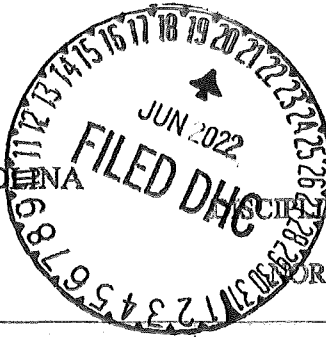


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 7

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ORDER OF DISCIPLINE

JIM MELO, Attorney,

Defendant

This matter was heard on June 1, 2022 by a Hearing Panel of the Disciplinary Hearing Commission ("DHC") composed of Donald C. Prentiss, Chair, and members Irving L. Joyner and Heath R. Jenkins, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i) of the North Carolina State Bar Discipline and Disability Rules. Plaintiff, the North Carolina State Bar ("Plaintiff" or "State Bar") was represented by Barry S. McNeill, Deputy Counsel. Defendant, Jim Melo ("Defendant" or "Melo"), was represented by F. Lane Williamson of Waxhaw, North Carolina. The Hearing Panel granted the Plaintiff's unopposed Motion for Summary Judgment and, as a result, the hearing addressed the appropriate discipline to be imposed for the violations of the Rules of Professional Conduct admitted by the Defendant.

Based upon the pleadings in this matter, the parties' stipulations of fact, and the evidence presented by the parties, the Hearing Panel hereby enters 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Jim Melo ("Defendant"), was admitted to the North Carolina State Bar on December 1, 2006, 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.

3. During the relevant periods referred to herein, Defendant 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. In or about June 2013, Defendant and Claudia Hurtado-Myers ("Hurtado-Myers") merged their solo law practices into one law firm, Melo & Hurtado, PLLC ("firm").

5. Defendant was the managing partner of the firm, handling the firm's accounting and expenses, including the payment of the firm's employees.

6. Hurtado-Myers managed her own staff and the day-to-day operations of the firm.

7. During all times referred to herein, Defendant and Hurtado-Myers had one or more employees who provided services for the firm.

8. As a self-described 100% owner of the firm, Defendant was solely liable for the firm's liabilities, including its tax obligations.

9. When Defendant paid the employees of the firm, the rules of the Internal Revenue Service ("IRS") required Defendant to withhold funds from the employees' paychecks to pay the employees' social security, Medicare, and federal income taxes ("employment taxes").

10. Defendant was required to collect, accurately and truthfully account for, and timely remit to the IRS the employment taxes withheld for the employees of the firm.

11. From the time the employment taxes were withheld until their remission to the IRS, Defendant had a fiduciary duty to hold the funds withheld from the employees' paychecks for the benefit of the United States Department of the Treasury.

12. Willful failure to collect, account for, or remit any tax imposed by the Internal Revenue Code is a felony under 26 U.S.C. § 7202.

13. The IRS rules also require that employers file IRS 941 forms every quarter.

14. The IRS 941 forms are summaries of the amounts paid to the employees, the amounts withheld from their paychecks, the monthly deposits remitted to the IRS, and the amount due if insufficient deposits are made.

15. Beginning with the third quarter of 2013 and continuing through the first quarter of 2016 ("the relevant time period"), Defendant withheld employment taxes from the firm's employees and reported the withholdings on IRS 941 forms but then intentionally did not remit all the withheld amounts to the IRS as required.

16. In 2015 and 2016, the IRS filed Federal Tax Liens against the firm totaling \$179,724.21, including delinquent payroll taxes, penalties, and interest in the amount of \$162,039.10, as well as delinquent unemployment taxes for tax year 2013, in the amount of \$17,685.11.

17. The Federal Tax Liens listed the firm's delinquent IRS 941 unpaid balance assessments totaling \$162,039.10 for the relevant time period:

- a) 3rd Quarter of 2013 in the amount of \$7,321.53
- b) 4th Quarter of 2013 in the amount of \$23,173.34
- c) 1st Quarter of 2014 in the amount of \$26,364.88
- d) 2nd Quarter of 2014 in the amount of \$25,420.66
- e) 3rd Quarter of 2014 in the amount of \$20,135.77
- f) 4th Quarter of 2014 in the amount of \$34,333.57
- g) 1st Quarter of 2015 in the amount of \$22,649.39
- h) 3rd Quarter of 2015 in the amount of \$1,546.41
- i) 1st Quarter of 2016 in the amount of \$1,093.55

18. On June 29, 2015, Defendant signed IRS Form 433-B (Collection Information Statement for Business) under penalty of perjury, checking the box "Yes" as to being "Responsible" for remitting the firm's employment taxes to the IRS.

19. In March 2015, while Defendant was away from the office, an IRS agent visited the firm and informed Hurtado-Myers, in Defendant's absence, that the firm's employment taxes had not been paid in over a year.

20. The employment taxes due to the IRS related to the third quarter of 2013 through the first quarter of 2016, as indicated in Paragraph 17 above.

21. Hurtado-Myers was unaware at the time of the IRS agent's visit in March 2015 that Defendant had not been remitting the firm's employment taxes to the IRS.

22. The IRS agent presented Hurtado-Myers with a tax bill for the firm's outstanding employment taxes, along with penalties and interest.

23. Once she had been apprised of the delinquent employment taxes, penalties, and interest, Hurtado-Myers informed Defendant about the IRS agent's visit.

24. When Defendant returned to the firm, he admitted to Hurtado-Myers that he had not paid the withheld employment taxes to the IRS for the time periods in question.

25. In August 2015, Hurtado-Myers left the firm with the understanding that Defendant was working to resolve the outstanding employment tax issue with the IRS.

26. Under Internal Revenue Code 6672, individuals who are required to collect, account for, and pay over employment taxes withheld from employees' wages may be held personally liable for a penalty if unpaid to the IRS.

27. In January of 2016, the IRS deemed Defendant 100% responsible as to the nonpayment of the firm's employment taxes to the IRS and assessed a Trust Fund Recovery Penalty ("TFRP") against him totaling \$99,639.82.

28. Defendant entered into an agreement with the IRS in August 2016 to pay \$2,500 per month towards the balance of the employment taxes, penalties, and interest owed to the IRS.

29. Defendant made timely monthly payments to the IRS from August 2016 until January 2019.

30. Defendant closed his firm on December 31, 2017, and became a partner with another law firm in Raleigh, North Carolina on January 1, 2018.

31. In 2019, the IRS garnished Defendant's income as a Criminal Justice Act ("CJA") attorney in the federal court system towards the debt owed.

32. During the period from the third quarter of 2013 through the first quarter of 2016 when Defendant was not making the employment tax deposits with the IRS as required by law, Defendant embezzled some or all of these funds to his own benefit or for the benefit of the firm.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a) By willfully failing to remit to the IRS the funds withheld from the firm's employees as required by 26 U.S.C. § 7202, Defendant committed felonious criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and,
- b) By knowingly and willfully embezzling the funds that he was holding for the benefit of the United States Department of the Treasury for his own use or the use of another, Defendant committed a criminal act that reflects adversely on his 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 in violation of Rule 8.4(c).

Upon the evidence presented by the parties, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has not received previous discipline.

2. Prior to the relevant time period, the firm paid wages to one or more employees, including to Defendant himself, and Defendant timely filed IRS Form 941 for the applicable quarters and remitted the required employee taxes to the IRS.

3. Defendant had signatory authority on all bank accounts maintained by the firm.

4. Except for one occasion when Defendant was on vacation during the relevant time period, Defendant signed the checks or initiated the direct deposits with which the firm paid bi-weekly wages to its employees.

5. During the relevant time period, Defendant controlled the funds in all bank accounts maintained by the firm and made decisions regarding how and when such funds in those accounts would be deposited and/or disbursed.

6. When the firm paid its employees during the relevant time period, Defendant would withhold the appropriate funds from the employees' paychecks to pay employment taxes to the IRS and state income taxes to the North Carolina Department of Revenue and would pay his employees and himself the net amounts due.

7. During the relevant time period, the withheld employment taxes remained in the firm's operating account or were utilized by Defendant for his personal use or in support of the firm and were not remitted by Defendant to the IRS.

8. Defendant received notices from the IRS regarding the accumulating delinquent employment taxes but took no remedial action to reduce his or the employees' salaries, spending on non-essentials, or expenses.

9. Defendant understood that from the time the employment taxes were withheld from employees' paychecks until the funds were ultimately to be paid to the IRS, he and the firm had a fiduciary obligation to hold the funds in trust for the benefit of the IRS.

10. For tax years 2013 through 2016, Defendant provided the firm's employees with W-2 forms at the end of the tax year reflecting the amounts of the employment taxes withheld from the employees' pay.

11. The W-2 forms Defendant provided to his employees included the total compensation paid, and separately listed the social security, Medicare, federal income taxes, and state income taxes withheld from his employees' paychecks.

12. Defendant knew the amounts he was supposed to be withholding for his employees and paying to the appropriate federal and state government agencies but nonetheless failed to remit the appropriate employment taxes to the IRS as indicated in Paragraph 17 above.

13. Defendant utilized a software system that automatically calculated the quarterly amounts he should remit to the IRS and which was linked to his firm's operating

account such that he only had to electronically authorize the quarterly payment of the employment taxes to the IRS.

14. Defendant provided no explanation for failing to remit the employment taxes to the IRS during the relevant time periods other than he “stuck his head in the sand” and it just became easier to not make the payments due to financial pressure as the firm grew.

15. Though Defendant led Hurtado-Myers to believe they were partners in the firm, their partnership was in name only and their verbal partnership agreement was never reduced to writing.

16. Defendant began having issues with the IRS in not timely filing the IRS 941 forms and not remitting the entirety of the firm’s withholding taxes to the IRS even before Hurtado-Myers joined the firm in the summer of 2013.

17. On the June 29, 2015 IRS Form 433-B, which Defendant signed under penalty of perjury, he falsely designated his ownership of the firm as 66% and Hurtado-Myers’ ownership as 34%, without ever disclosing to Hurtado-Myers or her eventual tax attorney the designation of her ownership interest.

18. Neither Defendant nor his tax attorney corrected the ownership designation on the June 29, 2015 IRS Form 433-B.

19. Even though Defendant was the person responsible for withholding, accounting for, and remitting the firm’s employment taxes to the IRS, the IRS filed liens against Hurtado-Myers for the employment taxes due and assessed the TFRP against her individually as well.

20. Hurtado-Myers’ comity application for admission to the Colorado State Bar has been held in abeyance pending resolution of her IRS obligation and this disciplinary proceeding against Defendant.

21. The IRS eventually held Hurtado-Myers responsible for 30% of the TFRP (\$26,748) and garnished approximately \$7,000 of her federal income tax refunds toward the payment of her amount owed.

22. The obligation deemed by the IRS to be owed by Hurtado-Myers, though not attributable to her, has caused her emotional distress since 2016.

23. Between Defendant’s voluntary payments to the IRS under his installment agreement and the CJA payments involuntarily garnished by the IRS, on or about September 13, 2021, Defendant successfully repaid to the IRS the entirety of the TFRP assessed against him but may still owe to the IRS a remaining balance of penalties and interest assessed against the firm.

24. Although Defendant has made diligent efforts to obtain documentary confirmation from the IRS that he has paid the balance of TFRP penalties and interest

against the firm, he has been unable to do so due to the unresponsiveness of the IRS. It therefore is unclear whether there is a remaining balance owed by the firm to the IRS.

25. Until the hearing in this matter, Defendant never apologized to Hurtado-Myers for the IRS holding her 30% liable for the TFRP or the emotional distress caused by his inactions.

26. Defendant did not express remorse for his inactions in remitting the employment taxes to the IRS and harm caused to Hurtado-Myers.

27. Defendant presented evidence of his good character and reputation as an attorney in criminal and immigration cases.

28. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including disbarment, suspension, censure, reprimand, and admonition, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

CONCLUSIONS WITH RESPECT TO DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (B) Intent of the Defendant to commit acts where the harm or potential harm is foreseeable;
- (C) Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;
- (E) Negative impact of Defendant's actions on public's perception of the profession;
- (F) Negative impact of Defendant's actions on the administration of justice;
- (H) Effect of Defendant's conduct on third parties; and,
- (I) Acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes there are none which warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (A) Absence of prior disciplinary offenses in this state;
- (C) Dishonest or selfish motive;
- (F) A pattern of misconduct;
- (K) Defendant's full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- (Q) Defendant's good character and reputation; and,
- (U) Imposition of other penalties or sanctions.

4. Defendant's conduct involved dishonesty, misrepresentations, and serious violations of criminal and tax law.

5. Defendant's conduct resulted in significant monetary harm and emotional distress to his former partner, Hurtado-Myers, as well as potential harm to others of the firm's employees whose employment taxes were not remitted by Defendant to the IRS.

6. The courts, the public and the administration of justice require attorneys to be honest and trustworthy. Defendant's conduct shows an extensive failure on his part to comply with the requirements of being a lawyer. His failure to apologize to his former partner for the harm he caused her and to make amends for her loss show that he continues to try to limit his responsibility for his own conduct. For these reasons, suspension of Defendant's law license is necessary for him to fully understand the seriousness of his misconduct and to help restore the public's faith in Defendant as an attorney.

7. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the misconduct at issue and the significant harm or potential harm Defendant's misconduct caused to the public, the administration of justice, and the legal profession.

8. For these reasons, this Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

- a) The factors under 27 N.C.A.C. 1B §.0116(f)(1) and (f)(3) that are established by the evidence are of a nature that support imposition of suspension as the appropriate discipline; and,
- b) Entry of less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send

the wrong message to prosecutors, attorneys, and the public regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Jim Melo, is hereby suspended from the practice of law for five years, effective 30 days from service of this order upon Defendant.

2. Defendant shall comply with the wind down provisions of 27 N.C.A.C. 1B § .0128 of the State Bar Rules.

3. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly provide client files to all clients who request return of their files.

4. After eighteen months of active suspension, Defendant may apply for a stay of the remaining period of suspension by filing a verified motion in this DHC proceeding demonstrating by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C. 1B § .0129(b), and has complied with each of the following conditions:

- a) Defendant shall timely submit his annual Continuing Legal Education ("CLE") report form to the CLE Department of the North Carolina State Bar each year of the stay and contemporaneously send a copy of the CLE report form to the Office of Counsel of the State Bar to document compliance with the above conditions of the stay. "Timely" means by the date specified by the CLE Department as the date by which members must submit their annual report forms to avoid assessment of a \$75.00 late filing penalty. Defendant must ensure the Office of Counsel receives a copy of his annual CLE report form no later than 15 days after it is due to the CLE Department of the State Bar each year;
- b) Defendant shall pay to the IRS any outstanding balance of the penalties and interest owed by his former firm in connection with the employment taxes. Defendant shall notify the Office of Counsel within ten (10) days of such payment to the IRS and provide the Office of Counsel with documentation of the payment or documentation from the IRS that no remaining balance is owed to the IRS;
- c) Defendant shall pay to Hurtado-Myers the sum of \$7,000 to compensate her for the garnishments made by the IRS of her personal federal income tax refunds. Defendant shall provide the

Office of Counsel with confirmation of the payment to Hurtado-Myers within ten (10) days of such payment.

- d) Defendant shall pay to the IRS any balance remaining of Hurtado-Myers' current debt to the IRS in connection with the firm's employment taxes. Defendant shall notify the Office of Counsel within ten (10) days of such payment to the IRS of Hurtado-Myers' debt to the IRS and provide the Office of Counsel with documentation of the payment or documentation that no remaining balance is owed to the IRS by Hurtado-Myers for the employment taxes;
- e) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all CLE requirements on a timely basis;
- f) Defendant shall keep his address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- g) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- h) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
- i) Defendant shall pay all costs and administrative fees of this proceeding as assessed by the Secretary of the State Bar within thirty (30) days after service of the notice of costs on him.

5. If Defendant successfully petitions for a stay of his suspension, the suspension of Defendant's law license shall be stayed as long as Defendant complies and continues to comply with the conditions set out in paragraphs 4e-4i above.

6. If Defendant fails to comply with any one or more of the conditions of the stay of his suspension provided in paragraphs 4e-4i above, the stay of suspension may be lifted in accordance with 27 N.C.A.C. 1B § .0118(a).

7. If Defendant successfully petitions for a stay of his suspension, Defendant's obligations governing the stay under this Order end after the applicable period of the stay provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C.A.C. 1B § .0118(a), the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the remaining portion of the suspension in

whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

8. If no stay is sought by Defendant, or if the stay of the suspension is lifted and the suspension is activated for any reason, the following conditions are placed upon Defendant's reinstatement to active status. With any petition Defendant files for reinstatement to active practice, Defendant must demonstrate by clear, cogent, and convincing evidence that he complied with each of the following conditions:

- a) Made good faith efforts to repay to the IRS the outstanding balance resulting from interest and penalties owed by his firm, as well as the \$7,000 garnished from Hurtado-Myers' federal income tax refunds and the outstanding balance, if any, owed to the IRS by Hurtado-Myers;
- b) Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- c) Complied with all provisions of 27 N.C.A.C. 1B § .0128 on a timely basis;
- d) Complied with all provisions of 27 N.C.A.C. 1B § 0129(b);
- e) Not have violated any of the Rules of Professional Conduct;
- f) Not have violated any laws of the State of North Carolina or of the United States; and
- g) Paid all costs of this proceeding as assessed by the Secretary of the State Bar within thirty (30) days of service of the notice of costs upon him.

9. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary of the State Bar, which shall be paid within thirty (30) days of service of the notice of costs upon Defendant.

10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0118(a) throughout the period of the suspension or any period of the stayed suspension, until all conditions set forth in paragraphs 4a-4i are satisfied.

Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 30 day of June, 2022.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel