

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 3

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT L. SCOTT, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard before a Hearing Panel of the Disciplinary Hearing Commission (“DHC”) composed of Walter E. Brock, Jr., Chair, and members Barbara B. Weyher and Scott A. Sutton. Plaintiff was represented by G. Patrick Murphy. Defendant, Robert L. Scott (“Scott” or “Defendant”), appeared *pro se*.

On December 10, 2013, the Hearing Panel granted partial summary judgment in favor of the State Bar concluding as a matter of law that Defendant violated Rule 1.3, Rule 1.15-2(m) and Rule 1.4(a) of the Rules of Professional Conduct as alleged in the State Bar’s Complaint for failure of Defendant on behalf of his client to timely obtain a title policy, timely pay title insurance premiums, timely pay property taxes, and respond to the client’s phone calls regarding those issues.

Based on the Hearing Panel’s summary judgment order, the sole issue remaining for determination of what, if any, discipline is appropriate for the violations established came on for hearing on February 20, 2014. Based on the Complaint, the Answer, the Order of Summary Judgment, and exhibits and evidence admitted during the hearing, and after careful consideration of the legal and factual arguments of the parties before, during and after the hearing, the Hearing Panel hereby finds by clear, cogent and convincing evidence, the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Plaintiff, the North Carolina State Bar (“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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant was admitted to the North Carolina State Bar on April 2, 2005, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, 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.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and conducted his practice from a law office in Greensboro, Guilford County, North Carolina.

4. From June 2006 through August 2010, Defendant was employed by The O'Brien Law Firm Co., LPA ("The O'Brien Law Firm"), a business that offered real estate closing services in North Carolina. The O'Brien Law Firm, which was established and operated by Dennis O'Brien, an attorney licensed and operating out of the State of Ohio, was under contract to the U.S. Department of Housing and Urban Development (HUD) to be its attorneys for real estate closings in North Carolina and operated in North Carolina from an office located at 101 South Elm Street, Suite 225, Greensboro, NC 27401.

5. Defendant was employed by The O'Brien Law Firm to serve as closing attorney for closings The O'Brien Law Firm handled in the State of North Carolina and was paid for those services by The O'Brien Law Firm.

6. On September 24, 2007, The O'Brien Law Firm filed an Interstate Law Firm Registration Statement with the North Carolina State Bar. On the registration statement, Defendant identified himself as a managing attorney for The O'Brien Law Firm office in North Carolina. Each attorney listed on the registration statement agreed to govern his or her personal and professional conduct with respect to legal matters arising in North Carolina in accordance with the Rules of Professional Conduct of the North Carolina State Bar.

7. Defendant was a managing attorney for The O'Brien Law Firm office in North Carolina, but did not have signature authority on The O'Brien Law Firm's trust account for funds handled for closings in North Carolina, and did not exercise supervisory authority over post-closing processes, such as timely payment of taxes and title insurance premiums.

8. When handling closings on behalf of The O'Brien Law Firm, Defendant relied on non-lawyer employees of The O'Brien Law Firm and other non-lawyers to perform title work, verify the taxes due, prepare the HUD-1 settlement statement, secure title insurance, pay the title insurance premium and conduct post-closing reviews. The policy and procedures of The O'Brien Law Firm dictated the activities of non-lawyer employees performing these functions. Defendant did not have or exercise the supervisory authority sufficient to ensure the work non-lawyer employees performed was compatible with the professional obligations of Defendant as closing attorney.

9. During 2008, The O'Brien Law Firm was handling between 200 and 300 real estate closings a month in North Carolina.

10. In his association with The O'Brien Law Firm, Defendant was the closing attorney for Tammy C. McCrae-Coley ("McCrae-Coley") in the August 21, 2008 purchase by McCrae-Coley of property located at 728 Tucker St., Burlington, NC 27215 ("Tucker St. property").

11. Defendant did not attend the McCrae-Coley closing but he authorized his signature to be placed on the HUD-1 settlement statement related to McCrae-Coley's purchase of the Tucker St. property by a Firm employee.

12. The HUD-1 settlement statement for the McCrae-Coley closing on the Tucker St. property shows that a charge for title insurance in the amount of \$162.50 was to be paid from McCrae-Coley's funds at the settlement.

13. The HUD-1 settlement statement for the McCrae-Coley closing on the Tucker St. property also shows that city/town property taxes in the amount of \$209.78 and county property taxes in the amount of \$194.67 were charged to and to be paid by McCrae-Coley at the closing for her portion of the 2008 taxes.

14. In April 2009, McCrae-Coley was notified by First Bank, High Point, N.C., the financial institution that held the mortgage on the Tucker St. property, that the title insurance on the Tucker St. property had not been obtained. An agent of First Bank advised McCrae-Coley that she had called and emailed The O'Brien Law Firm about the failure to secure the title insurance policy on the Tucker St. property, but could not get a return call.

15. After learning title insurance had not been obtained, McCrae-Coley tried for a few weeks to contact Defendant's office by phone. McCrae-Coley left messages and advised members of The O'Brien Law Firm staff that the title insurance policy needed to be issued and she needed somebody to call her back to let her know what was happening to correct the problem, but she never got a return call. McCrae-Coley then took time off from her job, went to Defendant's office, and waited for someone to assist her in her efforts to rectify the failure to secure title insurance on the Tucker St. property.

16. On June 25, 2009, The O'Brien Law Firm issued a check in the amount of \$162.50 to the title insurance company to secure a title policy on the Tucker St. property.

17. In December 2009, McCrae-Coley received a Notice of Attachment and Garnishment ("garnishment") from the Alamance County Tax Collector, which was also sent to her employer. The garnishment documents informed McCrae-Coley that for tax year 2008 a total of \$641.05 was owed on the Tucker St. property for taxes, interest and costs. When McCrae-Coley investigated the matter, she learned that the 2008 taxes had not all been paid on the Tucker St. property called for on the HUD-1 settlement statement.

18. Because the Alamance County Tax Collector was going to garnish McCrae-Coley's salary for the delinquent taxes that should have been paid on the Tucker St. property according to the HUD-1 settlement statement at closing, McCrae-Coley paid the delinquent taxes and then, on or about December 7, 2009, contacted Defendant's

office. McCrae-Coley spoke to an employee in Defendant's office, was told to fax the delinquent tax information to Defendant's office, and was told that it would take 1-2 weeks for the matter to be resolved. McCrae-Coley complied with the instructions and sent documentation to Defendant's law firm. After two weeks passed and McCrae-Coley did not receive reimbursement for the taxes she had paid to stop the garnishment, she called and emailed Defendant's law firm, but did not get any response to her requests for information about the tax reimbursement. McCrae-Coley then contacted The North Carolina State Bar.

19. On March 30, 2010, a check in the amount of \$546.82 was issued to McCrae-Coley to reimburse her for the 2008 delinquent taxes she had paid on the Tucker St. property.

20. In January 2009, Defendant sent an email to management in The O'Brien Law Firm advising them that in Defendant's view, The O'Brien Law Firm was operating more like a title company than a law firm. Further, Defendant wrote in the email: 1) that at least fifty percent of the phone calls and emails he received involved complaints about some aspect of firm's closing process; 2) that staff often did not return phone calls or emails from clients; and 3) that the backlog of files awaiting final policy issuance was staggering.

21. HUD's contract with The O'Brien Law Firm included terms regarding the firm's operations and, according to Defendant, the problems experienced in the McCrae-Coley closing were simple mistakes arising from a high volume real estate closing operation.

22. On November 11, 2009, Defendant was admonished by the Grievance Committee of The North Carolina State Bar for conduct arising from two real estate transactions he closed in January and June 2008. The committee found that Defendant had collected funds for title insurance but the funds were not promptly disbursed to the title company, and the final documents necessary to issue the policy were not prepared and sent promptly to the title insurance company.

Based on the above Findings of Fact Regarding Discipline, the Hearing Panel makes the following conclusions regarding discipline by clear, cogent and convincing evidence:

CONCLUSIONS REGARDING DISCIPLINE

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

2. The Hearing Panel has carefully considered all of the different forms of discipline available to it. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) and (w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this case that would warrant disbarment or suspension of Defendant's license to practice law.

3. The Hearing Panel has carefully examined the Admonition, Reprimand, and Censure factors enumerated in 27 N.C.A.C. 1B § .0113(k) of the Rules and Regulations of the North Carolina State Bar, and concludes the following factors are applicable to this case:

- a) Prior discipline for the same or similar conduct;
- b) Refusal of Defendant to acknowledge the wrongful nature of the conduct; and
- c) Imposition of lesser discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to members of the bar and the public regarding the conduct expected of members of the bar.

4. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this case:

- a) Prior disciplinary offense in this state or other jurisdiction;
- b) Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- c) Refusal to acknowledge the wrongful nature of his conduct;
- d) Defendant has not expressed remorse; and
- e) Defendant is experienced in the practice of law.

5. The conduct in which Defendant engaged violated one or more provisions of the Rules of Professional Conduct, the harm or potential harm caused by the Defendant is significant, and protection of the public requires more serious discipline than an admonition or reprimand.

6. An order imposing discipline short of a Censure would not be appropriate and would not be sufficient to protect the public.

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

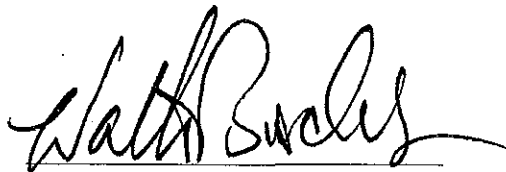
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ORDER OF DISCIPLINE

1. Defendant Robert L. Scott is hereby CENSURED for his conduct as set forth herein.

2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees within thirty days of service upon him by the Secretary of the statement of costs and administrative fees.

sd Signed by the Chair with the consent of the other hearing panel members, this the day of April, 2014.

A handwritten signature in cursive script, appearing to read "Walter Brock, Jr.", written over a horizontal line.

Walter E. Brock, Jr., Chair
Disciplinary Hearing Panel