

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CHRISTIE BYNUM SMITH, Attorney,

Defendant

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission (“DHC”) composed of Donald C. Prentiss, Chair, and members, James Davis and Jane B. Weathers, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Barry S. McNeill, Deputy Counsel for the North Carolina State Bar (“Plaintiff” or “State Bar”). Defendant, Christie Bynum Smith (“Defendant” or “Smith”), was represented by Frederick K. Sharpless, Sharpless, McClearn, Lester & Duffy, PA, Greensboro, North Carolina. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order of Discipline and to the discipline imposed. Defendant has freely and voluntarily stipulated to the findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this Consent Order of Discipline.

Based upon the pleadings in this matter, the parties’ stipulations of fact, and with the consent of the parties, the Hearing Panel finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

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, Christie Bynum Smith (“Defendant” or “Smith”), was admitted to the North Carolina State Bar in 2007, 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, Smith was engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

4. Smith maintained an attorney trust account at Branch Banking & Trust Company ("BB&T"), account number ending in the digits 4709.

5. Smith represented R.B. in the purchase of a property located at 3300 Peninsula Drive, Jamestown, North Carolina ("property").

6. The seller of the property was Saffa M. Mehdizadeh ("seller").

7. Smith scheduled the closing on the sale of the property for August 26, 2019.

8. Prior to the closing, an unidentified fraudster ("fraudster") was aware or became aware of the transaction, including the amount to be paid off on the seller's loan and the amount of the proceeds due to the seller.

9. On the morning of the closing, August 26, 2019, the fraudster, posing as the seller's agent, e-mailed Smith requesting information regarding the closing.

10. The fraudster then asked Smith to confirm receipt of a facsimile that included the seller's wiring instructions for the seller's proceeds.

11. Smith received the fraudster's facsimile at 3:47 p.m., EST, on August 26, 2019.

12. The facsimile contained wiring instructions directing the seller's proceeds to be wired to an account in the name of the seller at Wells Fargo Bank in New Brunswick, New Jersey.

13. Smith has offered no documentary evidence or corroboration that she verified the fraudulent wiring instructions with the seller or the seller's agent prior to initiating the wire transfer of the seller's funds.

14. At approximately, 4:34 p.m., EST, on August 26, 2019, Smith logged into her BB&T trust account portal and entered the wiring instructions from the facsimile, along with the seller's name and address.

15. At 4:35 p.m., EST, on August 26, 2019, Smith authorized the wire from her BB&T trust account in the amount of \$181,493.24 pursuant to the wiring instructions received via the fraudster's facsimile.

16. On September 3, 2019, the seller's agent informed Smith that the seller had not received the proceeds due to him from the sale of the property.

17. On or after September 3, 2019, Smith reviewed the e-mails, found discrepancies in the e-mails, and discovered that the wiring instructions she received and utilized from the fraudster were fraudulent.

18. Smith contacted BB&T and requested a recall of the wire transfer.

19. On or about September 10, 2019, Wells Fargo Bank recovered and returned to Smith's BB&T trust account the sum of \$7,994.90.

20. Only weeks prior to the closing, Smith had taken out a cyber insurance policy with Coalition Insurance Solutions, Inc. ("Coalition") of San Francisco, California.

21. One of the relevant endorsements on her policy precluded coverage for "loss arising out of any fraudulent request to change instruction or create a new instruction received by you or your financial institution that is not authenticated by you or your financial institution by means of a secondary method of authentication to verify the authenticity or validity of such instruction in addition to the original method of authentication undertaken." (emphasis in original)

22. In early September 2019, Smith initiated claims against her professional liability insurance policy and against her Coalition cyber insurance policy.

23. Smith's professional liability insurer denied coverage on her claim, but Coalition granted coverage without her making any representation about her efforts to authenticate the wiring instructions prior to initiating the wire transfer on August 26, 2019.

24. Coalition appointed counsel to represent Smith and Coalition reached a negotiated confidential settlement with the seller to make the seller whole.

25. On September 3, 2019, Smith contacted the State Bar and was advised by a State Bar investigator to file an electronic complaint referral with the Federal Bureau of Investigation's ("FBI") Internet Crime Complaint Center ("IC3").

26. On September 4, 2019, the State Bar investigator e-mailed Smith follow up contact information for the FBI and requested that Smith provide a summary and update of the facts relating to the wire fraud incident of August 26, 2019.

27. Later that same afternoon, Smith e-mailed the State Bar investigator a summary stating: "I spoke with [the seller] prior to sending the wire and confirmed receipt of this wire instructions along with the spelling of his name and address."

28. In both a September 17, 2019 letter through counsel to the State Bar's Director of Investigations and in her October 4, 2019 response to the State Bar's Letter of

Notice concerning a grievance (19G0961) opened by the State Bar, Smith represented to the State Bar that she had telephoned and spoken to the seller on August 26, 2019.

29. Smith represented to the State Bar that she made the telephone call to the seller after receiving the fraudulent facsimile at 3:47 p.m., EST, before she logged into her BB&T trust account portal to initiate the wire transfer at approximately 4:30 p.m., EST.

30. Smith also represented that during her telephone conversation with the seller, Smith conveyed to the seller that Smith had received wiring instructions by facsimile.

31. In response to follow up questions by the State Bar about the telephone call she allegedly made to the seller, on November 22, 2019 Smith provided telephone records and stated that she had incorrectly previously represented to the State Bar that she had initiated the telephone call to the seller, but now subsequently realized the seller had telephoned her.

32. In response to additional follow up questions about the timing of the telephone call in relation to the wire transfer, on December 6, 2019 Smith stated "it appears now that I may have misremembered the exact circumstances of my communications with [the seller] (i.e., who called who) and potentially the precise timing or sequence of these events."

33. Smith's telephone records establish that the seller initiated a telephone call to Smith on August 26, 2019, at 4:55 p.m., EST, 20 minutes after Smith initiated the wire transfer at 4:35 p.m., EST.

34. Smith's telephone records do not show that she telephoned the seller before she initiated the wire transfer on August 26, 2019.

35. There is no documentary evidence that Smith spoke to the seller via telephone after receiving the fraudulent facsimile and prior to initiating the wire transfer on August 26, 2019.

36. Before she initiated the wire transfer, Smith did not verify with the seller or the seller's agent by telephone or otherwise that the seller caused wiring instructions to be sent by facsimile to Smith.

37. Smith's statements to the State Bar during its grievance investigation that she telephoned the seller on August 26, 2019 to confirm receipt of the facsimile wiring instructions before she initiated the wire transfer are inconsistent with the factual record and could have been verified by Smith against her telephone records prior to making these statements to the State Bar.

Based on the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

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

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

(a) By making statements to the State Bar in connection with its grievance investigation without adequate investigation of her own records and therefore making the statements in reckless disregard for their truth or falsity, Defendant therefore knowingly made false statements of material fact in violation of Rule 8.1(a), and engaged in conduct involving misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c); and,

(b) By not verifying the wiring instructions with the seller or the seller's agent, Defendant failed to properly safeguard and disburse the seller's funds held in her trust account in violation of Rule 1.15-2(a), Rule 1.15-2(k) and Rule 1.15-2(n).

3. The State Bar voluntarily dismisses the following allegations of its Complaint:

(c) By making a false statement of material fact to her cyber insurance carrier, Defendant committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c); and,

(d) By making a false statement to the FBI on the IC3, Defendant committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c).

Upon the consent and stipulation of the parties, the Hearing Panel also finds the following:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

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

2. At the time of this incident in August of 2019, Defendant had been in the practice of law for approximately 12 years.

3. Defendant is only licensed to practice law in the State of North Carolina and has not incurred prior professional discipline in North Carolina.

4. Defendant was the only person working in her law firm office at the time on August 26, 2019 and was solely responsible for properly disbursing the seller's funds from her firm's trust account.

5. The seller's closing was the only real estate closing that Defendant handled on August 26, 2019.

6. The seller resided in California and, on February 1, 2021, passed away from cancer complications.

7. The seller was a key witness and the parties were unable to schedule and take the seller's deposition prior to his death due to his health.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes 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, in considering the appropriate discipline to impose in this case.

2. In addition, the hearing panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- (A) Absence of prior disciplinary offenses in this state or any other jurisdiction in 12 years of legal practice;
- (C) Absence of dishonest motive;
- (D) Timely good faith efforts to make restitution;
- (F) Defendant engaged in multiple offenses;
- (N) Submission of statements recklessly made without adequate investigation of the facts during the disciplinary process; and,
- (S) Degree of experience in the practice of law.

3. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(1) of the Rules and Regulations of the North Carolina

State Bar and finds the following factors warrant consideration of suspension of Defendant's license:

- (E) Defendant's actions had a potential negative impact on the public's perception of the legal profession; and,
- (I) Acts of negligent or reckless misrepresentation, without adequate investigation.

4. The hearing panel has also carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(2) of the Rules and Regulations of the North Carolina State Bar, does not find any factors warranting consideration of disbarment, and concludes that disbarment is not necessary in order to protect the public.

5. Honesty and truthfulness are foundations of the legal profession, and when an attorney breaches his or her trustworthiness as a professional it reflects negatively not just on the attorney, but on the profession as a whole.

6. When an attorney's lack of trustworthiness occurs during the disciplinary process, it also significantly harms the self-regulation of the profession.

7. The hearing panel has considered all other forms of discipline available and concludes, for the following reasons, that any sanction less than Censure would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

- a. The factors under 27 N.C.A.C. 1B §.0116(f)(1) and (f)(3) that are established by the evidence are of a nature that support imposition of Censure as the appropriate discipline;
 - b. Entry of 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 in this State; and,
 - c. A Censure will assure Defendant's progress and compliance with professional norms.
8. Defendant should be taxed with the administrative fees and costs of this action.

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

ORDER OF DISCIPLINE

1. The Defendant, Christie Bynum Smith, is hereby Censured. This Order will be effective immediately upon service of this Order upon Defendant.

2. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within thirty (30) days of service of the notice of costs upon Defendant, or as may be extended by the panel for good cause shown by Defendant.

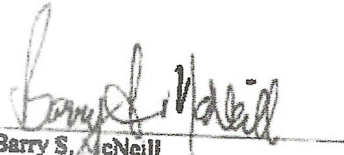
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 26 day of August 2021.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Christie Bynum Smith
Defendant


Barry S. McNeill
Deputy Counsel
The North Carolina State Bar


Frederick K. Sharpless
Counsel for Defendant