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NORTH CAROLINA

WAKE COUNTY

FILED
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B.E. JAMES, SEC.
THE N.C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
84 DHC 14

THE NORTH CAROLINA STATE BAR,
Plaintiff
vs.
WADE HOBSON,
Defendant

JUDGMENT BY DEFAULT AND
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, February 21, 1985, upon the Plaintiff's motion for default judgment which was filed on January 30, 1985. The Plaintiff was represented by David R. Johnson, and the Defendant did not appear and was unrepresented. The record in the cause shows and it is found as a fact that the Summons and the Complaint in this cause were personally served on the Defendant on December 12, 1984. The Hearing Committee finds further that, having made no appearance in the cause, by answer or otherwise, the Defendant's default was duly entered by the Secretary of the North Carolina State Bar, B. E. James, on January 30, 1985, upon motion of the Plaintiff. Based upon the record and the allegations of the complaint which are deemed admitted, the Hearing Committee concludes that it has personal and subject matter jurisdiction in this cause, enters judgment by default, and makes the following FINDINGS OF FACT:

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, Wade Hobson, was admitted to the North Carolina State Bar on November 10, 1958 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 Code of Professional Responsibility of the North Carolina State Bar and of 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 East Bend, Yadkin County, North Carolina.

4. The Defendant was employed in late 1979 by Anna Ruth Miller to represent her interests in selling two parcels of real property. In December, 1979, the Defendant prepared two deeds for the transfer of the real property and supervised the execution of those documents by Anna Ruth Miller on or about December 15, 1979.

5. As attorney for Anna Ruth Miller, the Defendant received the funds from the purchasers of the two tracts of land on behalf of Ms. Miller. The total amount received by the Defendant for the two tracts was $28,750.00.

6. The Defendant was instructed by Ms. Miller to disburse the funds on her behalf in the following manner:

a. Pay the costs of the transaction.
b. Pay her nephew $1000.
c. Pay her neice $1000.
d. Pay her brother Frank Miller $1000.
e. Pay her living expenses from time to time with the balance.

7. The Defendant did, in fact, pay the nephew and niece $1000 each. The Defendant also paid Frank Miller $3000. The Defendant also paid $12,750 to a nursing home on behalf of Ms. Miller to pay living expenses. Thus, the Defendant disbursed a total of $17,750 on behalf of Ms. Miller.

8. At some time prior to August, 1983, Ms. Miller gave a power of attorney to Thomas Addison Miller and his wife Lucy Matthews Miller to handle Ms. Miller's financial affairs. The attorneys-in-fact contacted the Defendant and attempted to obtain an accounting of the proceeds from the real estate transaction. The Defendant did not provide an accounting to them.

9. On August 15, 1983, the law firm of Bell and White wrote to the Defendant on behalf of the Millers asking for an accounting of the proceeds. A copy of the letter was attached to the Complaint as Exhibit 1 and is hereby incorporated by reference as if fully set out herein. The Defendant did not respond to that letter.

10. On December 1, 1983, the law firm of Bell and White wrote to the Defendant and advised that a bill from the nursing home for the care of Ms. Miller was due and payable in the amount of $5,350.00 and demanded payment from the funds held by the Defendant or a statement concerning the availability of funds. A copy of this letter was attached to the Complaint as Exhibit 2

and is hereby incorporated by reference as if fully set out herein. The Defendlant did not respond to that letter.

11. In January, 1984, the Millers filed a Complaint in Yadkin County as attorneys-in-fact for Ms. Miller against the Defendant seeking an accounting and the return of any funds held by the Defendant to the Millers as attorneys-in-fact. The Defendant did not file an Answer to the Complaint or otherwise respond to the action after being served on January 20, 1984, and the Millers eventually obtained a default judgment against the Defendant for $11,250.00.

12. While the Millers' action was pending, Ms. Miller died. The law firm of Bell and White wrote to the Defendant on May 4, 1984, and advised that Ms. Miller's funeral bill was $3,108.11 and requested an accounting of the funds entrusted to the Defendant. A copy of this letter was attached to the Complaint as Exhibit 3 and is hereby incorporated by reference as if fully set out herein. Exhibit 3 demands a response by May 15, 1984. The Defendant responded to this letter by disputing the qualifications of the attorneys-in-fact to demand an accounting, but did not make this response until May 25, 1984, by letter, a copy of which was attached to the Complaint as Exhibit 4 and is hereby incorporated by reference as if fully set out herein.

13. The Millers eventually qualified as the administrators of the estate of Ms. Miller.

14. On or about July 11, 1984, the Defendant received a Letter of Notice from the Chairman of the Grievance Committee setting forth the substance of the Defendant's conduct to date with regard to his handling of this matter. The Rules of the North Carolina State Bar required a response to a Letter of Notice within fifteen days of its receipt. The Defendant did not respond to that letter.

15. On or about September 24, 1984, the Defendant was served with a subpoena issued by the Chairman of the Grievance Committee to produce his trust account records to the Counsel for the North Carolina State Bar on October 4, 1984. The Defendant did not produce the records required at the time required and has not produced the records to date.

16. On October 17, 1984, the Defendant delivered a letter to the Grievance Committee in which he stated that he was obligated to disburse some money to the Miller estate but disputed the amount. The Defendant also stated that his records were in a state of confusion and could not be produced.

17. The Grievance Committee of the North Carolina State Bar met on October 17, 1984, to consider the Defendant's conduct pursuant to the rules of the North Carolina State Bar. The Defendant was aware that this matter was being considered by the Committee at that time.

18. On October 24, 1984, the Defendant tendered $5000.00 to the Miller estate, but has yet to provide an accounting for the proceeds to the estate or to the Bar.

Based on the foregoing FINDINGS OF FACT, the Hearing Committee makes the following CONCLUSIONS OF LAW:

1. The Disciplinary Hearing Commission has jurisdiction over the subject matter and has personal jurisdiction over the Defendant.

2. The Defendant's actions constitute grounds for imposition of discipline as violations of N. C. Gen. Stat. §84-28(a) and (b), the Disciplinary Rules of the North Carolina Code of Professional Responsibility, and the statutory grounds for discipline in that:

a. by failing to provide an accounting to the Millers or otherwise respond to their requests for an accounting, the Defendant failed to provide an appropriate accounting to a client in violation of Disciplinary Rule 9-102(B)(3);

b. by failing to pay any funds in his possession on behalf of Ms. Miller to the nursing home after December 1, 1983, or otherwise respond to requests for action, and/or by failing to pay the balance of the funds entrusted to him to the attorneys-in-fact within a reasonable time after requested, or after the judgment, the Defendant has failed to promptly pay the funds of a client entrusted to him as directed by the client in violation of Disciplinary Rule 9-102(B)(4);

c. by failing to maintain his records in an appropriate manner in which they could be produced upon request, the Defendant failed to maintain complete records of the receipt and disbursement of the funds entrusted to him in violation of Disciplinary Rule 9-102(B)(3);

d. by failing to respond to the Letter of Notice issued by the Chairman of the Grievance Committee, the Defendant has failed to respond to a formal inquiry of the North Carolina State Bar in violation of N. C. Gen. Stat. §84-28(b)(3) and has engaged in professional conduct adversely reflecting on his fitness to practice in violation of Disciplinary Rule 1-102(A)(6); and

e. by failing to produce the trust account records pursuant to subpoena issued by the Chairman of the Grievance Committee, the Defendant has failed to respond to a formal inquiry of the North Carolina State Bar in violation of N. C. Gen. Stat. §84-28(b)(3) and has engaged in professional conduct adversely reflecting on his fitness to practice in violation of Disciplinary Rule 1-102(A)(6).

This the 22 day of February, 1985.

Garrett Dixon Bailey, Chairman
Hearing Committee

Robert W. Wolf

Mary Cecile Bridges

NORTH CAROLINA

WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
84 DHC 14

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
vs.	)	ORDER OF DISCIPLINE
WADE HOBSON, Defendant	)	

This cause was heard by the undersigned duly appointed members of a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, February 22, 1985. The Plaintiff, the North Carolina State Bar was represented by David R. Johnson. The Defendant was not present and was not represented. In addition to the FINDINGS OF FACT AND CONCLUSIONS OF LAW entered in this cause, the Plaintiff presented evidence in the disciplinary phase of the proceedings which is summarized as follows:

On October 27, 1984, the Defendant wrote to the Bar and advised that $5000 had been tendered to attorney W. Thomas White, attorney for the administrators of the estate of Anna Ruth Miller, as funds due the estate from those funds he had received in December, 1979, upon the sale of the real property. The $5000 was delivered by bank check issued on funds from the Wade Hobson "trust account." The Defendant also provided the Bar with a letter from the bank certifying that his "trust account" had a balance in excess of $7000 after the withdrawal of the $5000 paid to the estate. The bank statements of the Defendant's bank account clearly show that the Defendant did not deposit the $28,750 in proceeds from the sale of the property in question in the "trust account" in December, 1979. In fact, the account records show that the account balance in the Defendant's account never exceeded $15,000 at any time since December, 1979, and, on occasion, the account balance was negative. As recently as January, 1985, the Defendant issued checks on the account which were returned for insufficient funds. Further, the Defendant was given additional time by the attorney for the estate to prove how much was owed to the estate in November, 1984, and the Defendant has failed to provide any information to the attorney. Thus, it appears that the Defendant still cannot account for the funds received in light of this proceeding and has not retained those funds in his fiduciary capacity.

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW and the additional evidence presented for purposes of discipline, the Hearing Committee enters the following ORDER OF DISCIPLINE:

1. The Defendant is hereby disbarred from the practice of law effective thirty days after service of this ORDER or thirty days after affirmance of this ORDER on appeal.

2. The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar by the effective date of this ORDER.

3. The Defendant shall comply with the provisions of Section 24 of the Discipline and Disbarment Rules of the North Carolina State Bar regarding the winding down of his practice.

4. As a condition precedent to the filing of any petition for reinstatement, the Defendant shall have fully accounted for the funds received on behalf of Anna Ruth Miller to both the estate and to the Bar or shall have provided full restitution of the funds owed to the estate and provide proof with the petition.

5. The Defendant is taxed with the costs of this proceeding which shall be paid as a condition precedent to the filing of any petition for reinstatement.

This the 22nd day of February, 1985.

Garrett Dixon Bailey, Chairman
Hearing Committee

Robert W. Wolf

Mary Cecile Bridges