



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 35

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN PETER CATTANO, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on November 16, 2015 by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, William O. King, and Patti Head pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Mary D. Winstead represented Plaintiff, the North Carolina State Bar. Defendant, John Peter Cattano, represented himself.

Based upon the pleadings, stipulations, and evidence presented at the hearing, 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, John Peter Cattano, was admitted to the North Carolina State Bar in April 1988.
3. In 1989, Defendant's petition to become an inactive member of the North Carolina State Bar was granted and Defendant's membership with the North Carolina State Bar was transferred to inactive status.
4. At all times referred to herein, Defendant, as an inactive member of the North Carolina State Bar, was subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.
5. During all or part of the relevant periods referred to herein, Defendant was licensed to practice law in the State of Virginia and engaged in the practice of law in Virginia.

6. In 2007, Defendant and attorney Caroline D. Bragg (hereinafter "Bragg") formed The Cattano Law Firm, P.C. (hereinafter "the firm"), in which Defendant and Bragg were the sole shareholders.

7. In 2008, Bragg and Defendant had a dispute about the firm finances and Bragg commenced litigation against Defendant and the firm concerning the distribution of assets of the firm.

8. On or about June 17, 2009, Bragg filed in the Circuit Court of the County of Albemarle, Virginia an Amended Complaint against Defendant individually and as a director of the firm, Case No. CL 08002570-00 (hereinafter "the lawsuit").

9. The lawsuit was styled: "Carole D. Bragg, Individually and on behalf of The Cattano Law Firm, P.C., and all of its Shareholders, Plaintiff v. The Cattano Law Firm, P.C. and John P. Cattano, Individually and in his capacity as a director of The Cattano Law Firm, P.C., Defendants."

10. In Count I of the Amended Complaint, Bragg requested an order requiring the firm to make its corporate books available to her or her agents for inspection and copying and to pay her reasonable expenses and attorney's fees incurred in making the request.

11. Count I was resolved in favor of Bragg pretrial by virtue of the court appointing a receiver to examine the corporate books.

12. The lawsuit was tried and on or about January 25, 2010, the jury returned their verdict finding in favor of the plaintiff on four of the five issues submitted to them.

13. Specifically, the jury found for the plaintiff on the following:

- (a) the breach of contract claim, awarding the plaintiff damages in the amount of \$10,416.66;
- (b) the conversion claim brought on behalf of the Cattano Law Firm, P.C., awarding damages to the Cattano Law Firm, P.C. in the amount of \$234,412.18 of which \$64,111.77, or 27.35%, was awarded to the plaintiff;
- (c) Defendant's claim of conversion against the plaintiff; and
- (d) the claim of judicial dissolution of the Cattano Law Firm, P.C., awarding the plaintiff damages in the amount of \$7,409.90.

14. The jury found in Defendant's favor on the claim of breach of fiduciary duty.

15. Handwritten on the verdict sheet was this finding: "We find Plaintiffs[sic] percentage ownership of Cattano Law Firm P.C. to be 27.35%."

16. The court also ordered, over Defendant's objection, that the Cattano Law Firm, P.C. pay Bragg's attorney's fees in the amount of \$269,813.00 and Bragg's costs, expenses, and share of the receiver's fees in the amount of \$19,415.71.

17. Defendant appealed the judgment to the Supreme Court of Virginia and raised five issues on appeal.

18. The Supreme Court of Virginia decided all five issues against Defendant and affirmed the lower court's judgment in Cattano v. Bragg, 283 Va. 638, 727 S.E.2d 625 (2012).

19. On or about October 5, 2012, Defendant filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Western District of Virginia, Lynchburg Division, Case No. 12-62294.

20. On or about January 25, 2013, Caroline V. Davis (formerly Caroline D. Bragg), filed a Verified Complaint to Determine Dischargeability of Debts, Adversary Proceeding Case No. 13-06008.

21. On or about January 25, 2013, the United States Trustee for Region Four initiated an adversary proceeding against Defendant by filing a Complaint to Deny Discharge, Adversary Proceeding Case No. 13-06009, in which he alleged, among other things, that Defendant had:

- (a) Set up a dummy corporation to conceal his interest in the law practice and the income from the law practice;
- (b) Knowingly made false statements under oath at his creditors' meeting;
- (c) Concealed his interest in his law firm and continued to conceal it with the intent to hinder, delay, or defraud his creditors and/or the bankruptcy trustee; and
- (d) Knowingly and fraudulently made false oaths regarding his income, property, expenses and/or gifts to family members, as well as his employment status with the law firm.

22. The parties to both adversary proceedings attended mediation and reached a compromise by which Defendant's bankruptcy case and both adversary proceedings would be dismissed. Consequently, there was never a hearing on the merits of the allegations referred to in paragraph 21 above.

23. In a Petition for Reinstatement (hereinafter "petition") dated March 21, 2014, Defendant petitioned the North Carolina State Bar for reinstatement to active membership status.

24. Question #6 on the petition reads: "Since your admission to the North Carolina State Bar or during the seven years preceding this petition, whichever period of time is less, have you been charged with fraud in any legal proceeding, civil or criminal (include charges for fraudulent conveyance, preference or unlawful concealment of assets)?"

25. Defendant answered "yes" to question #6.

26. Defendant included an attachment (hereinafter "attachment") to his petition regarding question #6.

27. In addition to the attachment, Defendant attached the pleadings described in paragraph 36 below.

28. In the attachment, Defendant stated: "I was personally involved in bitter litigation from the Fall of 2008 essentially through 2013. The litigation was initiated by a former law 'partner' who was asserting a fifty percent ownership interest in my law firm at the time. Despite the fact that she had only been out of law school for five years, she asserted an equal ownership interest in my firm. Years of litigation culminated in a jury trial, and the jury repudiated her assertions. However, even though she did not prevail, the trial court nonetheless awarded her attorney's fees, which was in large part the reason I filed a bankruptcy petition in October of 2012."

29. On or about May 5, 2014, the State Bar informed Defendant by email that the State Bar Administrative Committee had referred his petition to the Office of Counsel for further investigation, particularly with regard to his response to question #6.

30. In a letter dated May 7, 2014 responding to that email, Defendant stated: "the basis of the entire litigation warranting further investigation was groundless and fabricated."

31. Defendant's statements in the attachment to his petition that his former partner "did not prevail" in the litigation and that "the jury repudiated her assertions" were false and/or misleading.

32. Defendant's statement in his May 7, 2014 letter to the State Bar that "the basis of the entire litigation warranting further investigation was groundless and fabricated" was false and/or misleading.

33. In his attachment to the reinstatement petition concerning question #6, Defendant also stated: "During the course of the bankruptcy proceedings, this same attorney aggressively tried to do anything and everything possible to frustrate a discharge in bankruptcy. She had no choice in the bankruptcy proceeding but to allege fraud to attempt to prevent a discharge."

34. Defendant also stated that he was attaching to the petition "various pleadings which should reflect the basis of the claim" referred to in paragraph 33 above.

35. The pleadings Defendant attached to the petition in connection with his statement in paragraph 33 above consisted of the following: the Verified Complaint to Determine Dischargeability of Debts filed by Caroline V. Davis f/k/a Caroline D. Bragg, Defendant's Answer thereto, and the Consent Order Regarding Debtor's Motion to Dismiss.

36. Defendant did not disclose in his petition in response to question #6 that the United States Trustee had filed a complaint alleging fraud.

37. Defendant did not attach to his petition the complaint filed by the United States Trustee or any document that revealed that the United States Trustee had alleged that Defendant had committed fraud.

Based on the record and the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and this tribunal has jurisdiction over Defendant, John Peter Cattano, and the subject matter of this proceeding.

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

- (a) By asserting in his petition for reinstatement that the opposing party in a civil suit "did not prevail" and that "the jury repudiated her assertions," when in fact, the jury found for the opposing party on four of the five issues submitted to them and the law firm in which Defendant was the majority shareholder was required to pay the opposing party's attorney's fees, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (b) By stating in a letter to the State Bar that "the basis of the entire litigation warranting further investigation was groundless and fabricated" when in fact, the jury found for the opposing party on four of the five issues submitted to them and the law firm in which Defendant was the majority shareholder was required to pay the opposing party's attorney's fees, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and
- (c) By failing to disclose in his petition for reinstatement that the United States Trustee had filed a complaint against him alleging fraud in response to the question, "Since your admission to the North Carolina State Bar or during the seven years preceding this petition, whichever period of time is less, have you been charged with fraud in any legal proceeding, civil or criminal (include charges for fraudulent conveyance, preference or unlawful concealment of assets)?", Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence regarding discipline presented at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 37 above are reincorporated as if fully set forth herein.

2. Defendant has no prior disciplinary record concerning his license to practice law.

3. The integrity of the reinstatement process depends on an attorney seeking reinstatement from inactive status completely and truthfully answering the questions posed in the petition for reinstatement.

4. In his correspondence with the State Bar, Defendant stated that he regarded the disciplinary process and his response thereto "a complete waste of time and energy."

5. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the Hearing Panel hereby enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0114(w)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (a) Intent of the defendant to commit acts where the harm or potential harm was foreseeable;
- (b) Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity; and
- (c) Acts of dishonesty, misrepresentation, deceit or fabrication

3. The Hearing Panel concludes that the following factors from § .0114(w)(2), which require consideration of disbarment, are present in this case:

- (a) Acts of dishonesty, misrepresentation, deceit, or fabrication

4. The Hearing Panel concludes that the following factors from § .0114(w)(3), which are to be considered in all cases, are present in this case:

- (a) Absence of prior disciplinary offenses;
- (b) Dishonest or selfish motive;
- (c) Pattern of misconduct;
- (d) Multiple offenses;

- (e) Refusal to acknowledge wrongful nature of conduct; and
- (f) Substantial experience in the practice of law

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that any sanction less than suspension would fail to acknowledge the seriousness of the violations committed by Defendant and the potential significant harm to the legal profession, would fail to adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel concludes that the public will be adequately protected by imposing a period of suspension which is stayed upon Defendant's compliance with conditions designed to ensure Defendant's compliance with the Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for three years, effective 30 days from service of this order upon Defendant.
2. The three year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:
 - (a) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business address which shall be a street address and not a post office box or drawer;
 - (b) Defendant shall respond to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition pending or received during the stay;
 - (c) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government; and
 - (d) Defendant shall timely comply with all State Bar membership and continuing legal education requirements and shall pay all fees and costs assessed by the applicable deadline.
3. The administrative fees and costs of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.
4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end three years from the effective date of the

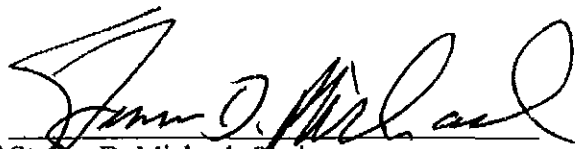
Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the three year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Order of Discipline, then the stay of the suspension may be lifted in accordance with 27 N.C. Admin. Code 1B § .0114(x).

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension.

7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 7th
day of December, 2015.


Steven D. Michael, Chair
Disciplinary Hearing Panel