STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR
10 DHC 27

FILED DHC MAR 2011

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

HOLLY C. STEVENS, PAULINE E. MAKIA, CARMEN J. BATTLE, and JAMIE FAYE NEWSOM, Attorneys,

Defendants

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONSENT ORDEROF DISCIPLINE AS TO PAULINE E. MAKIA

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, and members Harriett Smalls and Joe Castro, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Pauline E. Makia ("Makia"), was represented by Garris Neil Yarborough. Both Plaintiff and Defendant Makia stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Makia has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Makia freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

This order pertains only to the claims concerning Defendant Pauline E. Makia and resolves only those claims. The term "parties" in this order refers to the State Bar as Plaintiff and Pauline E. Makia as Defendant.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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 Pauline E. Makia ("Makia") was admitted to the North Carolina State Bar in 2003, 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, Makia was engaged in the practice of law in Fayetteville, Cumberland County, North Carolina.

4. Makia was properly served with process, a hearing in this matter was set, and the matter came before the Hearing Panel with due notice to all parties.

5. In about 2004, Makia opened a law office in Fayetteville, North Carolina. Although Makia had very little experience in real property law or in closing real estate transactions, Makia undertook, nonetheless, to engage in this area of the practice of law.

6. Makia hired non-attorney assistants who had previously worked for another attorney named Holly Stevens ("Stevens") to do the work for the real estate closings.

7. Stevens was associated with Maurice Jenkins ("Jenkins"), who purported to be a real estate investor. Stevens frequently closed real estate transactions involving Jenkins and participated in purchasing and selling real property with Jenkins. Unbeknownst to Makia, Jenkins and Stevens engaged in fraudulent practices in these real estate transactions.

8. Makia failed to provide the necessary supervision of her assistants and their work to ensure compliance with the Rules of Professional Conduct in real estate transactions closed by her office. Makia's lack of supervision included the following:

a. failing to ensure prior deeds of trust were being paid off from the funds at closing;

b. failing to ensure proper handling of entrusted funds;

c. failing to ensure compliance with lender closing instructions; and

d. failing to review and supervise the preparation of the preliminary and final opinions of title.

9. Makia failed to ensure that disbursements occurred as listed on the HUD-1 Settlement Statements. Moreover, Makia allowed Stevens to direct her to pay seller's proceeds to Jenkins instead of as listed on the HUD-1 Settlement Statement. Makia also failed to ensure the funds listed as due from the borrowers at closing were in fact collected from the borrowers at closing. Consequently, Makia failed to ensure the lenders were provided accurate information on the HUD-1 Settlement Statements provided to them by her office.

10. Makia failed to ensure deeds and deeds of trust from real estate transactions were promptly recorded and failed to ensure that deeds and deeds of trust were recorded before funds were disbursed.

11. Makia closed several real estate transactions involving Jenkins and/or Stevens. Makia's inexperience and her failure to supervise her staff and the work in these closings enabled Jenkins to continue to engage in fraudulent conduct assisted by Makia's office.

12. Exhibit B to the State Bar's complaint contains a list of real estate transactions closed by Makia. The transactions listed in Exhibit B provide examples of the conduct described herein.

13. Makia's inexperience and failure to supervise her staff also affected other real estate transactions, including the two transactions involving lender Homecoming Financial Network (HFN) listed in Exhibit B to the State Bar's complaint.

14. Makia failed to follow HFN's closing instructions in these two residential real estate transactions. In these transactions, the lender's instructions required the closing agent to notify the lender in writing if the property had changed hands in the 180 days immediately prior to closing, to notify the lender if the agent had knowledge of previous, concurrent, or subsequent transactions involving the borrower or subject property, and to not close or fund the loans if the agent had knowledge of a concurrent or subsequent transaction which would transfer the property. In both transactions, Makia was in possession of unrecorded deeds by which the sellers obtained the property within the 180 days preceding the closings. Makia failed to notify the lender of these prior transfers or ensure that her staff notified the lender, and allowed these transactions to close.

15. Makia failed to maintain and disburse HFN's entrusted funds appropriately in both of these transactions. Makia disbursed HFN's funds prior to recording the deeds and deeds of trust from the transactions.

16. For both of these HFN transactions, the title insurance company's Commitment for Title Insurance documents incorrectly listed Forever Young, Inc. as owner of these properties when Forever Young, Inc. did not yet own the properties. The incorrect information was the result of false information communicated to the title insurance company by Makia's office. Makia failed to ensure her staff accurately identified the owners of the properties on communications to the title insurance company.

Based upon 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 Makia and the subject matter of this proceeding.

2. Makia'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) as follows:

a) By failing to receive and disburse funds as represented on the HUD-1 Settlement Statements, Makia failed to appropriately maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m);

b) By practicing in an area of law without sufficient training or experience and by delegating tasks involving the practice of law to non-attorney assistants without providing adequate or meaningful supervision, Makia handled legal matters she was not competent to handle in violation of Rule 1.1 and failed to make reasonable efforts to ensure that the non-attorney assistants' conduct was compatible with her professional obligations in violation of Rule 5.3(b); and

c) By failing to comply with the lender's closing instructions in residential real estate transactions, Makia failed to represent a client with reasonable diligence in violation of Rule 1.3.

Upon the consent of the parties, the Hearing Panel also enters the following:

Findings Of Fact Regarding Discipline

1. The practice of law is restricted to attorneys because the advanced legal education and training received by attorneys is necessary to effectively identify applicable legal requirements and obligations, to identify legal issues, and to apply the law to each client's individual circumstance.

2. For an attorney to be able to supervise a non-attorney assistant's work, the attorney must first know the applicable legal authorities and requirements applicable to the work being done. An attorney cannot effectively or appropriately supervise a non-attorney's work if he or she does not know the applicable legal authorities or requirements that must be satisfied through the non-attorney's work.

3. Banks are not normally thought of as vulnerable entities. Nevertheless, banks rely upon the closing attorney to carry out the closing in an ethical, lawful, and proper manner. These institutions are particularly vulnerable to the conduct of attorneys who circumvent or facilitate others in the circumvention of safeguards employed to avoid fraud or fail to maintain internal procedures to prevent staff members from doing the same.

4. Makia's obligation as closing attorney was to produce an accurate HUD-1 Settlement Statement for each transaction, to ensure that funds were received and disbursed as authorized by the lender and to follow the lender's closing instructions.

5. Accurate HUD-1 Settlement Statements are necessary for the system of finance in real estate to function. Lenders rely upon the HUD-1 Settlement Statements to accurately reflect the receipt and disbursement of funds in real estate closings. Lenders

rely on the entries in line 303 of the HUD-1 Settlement Statements showing payment by the buyers/borrowers at closing to show the buyers/borrowers contributed their own money to the transaction. Lenders rely upon such personal contribution by the buyers/borrowers to reduce the risk of default on the loan by the buyers/borrowers. Makia's staff's preparation and submission of HUD-1 Settlement Statements that did not accurately show the receipt and disbursement of funds and Makia's failure to receive and disburse funds as reflected on the HUD-1 Settlement Statements negated the safeguards relied upon by the lenders.

6. Lenders provided closing instructions to Makia, compliance with which were a prerequisite to the lender making the loan to the borrower. Makia's failure to ensure compliance with HFN's closing instructions circumvented the lender's attempt through the closings instructions to ensure the loans at issue were ones it was willing to make. Additionally, the inaccurate preliminary opinions of title Makia's office provided to the title insurance companies resulted in false information on the title commitments that hid the first part of the transactions from the lenders.

7. Makia has no prior disciplinary record concerning her license to practice law.

8. Makia's inexperience in real property law prevented her from appreciating the problems with the way real estate closings were conducted by her office. She failed to appreciate the reliance by the lenders on the HUD-1 Settlement Statements. She failed to appreciate her role and obligation to the lenders. She failed to appreciate the necessity for total compliance with lenders' closing instructions. She failed to appreciate what her role should have been in supervising her staff.

9. Makia's ability to properly close transactions involving Jenkins was also compromised by a staff person who intentionally hid disbursements and prior deed of trust information from Makia.

10. Makia self-reported problems she discovered to the title insurance companies and the State Bar, and fully cooperated with all inquiries made regarding these real estate transactions.

11. Makia has expressed remorse for her conduct.

12. Makia did not engage in the conduct described in the Findings of Fact above with any dishonest or selfish motive.

13. 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 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 With Respect To Discipline

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

   a) Defendant's actions potentially had a negative impact on the public's perception of the legal profession; and

   b) Defendant's actions impaired her clients' ability to achieve the goals of the representation.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

3. 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 matter:

   a) Defendant's lack of prior disciplinary offenses;

   b) Absence of a dishonest or selfish motive;

   c) Defendant engaged in multiple offenses;

   d) Defendant engaged in a pattern of misconduct;

   e) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;

   f) Defendant's remorse; and

   g) The vulnerability of Defendant's clients.

4. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by

Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Makia complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Makia's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

Order Of Discipline

1. Defendant, Pauline E. Makia, is hereby suspended from the practice of law for five years, effective 30 days from service of this order upon Makia.

2. The five-year suspension is stayed for a period of five years as long as Makia complies, and continues to comply during the period of the stay, with the following conditions:

a. Does not engage in the practice of real property law, as defined in 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .2102.

b. Annually submits a certification of the areas of law in which she practiced for the preceding 12 months. Said certifications are due no later than December 31 of each year of the stay;

c. Each year of the stay, completes 12 hours of continuing legal education in addition to the hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. These 12 hours shall consist of substantive education courses in the areas of law in which Makia is then currently practicing. These additional hours must be completed within the applicable time period for completing the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518 each year of the stay and must be reported on the annual CLE report forms;

d. Each year of the stay, completes a continuing legal education course focusing on managing a law office and/or supervising non-legal assistants. This course may be taken as part of the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. This course must be completed within the applicable time period for completing the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518 each year of the stay and must be reported on the annual CLE report forms;

e. Within the 12 months immediately preceding expiration of the stay period, completes 6 hours of continuing legal education in real property law. These hours must be focused on general real property law or residential real property law, as defined in 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .2102. These hours may be taken as part of the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. These hours must be completed within the applicable time period for completing the continuing legal education hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518 and must be reported on the applicable annual CLE report form.

f. Timely submits her annual CLE report form to the CLE department of the North Carolina State Bar each year of the stay and contemporaneously sends a copy of the CLE report form to the Office of Counsel of the State Bar to document compliance with the above conditions of the stay. "Timely" means by the date specified by the CLE department as the date by which members must submit their annual report forms to avoid assessment of a $75.00 late filing penalty. Makia must ensure the Office of Counsel receives a copy of her annual CLE report form no later than 15 days after it is due to the CLE department of the State Bar each year;

g. Pays all Membership dues and Client Security Fund assessments and complies with all Continuing Legal Education requirements on a timely basis;

h. Arranges for an active member of the North Carolina State Bar who is in good standing who practices law in the county in which Makia primarily practices and who has been approved by the North Carolina State Bar to serve as her practice monitor. The selected monitor must agree to so serve and agree to meet with Makia monthly to review Makia's cases. Each month, the monitor must go over at least one case in detail in each area of law in which Makia is practicing, with discussion including but not limited to identification of applicable statutory and regulatory authorities, identification of potential legal issues, and plan of representation. Makia shall come prepared each month to discuss these topics in her cases with her practice monitor. The monitor must submit written quarterly reports of these meetings and discussions to the Office of Counsel of the State Bar, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15. This monitoring must occur for the duration of the stay of this suspension. Makia will pay the cost, if any, charged by the monitor. Makia must have made the arrangements for this monitoring attorney and supplied the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above no later than ninety (90) days from service of this Order;

i. Meets once a month with her practice monitor, to whom she will report the status of all current client matters, cooperates with the monitor attorney, and provides any information the monitor attorney deems reasonably necessary. Makia shall be prepared to discuss identification of applicable statutory and regulatory authorities, identification of potential legal issues, and plan of representation for each client matter;

j. Ensures the monitoring attorney sends a written report each quarter to the Office of Counsel of the State Bar as described above;

k. Cooperates with the Office of Counsel and makes appropriate arrangements for an alternate monitoring attorney if needed during the stay of this suspension;

l. Keeps her address of record with the North Carolina State Bar current, accepts all certified mail from the North Carolina State Bar, and responds to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;

m. Does not violate any of the Rules of Professional Conduct in effect during the period of the stay;

n. Does not violate any laws of the State of North Carolina or of the United States during the period of the stay; and

o. Pays all costs of this proceeding as assessed by the Secretary, including the costs allowed by statute for the taking of her deposition and deposition transcript, within thirty (30) days after service of the notice of costs on her.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, the following conditions are placed upon Makia's reinstatement to active status. With any petition Makia files for reinstatement to active practice, Makia must demonstrate by clear, cogent, and convincing evidence that she complied with each of the following conditions:

a. Submitted her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating her suspension;

b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;

c. Within the 12 months immediately preceding her application for reinstatement, completed 6 hours of continuing legal education in real property law. These hours must be focused on general real property law or residential real property law, as defined in 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .2102;

d. Not have violated any of the Rules of Professional Conduct;

e. Not have violated any laws of the State of North Carolina or of the United States;

f. Paid all costs of this proceeding as assessed by the Secretary within thirty (30) days of service of the notice of costs upon her;

4. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

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

This the 04 day of March 2011.

Sharon B. Alexander, Chair
Disciplinary Hearing Panel

Agreed and consented to by:

Jennifer Porter by M Plounter

Jennifer A. Porter
Attorney for Plaintiff

Pauline E. Makia
Defendant

Garris Neil Yarborough
Attorney for Defendant