

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 3

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

JEFFREY M. GULLER, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on for hearing on June 16, 1989 and was heard by a hearing committee of the Disciplinary Hearing Commission composed of Maureen Demarest Murray, Chairman, Harold Mitchell and Emily Turner; with A. Root Edmonson representing the North Carolina State Bar and Lawrence W. Hewitt representing Jeffrey J. Guller, and based upon the pleadings in this matter, the stipulations entered into by the parties, and the evidence presented at the hearing, the hearing committee finds the following to be supported 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, Jeffrey M. Guller, was admitted to the North Carolina State Bar on September 27, 1966, and is, and was at all times referred to herein, an Attorney of Law licensed to practice in North Carolina, subject to the rules, regulations, Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Gastonia, Gaston County, North Carolina.
4. On January 25, 1988, a loan was closed in Defendant's office which was a "bridge" loan from Gilbraltor Money Center, Inc. (hereinafter Gilbraltor) to Victor and Lela McSwain.
5. The loan was secured by a promissory note and a deed of trust on the McSwains' residence at 372 Leafmore Drive, Charlotte, NC which they were attempting to sell.

6. Gibraltar sent closing instructions to Defendant along with their check number 005481 dated January 21, 1988 in the amount of \$37,541.60 which represented the loan proceeds.
7. Defendant was instructed to pay off the existing loan the McSwains' had on their property at 372 Leafmore Drive held by C & S Real Estate Services, Inc. (hereinafter C & S) on January 29, 1988 after the three day rescission period had expired.
8. The McSwains' directed Defendant to disburse the funds from the closing according to the closing statement Defendant had prepared.
9. The loan payoff amount due to C & S on the instructed payoff date was \$30,786.25 rather than the amount that was listed on the closing statement.
10. Defendant's wife and paralegal, Jean Guller, deposited Gibraltar's check number 005481 into Defendant's attorney account at NCNB National Bank in Gastonia, North Carolina account number 629108519. This account was not a trust account but was an account which contained funds belonging to Defendant or his law office.
11. Defendant did not know that Jean Guller had not deposited the funds into his trust account.
12. The C & S loan was not paid off in January, 1988.
13. On or about March 1, 1988, Jean Guller sent check number 355 on Defendant's Real Estate Trust Account at NCNB in Gastonia, North Carolina, account number 629108527, to C & S in the amount of \$826 to cover the McSwains' February and March loan payments.
14. Gibraltar subsequently contacted Defendant's office and the C & S loan was paid off by Defendant's check number 0423 on his Real Estate Trust Account at NCNB, account number 629108527, in the amount of \$30,979.04 dated April 18, 1988.
15. Defendant did not know that Jean Guller had not paid off the C & S loan contemporaneously with the closing as he had instructed her to do.
16. Harry Warren of the North Carolina State Bar staff called Defendant and asked him to send the North Carolina State Bar some evidence that the money necessary to pay off the C & S loan at all times remained in a trust account from the closing date until the payoff was made.
17. In response, Defendant sent a May 6, 1988 letter to Harry Warren with attachments.
18. Included in the attachments was a deposit slip on Defendant's Real Estate Trust Account at NCNB, account number 629108527, dated January 26, 1988 in the sum of \$37,541.60 which contained a purported teller's stamp. This deposit slip was fabricated by Jean Guller. Defendant's bank statements on the Real Estate Trust Account show no such deposit on January

26, 1988.

19. Defendant did not know that the deposit slip was fabricated when he sent it to the North Carolina State Bar.
20. On or after April 7, 1988, Defendant was the closing attorney on a "refinance" loan from the North Carolina State Employee's Credit Union (hereafter Credit Union) to Leon D. and Karen S. Cox.
21. The loan was secured by a promissory note and a deed of trust on the Cox' residence at 303 Oakdale Street in Gastonia, North Carolina.
22. Jean Guller prepared a closing statement for the Cox closing.
23. The Coxes left their check in the sum of \$2,016.51 with Defendant on or prior to April 13, 1988.
24. Defendant was directed by his clients to make the disbursements according to the closing statement, including paying off the Cox' prior loan at Liberty Mortgage Corporation (hereinafter Liberty) in Tucker, Georgia.
25. Jean Guller deposited the \$27,500 in loan proceeds she had received from the Credit Union into Defendant's Trustee Account at Southern National, account number 321-565911 on April 7, 1988.
26. On April 13, 1988, Jean Guller wrote check number 4020 on the Trustee Account in the sum of \$27,500 and deposited that check with the Cox' check for \$2,016.51 into Defendant's Real Estate Trust Account at NCNB, account number 629108527.
27. Jean Guller subsequently requested a loan payoff amount from Liberty which would reflect a payoff date of April 25, 1988. The payoff amount for April 25, 1988 was \$26,499.33.
28. Jean Guller subsequently sought a payoff amount which would reflect a payoff date of May 13, 1988. The payoff for that date was \$26,673.88.
29. Jean Guller prepared check number 0467 on the Real Estate Trust Account dated May 12, 1988 in the sum of \$26,673.88 made payable to Liberty.
30. Check number 0467 was twice returned for insufficient funds in that the Real Estate Trust Account balance was insufficient to cover the check as reflected in the May 31, 1988 bank statement for that account.
31. Defendant did not know that the Liberty loan had not been paid contemporaneously with the Cox' closing until June, 1988 after Jean Guller admitted to him what she had done.
32. The Coxes employed attorney Steve Dolly to look into why Liberty had not been paid.
33. Steve Dolly went to Defendant's office on Friday afternoon, June 10, 1988 to inquire about the Cox' loan. Defendant

advised Dolly money had been wired to Liberty that day. No such payment had been made.

34. Defendant so advised Dolley because Jean Guller had told him that the payoff had been wired after Defendant questioned her about why Leon Cox had been trying to contact him.
35. The Cox' loan at Liberty was paid on June 23, 1988 when a payment was made to Liberty in the sum of \$27,102.86.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following CONCLUSIONS OF LAW:

Defendant's conduct, as set forth above, constitutes violations of N.C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to preserve the McSwains' funds received in a fiduciary capacity separate and apart from his or his law firm's funds in a trust account, Defendant violated Rules 10.1(A) and (C).
- (b) By failing to disburse the funds he received in a fiduciary capacity for the benefit of the McSwains as directed by his clients, Defendant violated Rule 10.2(E).
- (c) By failing to preserve the Cox' funds received in a fiduciary capacity separate and apart from his or his law firm's funds in a trust account, Defendant violated Rule 10.1(A) and (C).
- (d) By failing to disburse the funds he received in a fiduciary capacity for the benefit of the Coxes as directed by his clients, Defendant violated Rule 10.2(E).
- (e) No other violations as alleged in the complaint were found by the hearing committee.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee this the 25th day of

July, 1989.

Maureen D. Murray
Maureen D. Murray

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Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law entered in this matter of even date herewith, and further based upon arguments of counsel and evidence of the character of Defendant entered in the initial phase of this proceeding, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, Jeffrey M. Guller, is suspended from the practice of law in North Carolina for a period of one year.
2. The suspension of Defendant's license is herewith stayed for a period of three years upon the following conditions:
 - (a) Defendant shall not violate any of the Rules of Professional Conduct.
 - (b) Defendant shall employ an independent certified public accountant (CPA), at his own expense, to certify to the North Carolina State Bar each January and each June during the period of the stay that Defendant has complied with Canon X of the Rules of Professional Conduct of the North Carolina State Bar regarding trust accounts.
 - (c) Before the expiration of the stay, Defendant shall have paid Southern National Bank of Gastonia, North Carolina the debt he owes to them that resulted from a \$58,000 check deposited into Defendant's account at Southern National Bank which was not honored.
 - (d) Defendant is taxed with the costs in this matter as certified by the Secretary.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee this the 25th day of

July, 1989.

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Maureen D. Murray
Maureen D. Murray, Chairman

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