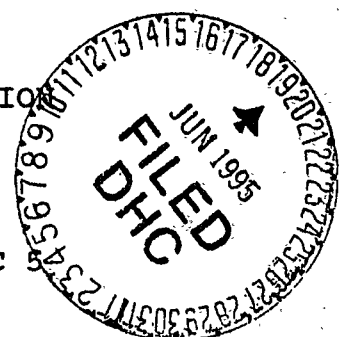


8398

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR



| | | |
|------------------------------|---|--|
| STATE OF NORTH CAROLINA | : | CASE NO. 95 DHC |
| COUNTY OF WAKE | : | |
| THE NORTH CAROLINA STATE BAR | : | |
| Plaintiff | : | |
| vs. | : | FINDINGS OF FACT AND CONCLUSIONS OF LAW |
| ROBERT MAGGIOLO | : | |
| Defendant | : | |

This cause coming on to be heard and being heard on May 12, May 17, and June 2, 1995 before a hearing committee composed of Maureen D. Murray, Chair, Stephen T. Smith, and James Lee Burney; with A. Root Edmonson representing the N. C. State Bar and Daniel R. Flebotte representing the Defendant; and based upon admitted facts in the Stipulation on Prehearing Conference and the evidence presented in the hearing, the hearing committee finds the following to be supported by clear, cogent, and convincing evidence:

FINDINGS OF FACT

1. The 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. The Defendant, Robert Maggiolo (hereinafter Maggiolo), was admitted to the North Carolina State Bar on August 31, 1978 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 North Carolina State Bar and the laws of the State of North Carolina.
3. During the time relevant to this matter, Maggiolo was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Durham, Durham County, North Carolina.
4. Prior to August, 1989, Maggiolo became a 50% shareholder with Durham realtor Glenn A. Darst (hereinafter Darst) in a real estate development company incorporated as Oak Hollow Development Corporation (hereinafter Oak Hollow). Darst

00662

became the President of Oak Hollow and Maggiolo became the Vice-President.

5. On August 11, 1989, Oak Hollow entered into a Sales Agreement with Thomas F. Laws and wife, Barbara B. Laws, (hereinafter the Laws) for Oak Hollow to purchase approximately 70 acres of real estate owned by the Laws in Orange County (hereinafter called Laws Farm). The purchase price for Laws Farm was \$199,810.00. The sales agreement called for \$2,500.00 of the purchase price to be paid at the signing of the agreement and the remaining \$197,310.00 to be paid pursuant to an unsecured promissory note.

6. Maggiolo closed the transaction between Oak Hollow and the Laws in his law office.

7. At the closing, the interests of Maggiolo's client, Oak Hollow, conflicted with the interests of the Laws. Maggiolo read the Sales Agreement to the Laws and answered their questions about it. Maggiolo did not advise the Laws to consult with an independent attorney for advice concerning the terms of the Sales Agreement. The Laws expected the documents prepared by Maggiolo to protect their interests.

8. On or before September 19, 1989, Maggiolo applied for a loan at The Village Bank in Chapel Hill, NC (hereinafter the bank). Maggiolo represented to the bank's representatives that the loan was to be used for Oak Hollow to purchase the Laws Farm property and to prepare the property for development. Of the \$175,000.00 maximum amount of the loan, \$132,500.00 was represented to be for the purchase price of the property.

9. Maggiolo also presented a personal financial statement to the bank since he was to be a guarantor of the Oak Hollow loan. Maggiolo did not disclose to the bank's representatives the existence of Oak Hollow's obligation to the Laws at any time prior to the bank advancing funds in reliance on the loan application and the financial statement.

10. On September 20, 1989, Maggiolo signed a promissory note to the bank and a deed of trust for the \$175,000.00 loan. \$132,500.00 was advanced by the bank on that date in reliance on Maggiolo's disclosures of what the money was to be used for and the financial positions of both himself and Oak Hollow.

11. None of the \$132,500.00 advanced on the loan by the bank was paid to the Laws as part of the purchase price of Laws Farm.

12. Maggiolo's failure to disclose to the bank the existence of the Sales Agreement between Oak Hollow and the Laws and his failure to disclose Oak Hollow's note to the Laws prior to the bank advancing \$132,500.00 for purchase of the Laws Farm

property was a misrepresentation of material fact necessary for the bank's consideration in determining whether to advance those funds.

13. Maggiolo's representation to the bank that the \$132,500.00 advance would be used to purchase the Laws Farm property, when it was not so used, was a misrepresentation of material fact necessary for the bank's consideration in determining whether to advance those funds.

14. Prior to obtaining the Laws Farm property, Oak Hollow owned property for development in Durham County known as Rougemont Retreat.

15. On December 12, 1988, Rick Ladd of Rick Ladd Construction Co., Inc. (hereinafter Ladd) signed an Offer to Purchase contract to purchase the property located at 3510 Moriah Road in the Rougemont Retreat subdivision from Oak Hollow. The Offer to Purchase contract indicated that Ladd had made a \$1,000.00 earnest money deposit. No cash was paid as an earnest money deposit by Ladd.

16. Also on December 12, 1988, Ladd signed an Offer to Purchase contract to purchase the property located at 3617 Red Mountain Road in the Rougemont Retreat subdivision from Oak Hollow. The Offer to Purchase contract indicated that Ladd had made a \$1,000.00 earnest money deposit. No cash was paid as an earnest money deposit by Ladd.

17. On January 10, 1989, Maggiolo conducted the closings on the property Oak Hollow was conveying to Ladd located at 3510 Moriah Road and 3617 Red Mountain Road in Rougemont Retreat. On the closing statements Maggiolo prepared, \$1,000.00 was shown as having been paid in earnest money on each of the lots.

18. On January 12, 1989, Ladd signed an Offer to Purchase contract to purchase the property located at 3623 Red Mountain Road in the Rougemont Retreat subdivision from Oak Hollow. The Offer to Purchase contract indicated that Ladd had made a \$2,500.00 earnest money deposit. No cash was paid as an earnest money deposit by Ladd.

19. On March 17, 1989, Maggiolo conducted the closing on the property Oak Hollow was conveying to Ladd located at 3623 Red Mountain Road in Rougemont Retreat. On the closing statement Maggiolo prepared, \$2,500.00 was shown as having been paid in earnest money on the lot.

20. The North Carolina State Bar did not prove by clear, cogent and convincing evidence that Maggiolo knew when he prepared the closing statements or when he conducted the closings on January 10, 1989 and March 17, 1989, that the earnest money

had not been paid by Ladd or that the closing statements were inaccurate.

21. Between March, 1991 and June, 1991, the North Carolina Real Estate Commission (hereinafter commission) began to inquire of Darst about, among other things, the handling of the Ladd earnest money deposits. Darst sought advice from Maggiolo.

22. After being advised by Darst that Darst needed something to get the commission "off his back," Maggiolo assisted Darst in preparing notes for Ladd to sign to indicate that the earnest money in each of the transactions described above had been paid by promissory notes.

23. On or about July 10, 1991, upon Maggiolo's advice, Darst had his secretary prepare three promissory notes for Ladd's signature which were back dated to the dates that the Offer to Purchase contracts had been entered into.

24. Ladd signed the notes on or about July 12, 1991.

25. On or about July 12, 1991, Darst gave copies of the back-dated promissory notes to an investigator for the commission. Copies of the notes were given to the investigator for the commission by Darst with the intent to deceive the commission. The copies were given to the investigator with the knowledge and advice of Maggiolo.

26. In addition to the closings Maggiolo did for the property Oak Hollow conveyed to Ladd, Maggiolo also did closings in which Oak Hollow conveyed property to the following persons on the following dates:

- (a) B. J. and Bobbie E. Cooksey on April 18, 1985;
- (b) Randall F. and Vanessa Gay T. Hall on July 28, 1986;
- (c) Robert Edward LaChance on June 4, 1987; and
- (d) Donald J. and Paula K. Brown, Jr. on April 22, 1991.

27. In each of the closing that Maggiolo conducted for persons purchasing property from Oak Hollow, a company in which Maggiolo was a principal, Maggiolo failed to make full disclosure in writing of the implications of his representation to those purchasers.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. State. Sec. 84-28(b)(2) in that Defendant's conduct violates the N. C. Rules of Professional Conduct as follows:

- (a) By reading the Sales Agreement to the Laws and answering their questions about the document, and by advising the Laws to sign the Sales Agreement, the promissory note, and the deed he had prepared for them to sign at the August 11, 1989 closing without advising the Laws to seek independent counsel, Maggiolo gave advice to a person who was not represented by counsel, other than the advice to seek counsel, when the interest of that person were in conflict with the interest of Maggiolo's client, Oak Hollow, in violation of Rule 7.4(B).
- (b) By advising the bank's representatives that \$132,500.00 of the loan proceeds were to be used to purchase the Laws Farm property when it was not, by failing to advise the bank's representatives about the transaction that Oak Hollow had already entered into with the Laws for purchase of the Laws Farm property, and by failing to advise the bank's representatives about the promissory note that had been entered into with the Laws prior to the bank advancing the \$132,500.00 on the loan, Maggiolo engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 1.2(C); and knowingly made a false statement of fact in violation of Rule 7.2(A)(4).
- (c) By advising Darst to create back-dated promissory notes to give to the commission's investigator with the intent to deceive the investigator, Maggiolo counseled or assisted a client in conduct he knew was fraudulent in violation of Rule 7.1(A)(4) and 7.2(A)(8) and participated in the creation of evidence when he knew the evidence was false in violation of Rule 7.2(A)(6).

The hearing committee did not find any of the other violations of the Rules of Professional Conduct alleged in the Complaint.

The hearing committee believes that Rule 5.1(B) required Maggiolo to obtain consent after full disclosure from the purchasers of Oak Hollow property for whom he did closings before being able to conduct such closings, which he did not do. However, since as a result of CPR 254 and subsequent RPC 83, Maggiolo may have reasonably believed he was complying with Rule 5.1(B) by having other counsel do the title searches, the hearing committee did not find that Maggiolo violated Rule 5.1(B).

Signed by the undersigned Chair with the full knowledge and consent of the other members of the hearing committee this the 15th day of June, 1995.

Maureen Demarest Murray
Maureen Demarest Murray, Chair
The Disciplinary Hearing Commission
P.O. Box 21927
Greensboro, North Carolina 27420
Telephone: (910) 378-5258

Carolina State Bar, found in Title 27 of the North Carolina Administrative Code.

3. Maggiolo is taxed with the costs of this hearing as assessed by the Secretary.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the hearing committee this the 15th day of June, 1995.

Maureen D. Murray

Maureen D. Murray
Chair
Hearing Committee