditions, and requirements

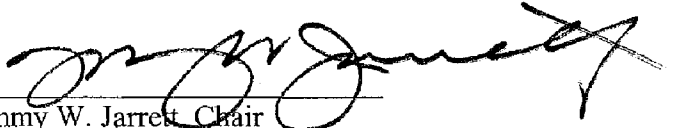
of this Order of Discipline, with Defendant's active status contingent upon continued compliance with the terms of this Order. Such stay will continue in force only as long as Defendant continues to comply with all conditions in this Order. The Disciplinary Hearing Commission will retain jurisdiction of the matter until all conditions of the Order are satisfied, under 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0114(x).

8. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with the conditions set out in paragraphs 5 (d) – (g) of the Order of Discipline section of this Order.

9. If an order staying any period of this suspension is entered and the Defendant fails to comply with any of the conditions referenced in Paragraph 8 of the Order of Discipline section of this Order, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members,
this the 17 day of October, 2007.


Tommy W. Jarrett, Chair
Disciplinary Hearing Committee