

WAKE COUNTY
NORTH CAROLINA



24762

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 51

THE NORTH CAROLINA STATE BAR
PLAINTIFF

v.

MICHAEL BRADBURY, ATTORNEY
DEFENDANT

)
)
) FINDINGS OF FACT
) CONCLUSIONS OF LAW
) AND ORDER OF DISCIPLINE
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THIS MATTER came on to be heard and was heard on March 4, 2005 before a duly assigned hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair; Tommy W. Jarrett and R. Mitchel Tyler. Carolin Bakewell appeared for the North Carolina State Bar. The Defendant, Michael Bradbury, did not appear and was not represented by counsel. Based upon the pleadings herein and the evidence introduced at trial, the hearing committee hereby makes the following:

FINDINGS OF FACT

1. 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, Michael Bradbury, ("Bradbury"), was admitted to the North Carolina State Bar in 1997 and is, and was at all relevant 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. During all periods relevant hereto Bradbury was engaged in the practice of law in Charlotte, North Carolina.
4. The complaint in this action was filed on Nov. 19, 2004.
5. Bradbury was served with the Summons and Complaint herein by certified mail on Nov. 24, 2004 and Dec. 6, 2004.

6. Bradbury's answer was due no later than Dec. 27, 2004.
7. Bradbury did not file an answer or other responsive pleading.
8. The Secretary of the N.C. State Bar entered Bradbury's default on Feb. 4, 2005.
9. The Disciplinary Hearing Commission has jurisdiction over Bradbury's person and over the subject matter of this proceeding.
10. Bradbury had proper notice of the time, date and place of this hearing.
11. On June 11, 2004, Bradbury served as the closing attorney for the sale of real property by Susan Stablein ("Stablein") to Michelle Hembree ("Hembree").
12. Bradbury deposited a total of \$132,649.98 relative to the Stablein-Hembree closing into his attorney trust account at First Citizens Bank ("trust account").
13. Bradbury was directed to disburse \$128,554.80 of the closing funds to Chase Manhattan Mortgage ("Chase") on Stablein's behalf.
14. Bradbury did not promptly remit the \$128,554.80 to Chase nor did he record the deed transferring the property from Stablein to Hembree or the deed of trust in favor of First Charter as required by the closing instructions.
15. On or about July 6, 2004, Bradbury disbursed \$6,589.62 of the closing funds to Chase and noted on the check that the payment was to cover Stablein's mortgage payments for July through December 2004.
16. As of July 6, 2004, Bradbury should have maintained at least \$122,000 in his trust account. The balance in the trust account on July 6 was \$67,487.60.
17. Bradbury misappropriated at least \$7,891 of the Stablein-Hembree closing funds for his own benefit without the knowledge or consent of his clients.
18. On July 9, 2004, Bradbury falsely told Stablein that the closing funds he had received to pay off her prior mortgage had been mistakenly applied to another account.
19. On July 12, 2004, Bradbury wired \$122,906.83 to Chase on behalf of Stablein. A substantial part of the funds used to pay Chase came from funds belonging to other clients that should have remained intact in Bradbury's trust account. Bradbury did not have permission to use these funds to pay Chase.
20. The HUD-1 settlement statement prepared by Bradbury and submitted to the lender, First Charter Bank, falsely represented that \$128,554.80 of the closing proceeds had been remitted to Chase at the time of closing.

21. On July 9, 2004, Bradbury served as the closing attorney for the sale of property by Leslie J. Amos ("Amos") to Henry and Adele Fielding.

22. Bradbury deposited a total of \$194,502.18 into his attorney trust account relative to the Amos-Fielding closing.

23. Bradbury was directed to remit \$126,483.15 of the closing proceeds to Wachovia Bank on Amos' behalf, but failed to do so.

24. On July 13, 2004, Bradbury misappropriated \$28,164 of the Amos-Fielding closing proceeds by issuing a trust account check to himself and depositing the check proceeds into his operating account without his client's knowledge or consent.

25. At all times after July 9, 2004, Bradbury should have maintained at least \$126,483.15 in his attorney trust account relative to the Amos-Fielding closing.

26. On July 12, 2004, the balance in Bradbury's trust account was \$112,213.57 and it remained below that figure at all times thereafter.

27. The HUD-1 settlement statement prepared by Bradbury and submitted to the lender, Granite Mortgage, Inc., falsely represented that \$126,483.15 of the closing proceeds had been remitted to Wachovia Bank at the time of closing.

28. Stewart Title Company has paid out a total of \$201,858.13 to replace sums misappropriated by Bradbury relating to the Amos-Fielding and Shaheen-Fuscaldo closings.

29. Bradbury has failed to make restitution of any client funds he misappropriated from his trust account.

CONCLUSIONS OF LAW

1. By failing to disburse the funds relating to the Amos-Fielding and Stablein-Hembree closings as directed by the lender's closing instructions, Bradbury failed to disburse and pay entrusted funds in violation of Revised Rules 1.15-2(a) and (m).

2. By misappropriating funds relating to the Amos-Fielding and Stablein-Hembree closings for his own benefit or that of third parties without his clients' consent and knowledge, Bradbury engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in criminal acts that reflect adversely on his honesty, trustworthiness or fitness as lawyer in other respects in violation of Rule 8.4(b) and used entrusted funds for his benefit of himself or third parties without the consent of his client in violation of Revised Rule 1.15-2(j).

3. By preparing and submitting HUD-1 settlement statements to Granite Mortgage and First Charter Bank that did not accurately reflect how entrusted funds were disbursed, Bradbury knowingly made false statements of material fact to a third party in violation of Revised Rule 4.1 and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact, the Conclusions of Law and the evidence presented at the hearing, the hearing committee also makes the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Bradbury engaged in additional misconduct in connection with the May 28, 2004 closing of the sale of real property by Ralph and Kimberly Sheheen ("Mr. & Mrs. Sheheen") to Robert Rivera and Donna Fuscaldo, as follows:

- a) Bradbury received \$198,646.38 from CitiMortgage Inc. to fund the Sheheen-Fuscaldo closing and deposited the funds into his attorney trust account.
- b) Bradbury was directed to disburse \$175,961.24 of the closing funds to Bank of America for the benefit of Mr. & Mrs. Sheheen to pay off a prior note and deed of trust.
- c) Bradbury disbursed a portion of the closing funds to himself and to third parties between May 28 and June 16. As of June 16, 2004, he should have held at least \$175,182.06 in his trust account on behalf of Mr. & Mrs. Sheheen.
- d) The balance in Bradbury's trust account on June 16, 2004 was \$120,106.82.
- e) On July 2, 2004, Bradbury wired \$106,503.15 to Bank of America on behalf of Mr. & Mrs. Sheheen.
- f) After Bradbury made the partial disbursement to Bank of America, he should have held at least \$66,724.74 in his trust account at all times on behalf of the Sheheens.
- g) The balance in Bradbury's trust account fell below \$66,724.74 on July 14, 2004 and remained below that sum at all times thereafter.
- h) Bradbury misappropriated all or a portion of the Sheheen- Fuscaldo closing funds for his own benefit or that of third parties without the knowledge or consent of his clients.

2. Bradbury engaged in additional misconduct in connection with his representation of IMS Mortgage Services, Inc., regarding a civil lawsuit filed against IMS in Mecklenburg County Superior Court in 2004 as follows:

a) Bradbury failed to file discovery responses on IMS' behalf, even when he was ordered to do so. He also failed to attend court-ordered mediation on IMS' behalf, despite the fact that he had been notified of the mediation date.

b) As a consequence, the court struck IMS' answer and entered a default judgment in the amount of \$5,518.17, plus \$787.57 in attorneys' fees against IMS. The court also awarded the plaintiff's attorney \$960 in fees and costs for pursuing the motion to compel discovery.

3. Bradbury's conduct is aggravated by the following facts:

a) He was motivated in part by a dishonest or selfish motive.

b) He engaged in a pattern of misconduct.

c) He engaged in multiple violations of the Rules of Professional Conduct.

d) He has failed to make restitution.

e) He failed to cooperate with the State Bar's investigation into his misconduct and disobeyed a Superior Court order requiring him to provide records and information to the State Bar.

f) There is evidence that Bradbury was using cocaine during the time of the misappropriations, which is criminal conduct that is a substantial aggravating factor.

g) Bradbury attempted to conceal his misconduct by lying to his clients and third parties about the reason for the late pay offs in the Amos-Fielding and Shaheen-Fuscaldo closings.

h) Bradbury has failed to demonstrate any remorse for his misconduct.

4. The Hearing Committee found that Bradbury's misconduct is mitigated by the fact that he has no prior discipline.

5. The aggravating factors far outweigh the mitigating factors.

Based on the foregoing findings of fact, the Committee enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. Bradbury's dishonest conduct has caused significant harm to his clients.

2. Bradbury's misconduct has also harmed the standing of the legal profession by undermining trust and confidence in lawyers and the legal system.

3. Disbarment is the only sanction that can adequately protect the public for the following reasons:

a) An attorney's duty to preserve client funds entrusted to the attorney is one of the most sacred that an attorney undertakes. An attorney should never violate that duty or the trust that the client has in the attorney.

b) An order of discipline less than disbarment would not sufficiently protect the public because Bradbury committed misdeeds involving moral turpitude and violations of the public trust.

c) Bradbury's misconduct occurred over a substantial period of time and therefore appears to be the result of a character flaw, rather than an aberration.

d) Bradbury has failed to show any evidence that he has addressed whatever trait or flaw contributed to his misconduct and therefore the Committee concludes that there is a risk that he would continue to engage in further misconduct if he were to remain licensed to practice law.

d) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Bradbury committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

e) The protection of the public requires that Bradbury not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts and the legal profession, and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, and any mixed findings of fact and conclusions of law howsoever designated, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. Michael Bradbury is hereby DISBARRED from the practice of law.

2. Bradbury shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him if he has not already done so in connection with his prior orders of discipline.

3. Bradbury shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar no later than 30 days from service of this order upon Bradbury.

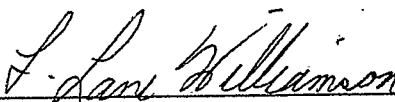
4. Bradbury shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").

5. Prior to seeking reinstatement of his law license, Bradbury must present satisfactory written evidence to the Office of Counsel that he has made restitution of the following sums:

- a) \$960 to IMS Mortgage Service Inc.
- b) \$201,858.13 to Stewart Title Inc.

6. Prior to seeking reinstatement of his law license, Bradbury must present written evidence documenting that he is neither addicted to nor abusing any illegal drugs or prescription medications.

Signed by the undersigned chairman with the full knowledge and consent of the other Hearing Committee members, this the 4th day of March 2005.



F. Lane Williamson
Chair, Disciplinary Hearing Committee