

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 6

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

CHARLES T. BUSBY and
LADD S. GASPAROVIC,

Defendants.

**ORDER
DISMISSING COMPLAINT**

(27 NCAC § 01B.0114(u))

THIS MATTER was heard on January 7-9, 2013, before a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, and members Joshua W. Willey, Jr., and Patti Head ("Hearing Panel"). Jennifer Porter represented the Plaintiff, the North Carolina State Bar. Defendant Charles T. Busby and Defendant Ladd S. Gasparovic appeared and both were represented by Stephen W. Petersen.

At the close of the Plaintiff's evidence, pursuant to Rule 41 of the North Carolina Rules of Civil Procedure, the Hearing Panel determined upon consideration of Plaintiff's evidence and the elements of 18 U.S.C. § 1344 that Plaintiff had not shown a right to relief as to those claims based on 18 U.S.C. § 1344. Based on that finding, the Hearing Panel rendered judgment against the Plaintiff on any claims related to 18 U.S.C. § 1344 by dismissing one alleged rule violation in the State Bar's complaint.

The Hearing Panel then heard Defendants' case in chief and Plaintiff's rebuttal evidence. At the conclusion of the hearing, based upon the Stipulations on Pre-Hearing Conference, the exhibits admitted into evidence, and the testimony of sworn witnesses, the Hearing Panel determined the merits of the case and unanimously found that Plaintiff failed to establish its charges of misconduct by clear, cogent, and convincing evidence and therefore enters this order dismissing the complaint against both Defendants. In support of its decision, the Hearing Panel makes the following:

FINDINGS OF FACT

1. In May 2007, Total Realty Management, LLC or "TRM" retained Defendants to represent it in the transactions that are the subject of this State Bar Complaint ("Transactions").
2. The Transactions involved real estate closings where property was transferred from an owner to TRM ("the first Transaction") and then from TRM to the ultimate Buyer ("the second Transaction"). In most cases, the Buyer obtained a loan to finance the purchase involved in the second Transaction from a lender. All such lenders are herein referred to as the "Lender."
3. The first Transaction and the second Transaction frequently occurred within minutes of each other.
4. Lender funds were not involved in the first Transaction.
5. In the second Transaction, the Buyer obtained a loan from a Lender to make his or her purchase, and Lender funds were used to complete the second Transaction.
6. TRM and the ultimate Buyer entered a sale agreement for each piece of property.
7. TRM sent the sale agreement to Paragon.
8. Paragon, a mortgage broker, had an indirect relationship with each Lender, and Paragon transmitted the sale agreement to the Lender.

9. For each proposed second Transaction, an appraisal of each piece of property was obtained from an appraiser on the Lender's approved appraiser list.

10. After making its own internal decision to lend the funds, the Lender sent the Defendants a Request for Title Commitment for each second Transaction.

11. The Defendants then issued preliminary title opinions to the title insurance company using an electronic form in Investors Title's E-Flite Program.

12. In the preliminary title opinions Defendants submitted to Investors Title, Defendants certified that TRM was the then-current owner of the subject real property by making a notation in the top box of the electronic form application that TRM was the "Current Owner."

13. At the time the Defendants issued preliminary title opinions to the title insurance company, TRM did not yet own the properties at issue.

14. At the time the Defendants issued preliminary title opinions to the title insurance company, Defendants knew TRM did not yet own the properties at issue.

15. In the initial preliminary title opinions Defendants submitted to Investors Title for the second Transactions, the Defendants gave no further clarification regarding the status of the "Current Owner."

16. In the remaining preliminary title opinions Defendants submitted to Investors Title for the second Transactions, the Defendants noted in either Paragraph 7 or the Additional Comments section that TRM was the Current Owner subject to a deed being transferred from the original owner to TRM ("subject to language").

17. Defendant Busby testified and explained the circumstances under which the "subject to language" was not included in the first preliminary title opinions that Defendants submitted to Investors Title for the second Transactions as an oversight.

18. Defendants expected that whoever they noted as "Current Owner" at the top of the preliminary opinion of title would be listed as current owner in the resulting title commitments and that the title commitments would contain a specific Requirement that there be a deed from the record owner to TRM before TRM would become the record owner.

19. Defendant Busby testified and explained why he thought it was appropriate for the title commitment to show TRM as the owner subject to a deed being transferred from the record owner to TRM.

20. There was conflicting expert and non-expert testimony, as to whether the preliminary opinions submitted by Defendants which reflected TRM and the "Current Owner" of subject real property and contained the "subject to" language adequately disclosed the true state of the title at the time each opinion was transmitted to Investors Title. This testimony included the testimony of a representative of Investors Title who testified that, while not the best or preferred method, these preliminary opinions were adequate to provide notice to Investors Title as to the true owner.

21. In each second Transaction, the Lender received a title commitment issued by Investors Title reflecting TRM as the owner of the subject real property, but the Lenders did not receive a copy of the preliminary opinions.

22. In the circumstances of this particular case, the Defendants represented two clients, TRM and the Lender, in each second Transaction in this matter.

23. In the circumstances of this particular case, there was no conflict between TRM and the Lender in the second Transactions.

24. No finding made or conclusion reached by this panel shall be construed as approval of the practice in which Defendants engaged by designating as the "Current Owner" of real property someone or some entity who was not, in fact, the record owner at the time.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

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

2. The State Bar, as Plaintiff, failed to meet its burden of providing clear, cogent, and convincing evidence that Defendants, by their conduct in these transactions, committed criminal acts that reflect adversely on their honesty, trustworthiness, or fitness in other respects and, therefore, the Hearing Panel concludes that the Defendants did not violate Rule 8.4(b) of the Rules of Professional Conduct.

3. The State Bar, as Plaintiff, failed to meet its burden of providing clear, cogent, and convincing evidence that Defendants, by their conduct in these transactions, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation and, therefore, the Hearing Panel concludes that the Defendants did not violate Rule 8.4(c) of the Rules of Professional Conduct.

4. The State Bar, as Plaintiff, failed to meet its burden of providing clear, cogent, and convincing evidence that Defendants, by their participation and conduct in these transactions, engaged in a conflict of interest that violated Rule 1.7(a) of the Rules of Professional Conduct.

5. "If the hearing panel finds that the charges of misconduct are not established by clear, cogent, and convincing evidence, it will enter an order dismissing the complaint."

27 NCAC 01B.0114(u).

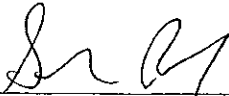
Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following:

ORDER DISMISSING THE COMPLAINT

IT IS THEREFORE, ORDERED AND ADJUDGED:

1. The Complaint filed in this case is **DISMISSED** as to all allegations against Defendant Charles T. Busby.
2. The Complaint filed in this case is **DISMISSED** as to all allegations against Defendant Ladd S. Gasparovic.
3. All parties shall bear their own costs.

Signed by the Chair with the consent of the other Hearing Panel members,
this 25 day of February, 2013.



SHARON B. ALEXANDER, CHAIR
DISCIPLINARY HEARING PANEL