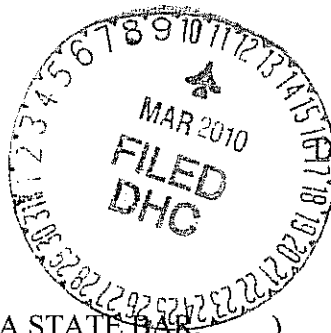


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 1

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
ALTON Y. LENNON, Attorney,)
Defendant.)

CORRECTED
ORDER OF DISCIPLINE

THIS MATTER came to be heard before a Hearing Panel of the Disciplinary Hearing Commission composed of C. Colon Willoughby, Jr., Chair, and members Ronald R. Davis and Karen B. Ray. William Farrell represented Plaintiff, the North Carolina State Bar. Defendant, Alton Y. Lennon, was represented by Stephen T. Smith.

On Plaintiff's motion, judgment on the pleadings was entered against Defendant. A separate Order of Discipline was filed on March 3, 2010. This corrected Order of Discipline is filed to correct an error in the March 3, 2010 Order of Discipline, which appears at paragraph number 3, under Findings of Fact Regarding Discipline. Paragraph number 3 under the Findings of Fact Regarding Discipline should read, "3. Defendant's conduct was directed toward a client of almost twenty years" rather than "Green's conduct was directed toward a client of almost twenty years." In all other respects, the Corrected Order of Discipline is the same as the original order.

Based upon the pleadings and admissions pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f) and Rule 8(d) of the Rules of Civil Procedure, the Hearing Panel hereby finds 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, Alton Y. Lennon, (hereinafter "defendant"), was admitted to the North Carolina State Bar on August 16, 1968, 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 Rules of Professional Conduct of the State of North Carolina State Bar and the laws of the State of North Carolina.

3. During all or a portion of the relevant periods referred to herein, defendant was actively engaged in the private practice of law in the city of Wilmington, New Hanover County, North Carolina.

4. Charles F. Green, III (hereinafter "Green") is a resident of New Hanover County, North Carolina.

5. Green became a client of defendant in 1987 and remained a client until on or about 2007. Throughout that period defendant provided legal counsel and services to Green.

6. In or around 1995, Green asked defendant to help him invest in real estate. Green had little knowledge of real estate; defendant was experienced in real estate transactions and represented clients involved in real estate development.

7. In the course of his representation of Green, defendant:

- a. Identified and recommended real estate investments;
- b. Acted as attorney, attorney-in-fact, and trustee for Green in real estate and business transactions, routinely handling such transactions under a power of attorney in Green's absence; and
- c. Held title to Green's properties and managed those properties as trustee for Green.

8. In 1999, defendant recommended that Green invest in certain vacant lands near Hampstead in Pender County, North Carolina which, according to defendant, could be resold for residential development.

9. In November 1999, February 2000, and May 2002, defendant, as trustee for Green, purchased "the Hampstead property" – three tracts of land in Pender County, North Carolina, described in deeds recorded in Book 1527, Page 129, Book 1558, Page 3, and Book 1888, Page 37, Pender County Register of Deeds.

10. Defendant took title to and managed the Hampstead property as trustee for Green.

11. Green's initial investment in the Hampstead property was approximately \$289,691.00, broken down as follows:

- a. \$6,564.00 for the first tract, purchased in 1999 and consisting of approximately 7 acres;
- b. \$235,450.00 for the second tract, purchased in February 2000 and consisting of approximately 83 acres; and
- c. \$44,677.00 for the third tract, purchased in 2002 and consisting of approximately 52 acres.

12. In connection with the purchase of the second Hampstead tract, defendant represented to Green that the purchase price was \$233,450.00.

13. The actual purchase price for the second Hampstead tract was only \$126,000.00. The HUD-1 settlement statement reflecting a purchase price of \$126,000.00 was not provided to Green at the closing of the sale, and Green did not discover this document until 2009.

14. Green paid at least \$235,450.00, inclusive of closing costs, for the second Hampstead tract, but the seller received only \$126,000.00 for the property.

15. Defendant concealed these discrepancies from Green, knowing and intending that Green would rely on him, and Green reasonably relied on defendant.

16. In acquiring the second Hampstead tract as trustee for Green, defendant misrepresented the purchase price to Green and concealed the actual purchase price, as well as documents reflecting the actual purchase price, so as to induce Green to pay more than the actual price of the property, and Green, in reliance on defendant, paid more than the actual purchase price for these properties.

17. In purchasing the second Hampstead tract for Green, defendant misappropriated to his own use the difference between the actual purchase price and the amount paid by Green.

18. In September 1999, defendant recommended that Green purchase eight acres in Brunswick County for residential development and in reliance on defendant, Green agreed to the purchase. This property came to be known as "Cedar Greens."

19. On or about September 14, 1999, defendant, as trustee for Green, acquired the Cedar Greens property by deeds recorded in Book 1330, Page 560, and Book 1331, Page 3, Brunswick County Register of Deeds.

20. In connection with the purchase of Cedar Greens, defendant prepared two non-identical purchase contracts. The contract provided to the seller ("seller's contract") stated a purchase price of \$26,000.00; the contract provided to Green stated a purchase price of \$55,000.00. Defendant did not provide the seller's contract to Green, and Green did not discover this document until 2009.

21. Defendant prepared at least two non-identical settlement statements in connection with the purchase of Cedar Greens. The settlement statement provided to the seller ("seller's statement") indicated a purchase price of \$26,000.00 with a \$1,500.00 reduction for the cost of an easement; the settlement statement provided to Green indicated a purchase price of \$55,000.00. Defendant did not provide Green with a copy of the seller's statement, and Green did not discover this document until 2009.

22. Green paid \$55,000.00 for Cedar Greens, but the seller received only \$24,500.00 for the property.

23. In acquiring the Cedar Greens property as trustee for Green, defendant misrepresented the purchase price to Green and concealed the actual price, as well as documents reflecting the actual price of the property, and Green, in reliance on defendant, paid more than the actual purchase price for the Cedar Greens property.

24. In purchasing the Cedar Greens property for Green, defendant misappropriated to his own use the difference between the actual purchase price and the amount paid by Green.

25. During the defendant's representation of Green and in connection with the sale of two Brunswick County lots to Paul Glowacki, that defendant held as trustee for Green, defendant represented to Green that the sales price was \$100,000.00, and prepared a HUD-1 settlement statement for Green reflecting that price on or about June 2, 1999.

26. The actual sales price for the two lots was approximately \$150,000.00, as reflected by the revenue stamps affixed to the deed recorded in Book 1307, Page 120, Brunswick County Registry.

27. The HUD-1 settlement statement prepared for Green was false and fraudulent in that, among other things, it misstated the sales price and the amount of revenue stamps purchased for the deed.

28. Defendant, as trustee for Green, received approximately \$150,000.00, less closing costs, for the two lots, and paid Green only \$100,000.00 plus closing costs.

29. Defendant concealed this discrepancy from Green, knowing and intending that Green would rely on him, and Green reasonably relied on defendant.

30. Defendant misappropriated to his own use approximately \$50,000.00 from the sale of the Brunswick lots.

31. Because of defendant's misrepresentations and concealment, Green did not discover the improprieties in the sale of the Brunswick lots until 2009.

32. In 2005, acting as trustee for Green, defendant hired Whitehead Inc. ("Whitehead") to construct drainage pits or ponds on the Hampstead lands.

33. Defendant told Green that Whitehead had agreed to build the ponds at no charge in exchange for being allowed to remove dirt from the property.

34. Without telling Green, defendant accepted payments from Whitehead ("the Whitehead payments") for dirt removed from the Hampstead lands during construction of the ponds, including the following:

<i>Date</i>	<i>Check No.</i>	<i>Amount</i>	<i>Memo</i>
4/12/05	1303	202.50	27 lds. @ 7.50 per ld.
5/19/05	1408	562.50	
6/7/05	1465	1500.00	Fill dirt (200 lds.) Hampstead Project
6/21/05	1505	1500.00	
7/22/05	1612	1500.00	200 lds. Fill dirt
9/7/05	1770	1125.00	150 lds. @ 7.50 per ld.

All of the checks were paid to and endorsed by defendant individually except check numbers 1465 and 1770, which were endorsed by defendant and Connie McKoy.

35. As Green's trustee, defendant had a duty to account to Green for all rents, profits and benefits derived from trust property, including the Whitehead payments.

36. Defendant failed to account to Green for the Whitehead payments or to apply the payments for Green's benefit. Defendant misappropriated to his own use the \$6,390.00 paid by Whitehead for the dirt removed from the Hampstead land.

37. Defendant never informed Green of the Whitehead payments, and Green knew nothing of them until July 2006.

38. Defendant's services as Green's trustee included paying, with Green's funds and on Green's behalf, expenses related to the properties he held in trust for Green.

39. Green agreed for expense payments to be handled as follows: defendant would provide expense information to Green; Green would pay the requested amounts to defendant as trustee; and defendant would deposit those funds into a trust account for Green's benefit, then pay property expenses from the trust account.

40. Before 2002, defendant used his law firm's trust account to manage payments related to Green's properties. In July 2002, he established a separate trust account specifically for the management of Green's properties.

41. Checks deposited to the law firm's trust account were typically endorsed by defendant as trustee and stamped as follows: "Pay to the order of Cooperative Bank, Wilmington, NC, for deposit only, Stevens, McGhee, O'Quinn & Toll LLP Trust Account."

42. Defendant failed to deposit a number of Green's expense payments into a trust account for Green's benefit, including, *inter alia*:

<i>Date</i>	<i>Check No.</i>	<i>Amount</i>	<i>Memo</i>
1/5/99	2108	82.00	Lockwood Folly Lots Brunswick County
9/16/99	2288	5,000.00	Bush Hog – Shorebird Farm
1/29/00	2356	10,768.00	8 acres – 7000. Shorebird – 3768.60
4/28/00	2389	2,000.00	Pender – 83 acres
10/30/00	2484	15,000.00	Pender County

These checks were drawn on Green's personal account, payable to and endorsed by defendant as trustee.

43. Green has repeatedly asked defendant for documentation that would explain how the above referenced checks were applied and defendant has failed to provide such documentation.

44. Defendant commingled the above referenced payments, which were to be used for Green's real estate expenses, with his own funds and utilized them for his own personal benefit without authorization from Green to do so.

45. At relevant times, while serving as Green's attorney, attorney-in-fact and trustee, defendant simultaneously represented and was personally involved in business ventures with Edwin L. Burnett, III, Viable Corp., Leland Ventures, L.L.C., Leland Development Company, L.L.C., and The Pastures, L.L.C.

46. Defendant was an officer and agent of Viable.

47. In 1995, on advice from defendant, Green invested in Leland Development, a real estate development company managed by Viable and Leland Ventures. Green ultimately acquired a 25% ownership interest.

48. In 1995, Leland Development purchased a tract of land consisting of approximately 199 acres in Brunswick County, North Carolina. The property is described in the deed recorded in Book 1018, Page 375, Brunswick County Register of Deeds.

49. A small portion of this property was sold in 1996, and Leland Development was left with approximately 180 acres (hereinafter "the Leland land").

50. Over the years, Leland Development made various improvements to its land in anticipation of selling it.

51. In or before January 2005, Burnett identified a potential buyer or buyers for a portion of the Leland land.

52. On or about May 19, 2005, The Pastures was formed, with defendant as its organizer and registered agent and Viable as its member-manager.

53. The Pastures was at all relevant times instrumentally dominated and controlled by Burnett, Viable, and defendant.

54. On or about May 26, 2005, Leland Development transferred all of its real estate to The Pastures by two deeds. The first, which transferred approximately 137.61 acres, was recorded on June 2, 2005 in Book 2159, Page 432, Brunswick County Register of Deeds. The second deed, which transferred approximately 43.34 acres (hereinafter "the second Leland tract"), was not recorded until September 6, 2005, in Book 2231, Page 262, Brunswick County Register of Deeds. Neither deed contains revenue stamps.

55. Leland Development received no consideration from The Pastures for these conveyances.

56. On or about May 26, 2005, The Pastures conveyed the 137.61-acre tract to Kardan Holdings, L.L.C., for approximately \$2,272,000.00 by deed recorded on June 2, 2005 in Book 2159, Page 438, Brunswick County Register of Deeds.

57. Defendant never informed Green about these transfers of the Leland land, even though defendant, as Green's attorney and trustee, had a duty to provide Green with material information about Leland Development property, and knew that Green was relying on him for such information.

58. On or before July 19, 2005, defendant told Green that Leland land was about to be sold to a developer and that Green first needed to transfer his 25% share of Leland Development to Viable. The price offered by Viable for Green's share was \$487,105.50; defendant told Green that this price represented one-fourth of the net price to be paid for the Leland land, and that Viable would not realize any profit on Green's share. Based on these representations, Green agreed.

59. On or about July 20, 2005, defendant, acting as Green's attorney-in-fact, conveyed Green's interest in Leland Development to Viable on the terms described in the preceding paragraph.

60. On or about July 20, 2005, Burnett, on behalf of Viable and Leland Development, signed a Memorandum of Sale prepared by defendant for Green (hereinafter "the Leland Memorandum") which stated that the price being paid for Green's interest in Leland Development was based on "anticipated net sales proceeds of \$1,958,422.00."

61. At the time Burnett signed the Leland Memorandum, one tract of the Leland land had already been sold, through The Pastures, for \$2,272,000.00, and Burnett had negotiated the sale of a second tract for an additional \$900,000.00. Defendant was aware of these facts. Defendant did not disclose and concealed these facts from Green. Green was thus unaware of the true value of his interest in Leland Development.

62. On or about August 29, 2005, The Pastures sold the second Leland tract to The Willows II, L.L.C. for approximately \$900,000.00 by deed recorded on September 9, 2005 in Book 2233, Page 744, Brunswick County Register of Deeds.

63. In transactions affecting his interest in Leland Development, Green reasonably relied on representations by defendant and was thus induced to sell his interest in Leland Development to Viable Corp. for substantially less than its fair market value.

64. At no time before Green sold his share of Leland Development did anyone disclose to him the material information that all the Leland land had been conveyed to The Pastures, that one tract had subsequently been sold for \$2,272,000.00, or that an agreement had been reached to sell the second tract for \$900,000.00. Green did not discover this information, and thus did not learn that he had not been paid fair market value for his share of Leland Development, until approximately July 2007.

65. The Fish Factory was formed in 1999 to build and operate a restaurant in Brunswick County, North Carolina.

66. Defendant and Burnett were member-managers and agents of Fish Factory.

67. In the transaction relating to Fish Factory described herein, defendant acted as attorney for Fish Factory and Burnett while simultaneously acting as Green's attorney, attorney-in-fact and trustee.

68. In 1999, defendant sold Green half his interest in Fish Factory, or a 10% share.

69. At all relevant times, defendant and Burnett, as managers of Fish Factory, owed fiduciary duties to Green as a minority member, including the duty to disclose material information about the company and its property. In addition, as Green's attorney and trustee, defendant owed Green conflict-free representation and the duty to disclose material information.

70. In 2000, Fish Factory acquired a tract of land (hereinafter "the Fish Factory property") on the Atlantic Intracoastal Waterway adjacent to a marina owned and operated by South Harbour Village Associates, L.L.C. (hereinafter "South Harbour"), a limited liability company managed by Burnett.

71. Fish Factory developed its property as a restaurant, but the venture was not profitable.

72. At some time before February 2006, defendant and Burnett decided to build boat slips in Fish Factory's riparian corridor. They did not tell Green of their plan.

73. Defendant and Burnett arranged for Fish Factory to obtain a permit for boat slips – not in its own name, but through a modification of South Harbour's permit for its marina. The modification was granted in June 2006.

74. Defendant and Burnett knew and intended that the addition of boat slips would enhance the value of the Fish Factory property. The permit for boat slips did in fact increase the value of the property.

75. In August 2006, defendant and Burnett, on behalf of Viable, offered to buy out the other Fish Factory investors, including Green. Defendant did not tell Green about the plan or permit for boat slips, and the price offered to Green did not reflect any increase in the value of the Fish Factory property resulting from the planned boat slips or the permit already obtained.

76. At the time of the buyout offer, defendant was still serving as Green's attorney and trustee.

77. Green agreed to the offer and sold his share of Fish Factory to defendant and Viable for a net loss. The closing took place in September 2006, but Green was not paid for his share until February 9, 2007.

78. On or about February 27, 2007, less than a month after the settlement with Green, Fish Factory applied in its own name for a permit to build boat slips in its riparian corridor.

79. Defendant had a duty to provide Green with material information about the Fish Factory property, including information about the plan and permit for boat slips, and knew that Green would rely on him for such information, and Green in fact reasonably relied on defendant for such information.

80. Defendant failed to provide Green with material facts about the Fish Factory property as alleged herein, and as a result, Green was induced to sell his share of Fish Factory for less than its fair market value.

81. Green did not learn of the plan or permit for boat slips until the summer of 2007.

82. The Fish Factory property was sold to a third party in September 2007, but the deed retained for Fish Factory the riparian rights appurtenant to the property, the adjacent riparian corridor, and the authority to build boat slips in its waters.

Based on the foregoing Findings of Fact the Panel enters the following:

Conclusions of Law

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over defendant, Alton Y. Lennon, and the subject matter.

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

- a. By misappropriating funds belonging to Green, defendant (i) committed criminal acts that reflect on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) of the Rules of Professional Conduct, (ii) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (c) of the Rules of Professional Conduct, and (iii) failed to preserve entrusted property of Green in violation of Rule 1.15-2 (c) and (j) of the Rules of Professional Conduct.
- b. By making misrepresentations to Green and concealing information and documents from Green, defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (c) of the Rules of Professional Conduct.
- c. By engaging in business transactions with Green which sacrificed the interests of Green for his own personal benefit and for the benefit of third parties, defendant engaged in conflicts of interest in violation of Rules 1.7 and 1.8 of the Rules of Professional Conduct.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

Findings of Fact Regarding Discipline

1. The findings in paragraphs 1 – 82 above are reincorporated as if set forth herein.
2. Defendant's conduct involved misappropriation, misrepresentation and deceit over a period of years.
3. Defendant's conduct was directed toward a client of almost twenty years.
4. Defendant, by engaging in conduct involving misappropriation, misrepresentation and deceit over a number of years, has shown himself to be untrustworthy.
5. Defendant put his own personal interests and those of others ahead of his client's interest.
6. Defendant's conduct damaged his client and can only have a negative impact on his client's and the public's perception of the legal profession.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, 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.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1)(2) and (3) of the Rules and Regulations of the State Bar and finds the following factors are applicable.

- a. Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- b. Elevation of the defendant's own interest above that of the client;
- c. Negative impact of defendant's actions on the client's or public's perception of the profession;
- d. Acts of dishonesty, misrepresentation, deceit or fabrication;
- e. Misappropriation or conversion of assets to which defendant was not entitled from a client;
- f. Dishonest or selfish motive;
- g. A pattern of misconduct; and
- h. Multiple offenses.

3. Defendant caused significant harm to his client, Charles F. Green, III, by misappropriation of funds belonging to Green.

4. Defendant's repeated commission of criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer caused significant potential harm to the legal profession, in that criminal conduct tends to bring the legal profession into disrepute.

5. The Hearing Panel has considered lesser alternatives and finds that suspension of defendant's license or a public censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the actual and potential harm to his clients, the public, the administration of justice, and the legal profession caused by defendant's conduct, and the threat of significant potential harm defendant poses to the public.

6. The Hearing Panel considered all lesser sanctions and finds that discipline short of disbarment would not adequately protect the public for the following reasons:

- a. Defendant committed misdeeds involving moral turpitude and violations of his client's trust, including fraudulent conduct, material misrepresentations, and deceit. Misconduct involving misappropriation and dishonesty are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys;
- b. Defendant repeatedly engaged in criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer, and engaged in abuses of trust by misappropriating funds entrusted to him.

- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
- d. The protection of the public and the legal profession requires that defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarred lawyers are required to make such a showing before they may resume practicing law.

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

ORDER OF DISCIPLINE

- 1. Defendant, Alton Y. Lennon, is hereby DISBARRED from the practice of law.
- 2. Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon defendant.
- 3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.
- 4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other Hearing Panel members, this the 11 day of March, 2010.


C. Colon Willoughby, Chair
Disciplinary Hearing Panel