

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 18

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v.

VALDERIA D. BRUNSON, Attorney
Defendant.

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, M. H. Hood Ellis, and Dr. Charles L. Garrett. Carmen H. Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Valderia D. Brunson, represented herself. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely and voluntarily waives her right to appeal this consent order or to challenge in any way the sufficiency of the findings. Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes by clear, cogent and convincing evidence 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. Defendant, Valderia D. Brunson, was admitted to the North Carolina State Bar on 18 August 2000 and is an Attorney at Law 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 the relevant period referred to herein, Brunson was actively engaged in the practice of law in Durham, Durham County, North Carolina.
4. Brunson was properly served with process and received due notice of the hearing in this matter.
5. In connection with her law practice, Brunson maintained two attorney trust accounts at BB&T, a general trust account (account number ending 8506) and a real estate trust account (account number ending 6041).

6. In August 2009, the State Bar conducted a random procedural audit of Brunson's general and real estate trust accounts. The audit revealed numerous failures by Brunson to properly maintain and document her attorney trust accounts, including:

- (a) The trust accounts contained funds other than client funds;
- (b) Brunson failed to file a written directive with BB&T to report to the State Bar any time a trust account check was presented against insufficient funds;
- (c) Brunson did not promptly disburse client funds;
- (d) Brunson failed to maintain required records of deposits;
- (e) All checks from the trust accounts did not show the client balances against which they were drawn;
- (f) Individual client ledgers were not accurate;
- (g) Brunson failed to perform monthly or quarterly reconciliations; and
- (h) Brunson did not always provide written accountings to clients.

7. On 21 August 2009, Brunson signed a statement indicating that she would remedy all of the trust accounting deficiencies identified by the auditor within thirty days.

8. Despite repeated requests and guidance from the State Bar auditor over the ensuing year, Brunson failed to completely correct the deficiencies. In particular, she did not reconcile the real estate trust account and was unable to identify the beneficial owners of the funds in that account.

9. In August 2010, the State Bar served Brunson with a Subpoena for Cause Audit. The State Bar analyzed the trust account and client documents produced by Brunson in response to the subpoena.

10. The State Bar's analysis of Brunson's real estate trust account revealed that the balance in the account was approximately \$17,700.00 less than the total amount of entrusted funds Brunson should have held in trust.

11. The deficit in Brunson's real estate trust account was caused by:

- (a) An un-funded loan of \$22,500.00 for a closing that occurred in May 2006;
- (b) \$2,665.00 that was erroneously wired out of the account twice in connection with a July 2007 closing; and
- (c) Accumulated bank fees and charges that exceeded the amount of Brunson's funds on deposit in the trust account.

12. In early 2007, when several checks from her real estate trust account were dishonored due to insufficient funds, Brunson deposited approximately \$6,800.00 of personal funds into the account. She did not, however, determine the amount of the deficiency or the reason there were insufficient funds on deposit in her trust account.

13. Brunson's deposit of personal funds only partially replenished the deficit in the account, and was not earmarked as a remedy for an identified deficit.

14. Brunson did not perform quarterly reconciliations of her real estate trust account beginning in at least 2006, when the unfunded loan caused the initial deficit in her account.

15. In December 2008, Brunson used entrusted funds for her own benefit by inadvertently disbursing \$311.00 from the real estate trust account to pay her Verizon bill.

Based on the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Valderia D. Brunson, and over the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) and N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to direct her bank, in writing, to report to the State Bar any trust account check presented against insufficient funds, Brunson violated Rule 1.15-2(k);
- (b) By failing to maintain complete trust account documentation and client ledgers, Brunson violated Rules 1.15-3(b) and (g);
- (c) By failing to reconcile her trust accounts, Brunson violated Rule 1.15-3(d);
- (d) By failing to provide clients with written accountings of entrusted funds Brunson violated Rule 1.15-3(e);
- (e) By depositing personal funds into her trust account without identifying the source of the account deficit and earmarking the deposit as a remedy for that deficit, Brunson comingled personal and entrusted funds in violation of Rule 1.15-2(f); and
- (f) By disbursing funds from her trust account to pay a personal bill, Brunson used entrusted funds for personal benefit in violation of Rule 1.15-2(j).

Based on the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Although Brunson's failure to properly identify, account for, and maintain entrusted funds created a foreseeable risk of harm to the clients whose money she held in trust, Brunson's mismanagement of her trust account does not reflect dishonest or selfish intent.

2. A lawyer's mismanagement of entrusted funds erodes the confidence clients place in attorneys who handle their affairs. As a result, such conduct harms the profession as a whole.

3. Brunson comingled personal funds with entrusted funds in her trust account in an effort to protect client funds when she realized there was a deficit in the trust account.

4. Brunson's use of entrusted funds to pay her Verizon bill was inadvertent and upon discovery of the error, she replenished the trust account.

5. After the August 2009 random audit, Brunson reconciled her general trust account, fully disbursed the funds therein, and closed the account. Entrusted funds remain in her real estate trust account.

6. In 2011 the State Bar's Grievance Committee issued to Brunson: (a) an Admonition for failure to timely disburse title premiums and obtain title policies, and (b) a Censure for disclosure of confidential information, failure to communicate, and lack of diligence.

7. Brunson cooperated fully with the State Bar's investigation of this matter.

8. Brunson is currently employed as corporate counsel and does not handle entrusted funds.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2), and determined that although this case involves technical misappropriation of assets to which the defendant was not entitled, the misappropriation was inadvertent and therefore does not warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) and (3) and determines the following factors are applicable:

- (a) Intent of the defendant to commit acts where the potential harm was foreseeable;
- (b) Prior disciplinary offenses;
- (c) Absence of dishonest or selfish motive;
- (d) Multiple offenses;
- (e) Remorse; and
- (f) Cooperative attitude toward the proceedings.

4. A censure, reprimand, or admonition would be insufficient discipline because of the significant potential harm to clients and the profession caused by Defendant's conduct.

5. Although Defendant's conduct is serious enough to warrant more discipline than a censure, it does not warrant an active suspension of her license.

6. The public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant to ensure protection of the public and continued compliance with the Rules of Professional Conduct. Among other things, if and when Defendant resumes practicing law in a capacity other than corporate counsel, she must demonstrate that she is properly maintaining and accounting for any funds received by her in trust or in a fiduciary capacity.

7. A stayed suspension of Defendant's law license is warranted insofar as entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, Conclusions of Law Regarding Discipline, and the consent of the parties, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Valderia D. Brunson, is hereby suspended for two years. The suspension shall be stayed for five years as long as Defendant complies with the conditions identified in paragraph 2, below.

2. The suspension of Defendant's law license shall be stayed for five years as long as Defendant complies and continues to comply with the following conditions:

- (a) Within 90 days of this order's effective date, Defendant shall provide the State Bar with a complete list of all clients for whom Defendant should be holding

funds in trust, contact information for each of those clients, and the amount of money to which each of those clients is entitled;

- (b) If the balance in Defendant's trust account is less than the total amount of funds due to clients, Defendant shall be personally responsible for paying any amounts still due to clients after the funds in Defendant's trust account are completely disbursed. Defendant must make the payments for which she is personally responsible within one year after the funds currently in her trust account are disbursed.
- (c) Defendant shall cooperate in all efforts by the State Bar to return entrusted funds to their rightful owners, including but not limited to any disbursement action filed in the Wake County Superior Court;
- (d) Defendant shall immediately notify the Office of Counsel if she resumes any form of legal practice other than in-house counsel. In addition, on October 30 and April 30 of each year during the period of the stay, Defendant shall submit an affidavit to the Office of Counsel indicating her employment status and/or the nature of her legal practice.
- (e) If at any time during the period of the stay Defendant resumes any form of legal practice other than in-house counsel, Defendant shall arrange for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of her practice to serve as her practice monitor. Before Defendant resumes practicing in a capacity other than in-house counsel, she must supply the Office of Counsel with a letter from the approved monitoring attorney confirming his or her agreement to: (a) meet with Brunson monthly to review Brunson's cases; (b) provide supervision to ensure that Brunson timely and completely handles client matters; and (c) provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the duration of the stay of the suspension: January 30, April 30, July 30, and October 30. Brunson will be responsible for the cost, if any, charged by the monitor for this supervision.
- (f) If at any time during the period of the stay Defendant resumes any form of legal practice that involves handling entrusted funds:
 - i. Defendant shall open a new trust account and have a CPA audit the new trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct.
 - ii. The CPA must report quarterly to the Office of Counsel concerning the compliance of Defendant's trust account with the Rules of Professional Conduct, including but not limited to any accounting irregularities and any deviance from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's reports are due no later than 30 days after the end of each quarter (first quarter's

report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30). It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;

- iii. If any of the CPA reports referenced in paragraph (g)(ii) above note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar and to the CPA within 30 days of the date of the CPA's report;
- iv. If any of the CPA reports referenced in paragraph (g)(ii) above note any irregularities or deficiencies in Defendant's handling of entrusted funds, the CPA shall provide a subsequent report regarding whether Defendant's remedial actions were sufficient and whether Defendant's account(s) has been brought into compliance with the Rules of Professional Conduct. The CPA shall provide this report regarding remedial measures to the Office of Counsel within 30 days of Defendant's provision of proof of remedial action. It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein.

- (g) All CPA evaluations, reports, and services referred to herein will be completed and submitted at Defendant's sole expense;
- (h) Failure of the CPA to submit any report required by this Order shall be grounds to lift the stay and activate the suspension;
- (i) Defendant shall successfully complete four hours of continuing legal education in the area of trust account management within the first year after the effective date of this order. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. This is in addition to the standard annual CLE requirements;
- (j) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;
- (k) Defendant shall keep the North Carolina State Bar Membership Department advised of her current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (l) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which she receives notice after the effective date of this Order;

(m) Defendant shall promptly accept service of all certified mail from the State Bar that is sent to her; and

(n) Defendant shall timely comply with all State Bar Membership and Continuing Legal Education requirements.

3. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 2(a) – (n) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

4. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of her license to practice law, Defendant must show by clear, cogent and convincing evidence that she has complied with each of the following conditions:

- (a) Defendant submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of her law license;
- (b) Defendant complied with all provisions of 27 N.C.A.C. 1B § .0124 following the order lifting the stay and/or activating the suspension of her law license;
- (c) Defendant kept the North Carolina State Bar Membership Department advised of her current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (d) Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution process for any petition of which she received notice after the effective date of this Order;
- (e) Defendant promptly accepted all certified mail sent to her by the State Bar;
- (f) That at the time of her petition for stay, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from her, as well as all judicial district dues, fees and assessments;
- (g) That at the time of her petition for stay, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (h) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;

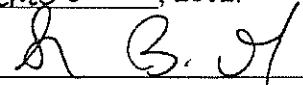
- (i) Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon her by the Secretary of the State Bar; and
- (j) Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

5. Any order of the Administrative Committee of the North Carolina State Bar placing Brunson in inactive status for any reason shall toll the running of the suspension, the period of the stay of the suspension, and Brunson's obligation to comply with the terms of the stay of the suspension under this order. Upon Brunson's reinstatement to active status by the Administrative Committee, the tolling of the running of the suspension and the stay of the suspension under this order shall be lifted, at which time Brunson's obligation to comply with the conditions of the stay of the suspension in this order will resume.


6. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which Defendant shall pay within thirty days of service of the notice of costs upon Defendant.

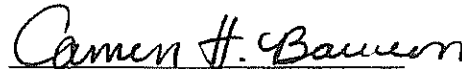
7. This Order shall be effective on the date it is filed.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 14 day of September, 2012.


Sharon B. Alexander, Chair
Hearing Panel

CONSENTED TO BY:


Valderia D. Brunson
Defendant


Carmen H. Bannon
Attorney for Plaintiff