NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 28

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
v.	)	ORDER OF DSICIPLINE
SYBIL H. BARRETT, Attorney, Defendant	)	

This matter was heard by a hearing panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair; Renny W. Deese and Bradley Lail. Based upon the records of this case establishing the defendant's default, as entered by the Secretary on July 7, 2014, and the facts deemed admitted based upon the defendant's default, the panel finds the following facts were established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The defendant, Sybil H. Barrett (hereinafter "Barrett"), was admitted to the North Carolina State Bar on March 22, 2003 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. Barrett was served with the Complaint in this matter by publication beginning May 16, 2014.

4. Barrett failed to file an answer or other responsive pleading.

5. Barrett's default was entered on July 7, 2014.

6. The order assigning the hearing panel and setting this matter for hearing on October 17, 2014 that was mailed to Barrett by the Clerk was not returned to the Clerk as undeliverable.

7. Barrett did not appear at the hearing either in person or through Counsel.

8. During the relevant time that Barrett was actively engaged in the practice of law in the State of North Carolina, she maintained a law office in the city of Charlotte, Mecklenburg County, North Carolina.

9. During the time relevant to this Complaint, Barrett maintained a trust account at Bank of America with an account number ending in 1892 (hereinafter "trust account").

10. On September 24, 2008, Barrett closed M. Ziaee's purchase of real property located at 10914 Chrudan Drive in Charlotte, NC.

11. Barrett represented Ziaee in the transaction. Barrett had fiduciary duties to Ziaee's lender and to the seller.

12. Barrett had a duty to receive and disburse the funds for the closing in accordance with the HUD-1 Settlement Statement, arising from the attorney-client relationship with Ziaee and from the fiduciary relationship with the lender and seller.

13. From the closing proceeds for the Ziaee transaction that Barrett had on deposit in her trust account as of September 25, 2008, Barrett should have paid the 2008 property taxes on the Chrudan Drive property in the amount of $1,781.51 to the Mecklenburg County Tax Collector as shown on lines 07 and 511 of the HUD-1 Barrett prepared for the closing.

14. Barrett failed to pay the 2008 property tax from the closing proceeds as she was obligated to do.

15. At the beginning of the day on March 27, 2009, Barrett's trust account balance was $1,597.78.

16. On March 27, 2009, after being contacted by M. Ziaee about the unpaid taxes, Barrett wrote trust account check number 1498 payable M. Ziaee for $1,846.86 which constituted the tax owed plus the accumulated interest of $62.35. Barrett should have had at least $1,781.51 in her trust account for M. Ziaee on that date.

17. Prior to March 27, 2009, Barrett had appropriated a portion of the funds she was holding in a fiduciary capacity for M. Ziaee to her own use or to the use of someone other than her client, M. Ziaee.

18. On March 27, 2009, Barrett deposited $2,000.00 of her own funds from a financial management account she maintained at Citi Smith Barney, with an account number ending in 3591, into her trust account to cover check number 1498.

19. On January 27, 2009, Barrett closed The Blue Skies Trust's purchase of real property located at 8315 Cricket Lake Drive in Charlotte, NC.

20. Barrett represented the buyer in the Blue Skies Trust transaction. Barrett had fiduciary duties to the buyer's lender and to the seller.

21. Barrett had a duty to receive and disburse the funds for the closing in accordance with the HUD-1 Settlement Statement, arising from the attorney-client relationship with Blue Skies Trust and from the fiduciary relationship with the lender and seller.

22. On January 27, 2009, Barrett received a $130,892.28 wire transfer into her trust account from The Blue Skies Trust's lender and deposited a check for $2, 359.16 from The Blue Skies Trust into the trust account. These funds constituted the closing proceeds for The Blue Skies Trust's closing.

23. Prior to the deposit of The Blue Skies Trust's closing proceeds into her trust account, the balance in the account was $614.08.

24. From the closing proceeds received by Barrett for this closing, Barrett should have paid the seller's 2008 property taxes in the amount of $1,675.19 to the Mecklenburg County Tax Collector as shown on line1304 of the HUD-1 Barrett prepared for the closing.

25. Barrett failed to pay the seller's 2008 property tax from the closing proceeds as she was obligated to do.

26. On January 22, 2010, without having paid the seller's property tax from The Blue Skies Trust's closing, Barrett closed her trust account by taking the $605.97 balance as a debit.

27. Barrett appropriated $1,675.19 of The Blue Skies Trust's closing proceeds that she had received in a fiduciary capacity for the sole purpose of paying the seller's property taxes to the Mecklenburg County Tax Collector to her own use or to the use of someone other than her client, The Blue Skies Trust.

28. During the time relevant to this Complaint, Barrett maintained an operating account at Bank of America with an account number ending in 1902 (hereinafter, "operating account").

29. Between January 2, 2008 and December 2, 2009, Barrett made 125 intra-bank transfers from her trust account to her operating account without attributing the transfers to any client.

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

CONCLUSIONS OF LAW

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

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

(a) by failing to pay the 2008 property taxes on the Chrudan Drive property to the Mecklenburg County Tax Collector as she was obligated to do, Barrett failed to promptly pay or deliver entrusted property to a third person as directed by her client in violation of Rule 1.15-2(m) and failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

(b) by appropriating a portion of the $1,781.51 she should have held in a fiduciary capacity for M. Ziaee to her own use or to the use of someone other than her client, Barrett used entrusted property to the benefit of herself or some person other than the legal or beneficial owner in violation of Rule 1.15-2(j); committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

(c) by failing to promptly pay the seller's property taxes on the property purchased by The Blue Skies Trust to the Mecklenburg County Tax Collector as she was obligated to do, Barrett failed to promptly pay or deliver entrusted property to a third person as directed by her client in violation of Rule 1.15-2(m) and failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3; and

(d) by appropriating the $1,675.19 she received in a fiduciary capacity that should have been used to pay the seller's property taxes on the property purchased by The Blue Skies Trust to the Mecklenburg Tax Collector to her own use or to the use of someone other than her client, Barrett used entrusted property to the benefit of herself or some person other than the legal or beneficial owner in violation of Rule 1.15-2(j); committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

(e) by making intra-bank transfers from her trust account to her operating account without attributing the transfers to any client, Barrett had items drawn from her trust account that didn't indicate on the item the client balance on which the item was drawn in violation of Rule 1.15-2(h).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Barrett knowingly took money entrusted to her by her clients that had been entrusted to her for a particular purpose, the payment of taxes that were a lien on the property being purchased by her clients.

2. As a result of Barrett's failure to pay the taxes on the property her clients were purchasing, Barrett caused significant harm and potential harm to;

a. her clients whose property was subject to sale for non-payment of the taxes;
b. the sellers of the property whose tax bills on the public record were shown as being delinquent; and
c. her clients' lenders whose security interest on the property was impaired by the continuing existence of the tax liens.

3. Barrett caused significant harm and potential harm to her other clients whose funds were in jeopardy from Barrett's many unattributed transfers from her trust account to her operating account and whose funds were used to reimburse her client Ziaee for the taxes she had failed to pay from his closing; and

4. Barrett caused significant harm and potential harm to the public and the legal profession caused any time an attorney's significant dishonest conduct becomes a matter of public record.

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

CONCLUSIONS REGARDING DISCIPLINE

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

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

a. Barrett has had no prior disciplinary offense in this state;

b. Barrett had a dishonest or selfish motive;

c. Barrett exhibited a pattern of misconduct;

d. Barrett committed multiple offenses;

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

a. Barrett intended to commit acts where the resulting harm or potential harm to her clients was foreseeable;

b. The circumstances reflect Barrett's lack of honesty, trustworthiness and integrity;

c. Barrett elevated her own interest above the interests of her clients;

d. Barrett's conduct had a negative impact on the public's perception of the legal profession;

e. Barrett impaired her clients' ability to achieve the goals of the representation;

f. Barrett's conduct adversely affected third parties; and

g. Barrett engaged in acts of dishonesty and deceit.

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

a. Barrett engaged in acts of dishonesty; and

b. Barrett engaged in misappropriation of her clients' funds.

2. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, censure or suspension of Barrett's license would not be sufficient discipline because of the gravity of the actual harm Barrett's conduct caused to the public and the legal profession, and because of the gravity of the significant potential harm to potential clients, the public, and the legal profession if Barrett were permitted to continue practicing law.

3. The hearing panel finds that discipline short of disbarment would not adequately protect the public or the legal profession for the following reasons:

a. Barrett committed misdeeds involving violations of the public trust, including misappropriation of clients' entrusted funds;

b. Misconduct involving misappropriation is among the most serious that any attorney can commit. Such offenses demonstrate that Barrett is not trustworthy. The public should be able to assume that all lawyers are trustworthy; and

c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Barrett committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state.

4. Protection of the public, the legal professional and the administration of justice requires that Barrett not be permitted to resume the practice of law until she demonstrates the following:

a. That she has reformed;

b. That she understands her obligations to her clients, the public, and the legal profession; and

c. That permitting her to practice law will not be detrimental to the public, or the integrity and standing of the legal profession.

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

ORDER OF DISCIPLINE

1. Sybil H. Barrett is hereby DISBARRED from the practice of law, effective 30 days from the date of service of this order upon her.

2. Barrett shall surrender her law license and bar membership card within 30 days after service of this order upon her.

3. Barrett shall comply with all provisions of 27 N.C.A.C. 1B §.0124 of the North Carolina State Bar Discipline and Disability Rules as applicable.

4. Barrett is taxed with the costs and administrative fees of this action as assessed by the Secretary which shall be paid within ninety (90) days of service of the notice of costs upon her.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other panel members, this the 17th day of October 2014.

Joshua W. Willey, Jr., Chair
Disciplinary Hearing Panel