

10236

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
'04 DHC 39



THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
JANESE M. BALILES, Attorney,)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Chair, T. Richard Kane, and Lorraine Stephens. Margaret Cloutier represented plaintiff. Defendant was represented by Alan M. Schneider. Defendant has agreed to waive a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant also stipulates that she waives her right to appeal this consent order or challenge in any way the sufficiency of the findings, conclusions of law or order of discipline by consenting to the entry of this order.

Based on the consent of the parties, the Hearing Committee hereby enters the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Janese M. Baliles (hereinafter "Baliles"), was admitted to the North Carolina State Bar on August 21, 1982 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Baliles actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Asheville, Buncombe County, North Carolina.

4. In or about March 2002, Matthew J. Revis (hereinafter referred to as "Revis") engaged Baliles to close a loan Revis obtained to refinance real property owned by him. Baliles was to perform services and prepare documents as required by Revis's lender, including obtaining a commitment for title insurance before the closing and a final title insurance policy after the closing.

5. Before the closing, Baliles obtained a commitment for title insurance from Stewart Title Guaranty Company (hereinafter referred to as "Stewart Title") and received an invoice in the amount of \$103 from Stewart Title. The invoice was for the premium for the final title insurance policy and was to be paid by Baliles from the proceeds of the loan. The final title insurance policy would be issued by Stewart Title after the closing upon receipt of the premium amount and final title opinion prepared and signed by Baliles.

6. The Revis loan closing took place on or about March 26, 2002 and Baliles deposited the loan proceeds into her trust account. Baliles deducted \$103 from the loan proceeds for the title insurance premium and issued check number 7981, dated March 28, 2002, made payable to Stewart Title.

7. Baliles did not send check number 7981 to Stewart Title or provide Stewart Title a final title opinion within a reasonable time after Revis's March 26, 2002 loan closing.

8. Revis's lender, Alternative Mortgage Corp., called Baliles and contacted her by letter sent certified mail inquiring about the status of the title insurance policy. Baliles did not respond to those inquiries.

9. On or about February 27, 2003 Baliles provided a final title opinion and the premium to Stewart Title, obtained the final title insurance policy from Stewart Title and sent it to Revis's lender.

10. In or about March 2002, Janet E. Henry (hereinafter referred to as "Henry") engaged Baliles to close a loan Henry obtained to purchase real property. Baliles was to perform services and prepare documents as required by Henry's lender, including obtaining a commitment for title insurance before the closing and a final title insurance policy after the closing.

11. Before the closing, Baliles obtained a commitment for title insurance from Stewart Title and received an invoice in the amount of \$197.90 from Stewart Title. The invoice was for the premium for the final title insurance policy and was to be paid by Baliles from the proceeds of the loan. The final title insurance

policy would be issued by Stewart Title after the closing upon receipt of the premium amount and final title opinion prepared and signed by Baliles.

12. The Henry loan closing took place on or about March 28, 2002 and Baliles deposited the loan proceeds into her trust account. Baliles deducted \$197.90 from the loan proceeds for the title insurance premium and issued check number 7974, dated March 28, 2002, made payable to Stewart Title.

13. Baliles did not send check number 7974 to Stewart Title or provide Stewart Title a final title opinion within a reasonable time after Henry's March 28, 2002 loan closing.

14. Henry's lender, Alternative Mortgage Corp., called Baliles and contacted Baliles by letter sent certified mail inquiring about the status of the title insurance policy. Baliles did not respond to those inquiries.

15. On or about March 10, 2003 Baliles provided a final title opinion and the premium to Stewart Title, obtained the final title insurance policy from Stewart Title and sent it to Henry's lender.

16. From August 1992 until March 30, 2003 various clients engaged Baliles to close real property transactions for the clients for purchase or refinance real property. For each such closing Baliles was to perform services and prepare documents as required by the lender, when a lender was involved, including obtaining a commitment for title insurance before each closing and a final title insurance policy after each closing. In cash purchase transactions in which a lender was not involved Baliles performed services and prepared documents needed to complete a property transfer and as a habit of her practice collected a premium for title insurance in order to obtain a policy of owner's title insurance for the purchaser.

17. For each real property transaction referred to in Paragraph 16 above, Baliles deposited the loan proceeds or cash funds into her trust account and deducted a specific sum from such funds for the title insurance premium, then issued a check in that amount made payable to a title insurance company.

18. Between August 1992 and March 30, 2003, Baliles conducted 132 closings for which she did not send the checks for payment of premiums or provide final title opinions to the title companies. The checks issued as set forth in Paragraph 17 above, listed by date, number, amount and title insurance company, are itemized in Exhibit 1 attached hereto and incorporated herein as if set forth in full. The funds for each check listed in Exhibit 1 remained in Baliles' trust account as of September 30, 2003.

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over defendant and the subject matter of this proceeding.

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that he violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

a. by failing to obtain final title insurance policies in the 132 closings listed in Exhibit 1 and failing to obtain the final title insurance policies within a reasonable time after the Revis and Henry closings, Baliles did not act with reasonable diligence and promptness in representing clients in violation of Rule 1.3 and former Rule 6(b)(3), and

b. by holding in her trust account the funds payable to title insurance companies in the 132 closings listed in Exhibit 1 and the Revis and Henry closings, Baliles did not promptly pay or deliver entrusted property to third persons as directed by her clients in violation of Rule 1.15-2(m) (Rule 1.15-2(h) before the May 4, 2000 revision) and former Rule 10.2(e).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee also enters the following

FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:

- a. a pattern of misconduct;
- b. multiple offenses; and
- c. substantial experience in the practice of law.

2. Defendant's misconduct is mitigated by the following factors:

- a. absence of a prior disciplinary record;
- b. absence of a dishonest or selfish motive;
- c. full and free disclosure to the hearing committee and cooperative attitude toward proceedings;

- d. personal difficulties and incidents of office damage leading to disruption in the operation of defendant's law practice; and
- e. good reputation in the legal community.

3. Defendant's conduct in failing to obtain title insurance policies in more than 132 instances threatened significant harm to all of those clients and their lenders in that, had claims been made against the properties, the clients and lenders could have been unprotected by insurance policies they thought they had purchased. The Hearing Committee finds and concludes that under the circumstances of this case, given the number of clients affected, the public will not be adequately protected by a censure and that a stayed suspension is necessary to allow implementation of conditions to ensure the protection of the public and defendant's future clients.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, and upon consent of the parties, the Hearing Committee enters the following

ORDER OF DISCIPLINE

1. The license of defendant, Janese M. Baliles, is hereby suspended for six months from the date this Order of Discipline is served upon her. The period of suspension is stayed for two years upon the following conditions:

a. No later than December 15, 2004 defendant shall contract with a licensed North Carolina attorney who maintains a private law practice in the judicial district in which defendant maintains her practice to serve as a practice monitor. Defendant will first secure the approval of her proposed practice monitor to the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Defendant will personally meet with her practice monitor at least once each quarter beginning in January 2005 during the period of stayed suspension. Defendant will keep the monitor apprised of all open and pending client matters and the status of all such matters. Within 15 days after the end of each calendar quarter of each year of the stayed suspension, defendant will deliver to the Office of Counsel written reports signed by the practice monitor confirming that the meetings are occurring and that the defendant is reporting on the status of defendant's client matters to the practice monitor and that the practice monitor is satisfied with the status of such client matters. Defendant will be solely responsible for all costs associated with the monitoring of her law practice.

b. Defendant shall complete within the first twelve months of the stay, at her own expense, a course of training in law office

management approved by the North Carolina State Bar, and expressly waive any rights she might otherwise have to confidential communications with persons associated with the management training program in regard to the prescribed course of training.

c. Defendant shall provide to the offices of the North Carolina State Bar within 15 days of the end of each calendar quarter, beginning with the quarter ending in March 2005, reports of any and all trust account funds maintained by defendant prepared by a certified public accountant engaged at defendant's own expense. Defendant shall provide such certified public accountant the necessary information to satisfactorily submit such quarterly reports.

d. Defendant shall successfully complete eight hours of the 12 hours required of each lawyer per year of continuing legal education from a sponsor approved by the North Carolina State Bar on the topic of real property issues and report same to the Office of Continuing Legal Education of the North Carolina State Bar.

e. By November 15, 2004, defendant shall provide to the North Carolina State Bar documentation satisfactory to the Office of Counsel that defendant has appropriately disbursed the funds for each of the 132 instances listed in Exhibit 1, either for obtaining policies of title insurance or for some other appropriate purpose including refund of the premiums to the client when requested by the client.

f. Defendant shall not violate any state or federal laws or any provisions of the Revised Rules of Professional Conduct during the period of the stayed suspension.

g. Defendant shall respond to all State Bar requests for information by the deadline stated in the communication or within 30 days, whichever is earlier, as required by Rule 8.1(b) of the Revised Rules of Professional Conduct.

h. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements.

i. Defendant shall pay all costs incurred in this proceeding as assessed by the Secretary within 30 days of service of the notice of costs upon defendant.

2. If, upon a motion by the State Bar, a hearing committee of the DHC finds that the defendant has violated any of the conditions in Paragraphs 1(a)

through (i) of this Order of Discipline, the suspension of defendant's license shall be activated. If the suspension is activated, prior to seeking reinstatement of her license, defendant must:

a. Comply with all provisions of State Bar Discipline and Disability Rules, 27 N.C.A.C. §1B .0125(b); and

b. Satisfy all the conditions set forth in Paragraphs 1(a) through (i) of this Order of Discipline

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 11 day of October, 2004.



CARLYN G. POOLE, CHAIR
HEARING COMMITTEE

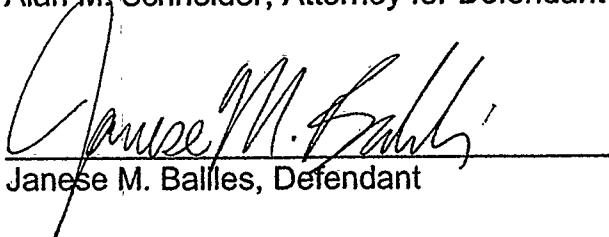
CONSENTED TO:



Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff



Alan M. Schneider, Attorney for Defendant



Janese M. Ballles, Defendant

Exhibit 1

| | DATE | CHECK NUMBER | CHECK AMOUNT | PAYEE |
|------|----------|--|--------------|---------------------|
| 1 | 08/31/92 | 198 | 69.60 | Commonwealth |
| 2*** | 09/01/92 | 227 correction made to check number | 50.00 | Commonwealth |
| 3 | 09/02/92 | 478 | 72.00 | Commonwealth |
| 4 | 09/03/92 | 605 | 25.00 | Commonwealth |
| 5 | 09/04/92 | 829 | 96.60 | Commonwealth |
| 6 | 09/05/92 | 885 | 66.80 | Commonwealth |
| 7 | 02/17/93 | 1115 | 100.00 | Commonwealth |
| 8 | 02/21/93 | 1445 | 25.00 | Commonwealth |
| 9 | 02/24/93 | 1845 | 25.00 | Commonwealth |
| 10 | 02/25/93 | 1850 | 68.00 | Stewart |
| 11 | 02/01/94 | 2064 | 44.80 | Commonwealth |
| 12 | 02/25/94 | 2113 | 34.60 | Stewart |
| 13 | 05/23/94 | 2278 | 50.00 | Stewart |
| 14 | 09/23/94 | 2448 | 50.00 | Stewart |
| 15 | 12/07/94 | 2639 | 100.00 | Stewart |
| 16 | 03/15/95 | 2705 | 86.00 | Stewart |
| 17 | 04/10/95 | 2735 | 450.00 | To Refund to Client |
| 18 | 04/10/95 | 2738 | 100.00 | To Refund to Client |
| 19 | 05/18/95 | 2778 | 25.00 | Commonwealth |
| 20 | 05/30/95 | 2827 | 30.00 | Commonwealth |
| 21 | 08/30/95 | 2963 | 54.50 | Stewart |
| 22 | 08/30/95 | 2974 | 50.00 | Stewart |

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|----|----------------|--|--------|--------------------|
| 23 | 10/05/95 | 3053 | 180.00 | Stewart |
| 24 | 03/15/96 | 3277 | 70.00 | Stewart |
| 25 | 03/26/96 | 3281 | 66.00 | Stewart |
| 26 | 06/21/96 | 3486 | 62.00 | Stewart |
| 27 | 06/21/96 | 3497 | 180.00 | Stewart |
| 28 | 06/28/96 | 3508 | 50.00 | Stewart |
| 29 | 07/02/96 | 3521 | 70.00 | Stewart |
| 30 | 07/26/96 | 3576 | 34.00 | Commonwealth |
| 31 | *** 08/26/96 | 3618 | 68.00 | Stewart |
| | | <i>Correction to \$68.00 from incorrect amount of \$668.00</i> | | |
| 32 | 08/30/96 | 3625 | 162.00 | Stewart |
| 33 | 09/05/96 | 3672 | 240.00 | Stewart |
| | <i>Deleted</i> | 3750 | 25.00 | <i>First Union</i> |
| | | <i>This is not a title insurance check</i> | | |
| 34 | 10/02/96 | 3751 | 50.00 | Stewart |
| 35 | 10/31/96 | 3797 | 50.00 | Stewart |
| 36 | 12/03/96 | 3860 | 80.00 | Stewart |
| 37 | 12/16/96 | 3873 | 34.00 | Stewart |
| 38 | 01/23/97 | 3954 | 72.00 | Stewart |
| 39 | 05/16/97 | 4195 | 33.00 | Stewart |
| 40 | 06/16/97 | 4251 | 206.00 | Stewart |
| 41 | 07/10/97 | 4323 | 256.00 | Stewart |

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|----|----------|------|--------|--------------|
| 42 | 07/17/97 | 4331 | 268.00 | Commonwealth |
| 43 | 07/31/97 | 4365 | 118.00 | Commonwealth |
| 44 | 08/05/97 | 4385 | 25.00 | Commonwealth |
| 45 | 08/12/97 | 4399 | 25.00 | Commonwealth |
| 46 | 08/25/97 | 4410 | 92.00 | Stewart |
| 47 | 09/26/97 | 4475 | 124.00 | Stewart |
| 48 | 09/30/97 | 4478 | 142.00 | Stewart |
| 49 | 10/02/97 | 4488 | 152.00 | Stewart |
| 50 | 11/03/97 | 4532 | 120.00 | Stewart |
| 51 | 11/07/97 | 4544 | 164.90 | Stewart |
| 52 | 11/18/97 | 4569 | 128.00 | Stewart |
| 53 | 12/08/97 | 4639 | 124.00 | Stewart |
| 54 | 12/10/97 | 4647 | 98.00 | Stewart |
| 55 | 12/23/97 | 4726 | 110.00 | Stewart |
| 56 | 01/09/98 | 4777 | 70.00 | Stewart |
| 57 | 01/12/98 | 4781 | 214.00 | Stewart |
| 58 | 01/21/98 | 4819 | 214.00 | Stewart |
| 59 | 03/02/98 | 4922 | 152.00 | Stewart |
| 60 | 03/31/98 | 4984 | 170.00 | Stewart |
| 61 | 06/26/98 | 5398 | 80.00 | Stewart |
| 62 | 07/07/98 | 5423 | 484.85 | Stewart |
| 63 | 07/23/98 | 5536 | 100.00 | Stewart |

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|----|----------|------|--------|---------|
| 64 | 08/31/98 | 5623 | 174.85 | Stewart |
| 65 | 09/25/98 | 5698 | 288.00 | Stewart |
| 66 | 10/09/98 | 5731 | 75.00 | Stewart |
| 67 | 12/16/98 | 5935 | 146.00 | Stewart |
| 68 | 12/29/97 | 5982 | 73.00 | Stewart |
| 69 | 01/28/99 | 6027 | 78.00 | Stewart |
| 70 | 02/19/99 | 6081 | 300.00 | Stewart |
| 71 | 03/31/99 | 6199 | 124.00 | Stewart |
| 72 | 03/31/99 | 6200 | 26.00 | Stewart |
| 73 | 04/05/99 | 6209 | 76.00 | Stewart |
| 74 | 07/16/99 | 6445 | 173.00 | Stewart |
| 75 | 01/27/99 | 6493 | 148.00 | Stewart |
| 76 | 01/30/99 | 6515 | 66.00 | Stewart |
| 77 | 08/19/99 | 6576 | 218.00 | Stewart |
| 78 | 09/02/99 | 6599 | 118.00 | Stewart |
| 79 | 10/20/99 | 6684 | 297.50 | Stewart |
| 80 | 10/28/99 | 6733 | 218.00 | Stewart |
| 81 | 11/12/99 | 6750 | 632.00 | Stewart |
| 82 | 11/19/99 | 6758 | 50.00 | Stewart |
| 83 | 11/24/99 | 6767 | 144.00 | Stewart |
| 84 | 11/30/99 | 6788 | 176.00 | Stewart |
| 85 | 12/02/99 | 6775 | 267.00 | Stewart |

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|-----|----------|------|--------|---------|
| 86 | 12/14/99 | 6826 | 90.00 | Stewart |
| 87 | 12/16/97 | 6848 | 52.00 | Stewart |
| 88 | 03/01/00 | 6928 | 50.00 | Stewart |
| 89 | 03/01/00 | 6932 | 126.00 | Stewart |
| 90 | 03/02/00 | 6938 | 156.00 | Stewart |
| 91 | 03/22/00 | 6957 | 70.00 | Stewart |
| 92 | 03/28/00 | 7000 | 146.35 | Stewart |
| 93 | 04/07/00 | 7019 | 200.00 | Stewart |
| 94 | 04/17/00 | 7038 | 60.00 | Stewart |
| 95 | 04/18/00 | 7040 | 50.00 | Stewart |
| 96 | 06/15/00 | 7118 | 205.00 | Stewart |
| 97 | 06/28/00 | 7143 | 128.00 | Stewart |
| 98 | 06/28/00 | 7166 | 156.00 | Stewart |
| 99 | 06/22/00 | 7172 | 224.00 | Stewart |
| 100 | 07/06/00 | 7180 | 117.00 | Stewart |
| 101 | 07/26/00 | 7202 | 50.00 | Stewart |
| 102 | 08/25/00 | 7249 | 200.00 | Stewart |
| 103 | 09/20/00 | 7268 | 172.00 | Stewart |
| 104 | 10/16/00 | 7287 | 50.00 | Stewart |
| 105 | 11/09/00 | 7331 | 270.35 | Stewart |
| 106 | 11/10/00 | 7338 | 188.00 | Stewart |
| 107 | 12/22/00 | 7381 | 58.00 | Stewart |

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|-----|----------|------|--------|---------|
| 108 | 12/28/00 | 7389 | 80.00 | Stewart |
| 109 | 04/11/01 | 7484 | 50.00 | Stewart |
| 110 | 06/27/01 | 7556 | 156.20 | Stewart |
| 111 | 07/06/01 | 7576 | 72.00 | Stewart |
| 112 | 07/06/01 | 5073 | 50.00 | Stewart |
| 113 | 08/16/01 | 7659 | 164.00 | Stewart |
| 114 | 11/16/01 | 7810 | 150.00 | Stewart |
| 115 | 12/05/01 | 7857 | 84.00 | Stewart |
| 116 | 12/12/01 | 7865 | 153.00 | Stewart |
| 117 | 01/03/01 | 7910 | 60.00 | Stewart |
| 118 | 01/31/02 | 7938 | 175.00 | Stewart |
| 119 | 01/31/02 | 7948 | 300.00 | Stewart |
| 120 | 03/05/02 | 7965 | 176.00 | Stewart |
| 121 | 06/03/02 | 8044 | 262.00 | Stewart |
| 122 | 06/25/02 | 8074 | 138.40 | Stewart |
| 123 | 06/28/02 | 8081 | 226.25 | Stewart |
| 124 | 11/26/02 | 8216 | 268.00 | Stewart |
| 125 | 11/26/02 | 8225 | 120.00 | Stewart |
| 126 | 02/04/03 | 8311 | 218.00 | Stewart |
| 127 | 02/13/03 | 8320 | 269.50 | Stewart |
| 128 | 02/18/03 | 8324 | 60.00 | Stewart |
| 129 | 02/20/03 | 8329 | 81.20 | Stewart |

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|-----|----------|------|--------|---------|
| 130 | 02/24/03 | 8348 | 105.25 | Stewart |
| 131 | 03/12/03 | 8362 | 134.00 | Stewart |
| 132 | 03/14/03 | 8376 | 121.50 | Stewart |