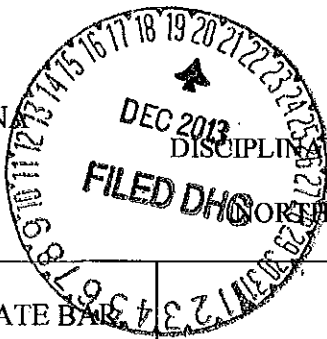


STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 31

Plaintiff

v.

D. BERNARD ALSTON, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Sharon Alexander, Chair, Harriett T. Smalls, and Patti Head pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, D. Bernard Alston, represented himself. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the hearing panel hereby makes, by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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, D. Bernard Alston ("Defendant" or "Alston"), was admitted to the North Carolina State Bar on 24 August 1985, and was, 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 relevant periods referred to herein, Alston was actively suspended from the practice of law in the State of North Carolina pursuant to the Orders of Discipline issued by the Disciplinary Hearing Commission in case numbers 07 DHC 21 (entered 17 April 2008) and 09 DHC 19 (entered 18 January 2010).

4. Defendant was properly served with process and received due notice of the hearing in this matter.

5. In or around January 2012, Robert Hargrove ("Hargrove") contacted Alston concerning the purchase of real property located at 272 Whitten Ave., Henderson, North Carolina (hereinafter "Hargrove transaction").

6. Hargrove informed Alston from the beginning of their interaction that he wanted to obtain title insurance for the property that he intended to purchase through the Hargrove transaction.

7. On or around 20 January 2012, Alston received a \$200.00 fee from Hargrove to conduct a title examination for the property.

8. Alston asked attorney Yolanda Feimster ("Feimster") to serve as the closing attorney in the Hargrove transaction.

9. Alston offered to prepare the necessary closing documents for the Hargrove transaction under Feimster's name.

10. Feimster declined Alston's request and instructed Alston not to include her name on any documents associated with the Hargrove transaction.

11. Alston subsequently prepared deeds for the Hargrove transaction and listed Feimster as the individual who prepared the deeds.

12. Feimster never reviewed the deeds as prepared by Alston, never consented to her name appearing on the deeds, and did not know of the deeds' existence.

13. Alston also asked attorney Garey Ballance ("Ballance") to serve as closing attorney on the Hargrove transaction, stating Feimster had already prepared the deeds to be used in the transaction.

14. Alston offered to prepare the remaining necessary closing documents for the Hargrove transaction under Ballance's name.

15. Ballance agreed to serve as closing attorney in the Hargrove transaction so long as Hargrove did not require title insurance because Ballance did not have liability coverage as required by title insurers.

16. Alston did not inform Ballance that Hargrove wanted to obtain title insurance as Hargrove previously indicated to Alston.

17. Alston and Ballance together prepared the HUD-1 Settlement Statement for the Hargrove transaction and listed Ballance as the closing attorney on the form.

18. Ballance subsequently learned that Hargrove wanted to obtain title insurance for the property he intended to purchase through the Hargrove transaction.

19. Upon learning of Hargrove's desire for title insurance, Ballance withdrew from the representation.

20. Ballance asked Alston to inform Hargrove that he needed another attorney to serve as closing attorney in the transaction.

21. Due to his inability to serve as the closing attorney in the Hargrove transaction, Ballance provided the previously prepared closing documents to Alston for destruction.

22. Alston did not inform Hargrove that Ballance withdrew from acting as closing attorney in the Hargrove transaction.

23. Alston did not destroy the closing documents previously prepared by Alston and Ballance for the Hargrove transaction.

24. On or about 6 April 2012, Alston performed the closing for the Hargrove transaction after business hours and outside the presence of any other attorney.

25. Alston used the HUD-1 Settlement Statement purportedly approved by Ballance to conduct the closing.

26. Alston gave Hargrove the false impression that Alston was acting pursuant to Ballance's instruction and that Ballance remained the closing attorney for the transaction.

27. Alston used the deeds purportedly prepared by Feimster to conduct the closing.

28. Alston gave Hargrove the false impression that the deeds used at closing were prepared and approved by a licensed North Carolina attorney.

29. Alston gave Hargrove the false impression that title insurance had been obtained for the property.

30. Alston collected from Hargrove a check made payable to Investors Title in the amount of \$51.25 to pay for the purported premium on title insurance.

31. Alston never forwarded Hargrove's check to Investors Title.

32. Alston received a \$425.00 fee from Hargrove for closing the Hargrove transaction.

33. On or about 9 April 2012, Alston filed the deeds purportedly prepared by Feimster with the Vance County Register of Deeds.

34. In or around April and May 2012, Alston met attorney Lori Renn ("Renn") at the Vance County Register of Deeds. Alston asked Renn if she would certify title and obtain title insurance for the Hargrove transaction.

35. Alston falsely informed Renn that Ballance served as the closing attorney for the Hargrove transaction and that Ballance had performed the title search in the Hargrove transaction.

36. Upon Renn's examination of title, Renn noticed immediate issues concerning possible surviving heirs and/or spouses of the sellers in the Hargrove transaction that were not clearly documented in the official record. Renn prepared a Family Affidavit for Alston to give to the sellers' various family members in order to clear the title.

37. Alston never had the sellers execute the Family Affidavit as prepared and suggested by Renn.

38. Alston failed to contact or follow-up with Renn concerning the status of the title search.

39. Hargrove did not obtain title insurance through the Hargrove transaction. Hargrove later retained a new attorney to obtain title insurance on the property he acquired through the Hargrove transaction.

40. Feimster, Ballance, and Renn received no fee in conjunction with the Hargrove transaction.

41. Alston was the only acting party to receive payment for services concerning the Hargrove transaction.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, D. Bernard Alston, and over the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- (a) By accepting payment for legal services performed while suspended from the practice of law, Alston committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (b) By acting as closing attorney for the Hargrove transaction – including preparing deeds for the transaction, filing the deeds with the Vance County Register of Deeds, and conducting the Hargrove transaction using documents wherein the attorneys listed on the documents did not actually participate in the closing and did not consent to the representation – while suspended from the practice of law, Alston engaged in the unauthorized practice of law in violation of Rule 5.5(a), maintained a systematic and continuous presence in

his jurisdiction and/or held himself out to the public as permitted to practice law in that jurisdiction in violation of Rule 5.5(b), committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

- (c) By misleading Hargrove, Feimster, Ballance, and Renn regarding the actual status of the Hargrove transaction, Alston engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based upon the consent of the parties, the hearing panel also finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant was previously suspended pursuant to the Order of Discipline issued by the Disciplinary Hearing Commission in case number 07 DHC 21 dated April 17, 2008. The basis for discipline in the 2008 Order of Discipline consisted of extensive client neglect and failure to respond to the State Bar, which is similar to the conduct at issue in the present action. The 2008 Order of Discipline suspended Defendant for five years, with Defendant being allowed to apply for a stay of the remaining portion of the suspension after eighteen months.

2. After the DHC filed the 2008 Order of Discipline referenced above, Defendant was again suspended by the DHC pursuant to the Order of Discipline in case number 09 DHC 19 dated 18 January 2010. The basis for discipline in the 2010 Order of Discipline consisted of additional extensive client neglect – some of which occurred during the time period when Defendant was winding down his law practice as a result of the 2008 Order of Discipline – and multiple instances of failing to respond to the State Bar's inquiries. The 2010 Order of Discipline suspended Defendant for an additional five years, with Defendant being allowed to apply for a stay of the remaining portion of the suspension after eighteen months.

3. Defendant's conduct in the present action demonstrates Defendant's continued disregard for the orders issued by the Disciplinary Hearing Commission, demonstrates Defendant's pattern of misconduct over the course of at least five years, and demonstrates Defendant's refusal to participate in the self-regulation process. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

4. Defendant acted in a dishonest and deceitful manner when he prepared a deed conveying property in the Hargrove transaction under another attorney's name without that attorney's knowledge or consent, when he continued to use a HUD-1 form after another attorney told Defendant to destroy the form, and when Defendant misrepresented the different aspects of the closing transaction to Hargrove, the Register of Deeds, and the other attorneys involved in this transaction.

5. Defendant's conduct reflects a dishonest or selfish motive in that Defendant promoted and pursued the Hargrove closing transaction for the purpose of collecting a fee to which he was not entitled.

6. Defendant's conduct caused actual significant harm to Hargrove as well as the sellers in the Hargrove transaction by facilitating Hargrove's acquisition of real property via documents that were not created or approved for use by an attorney licensed to practice law in North Carolina. Defendant intentionally engaged in this conduct knowing his conduct could and would cause the resulting harm to Hargrove and the third party sellers. Hargrove has since retained subsequent counsel in an attempt to rectify the consequences of Defendant's misconduct.

7. Defendant's conduct caused potential significant harm to the standing of the legal profession in the eyes of the public in that such conduct by attorneys erodes the trust of the public in the profession. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

8. Defendant, who was licensed to practice law in North Carolina in 1985, has substantial experience in the practice of law.

9. As noted in the 2008 & 2010 Orders of Discipline, Defendant was diagnosed with depression in or about May 2007. Defendant's depression contributed in part to the client neglect and the failure to respond to inquiries from the State Bar as described in the 2008 & 2010 Orders of Discipline. Defendant continues to pursue treatment for his depression, and Defendant continues to participate in the Lawyer's Assistance Program.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following

CONCLUSIONS REGARDING 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. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are applicable:

- (a) Defendant's prior disciplinary offenses in North Carolina;
- (b) Defendant's dishonest or selfish motive;
- (c) Defendant's pattern of misconduct; and
- (d) Defendant's substantial experience in the practice of law.

2. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State

Bar and concludes that although acts of dishonesty, misrepresentation, deceit, or fabrication are present in this case, disbarment is not necessary in order to protect the public.

3. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factors warrant suspension of Defendant's license:

- (a) Defendant's intent to commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (c) Defendant's actions potentially had a negative impact on the public's perception of the legal profession;
- (d) Defendant's conduct had a potential adverse affect on third parties; and
- (e) Defendant's conduct included acts of dishonesty, misrepresentation, deceit, or fabrication.

4. The hearing panel has considered all other forms of discipline and concludes that any sanction less than suspension 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 to the public regarding the conduct expected of members of the Bar.

5. Due to the misrepresentations described in the present action as well as the significant potential harm resulting from Defendant's conduct, the hearing panel concludes that active suspension of Defendant's license for a significant and set period of time is the only discipline that will adequately protect the public from future transgressions by Defendant, that acknowledges the seriousness of the offenses Defendant committed, and that sends a proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, D. Bernard Alston, is hereby suspended for five years. This Order shall be effective upon filing, and the suspension shall run concurrently with the remaining terms of the suspensions Defendant is presently serving pursuant to the Orders of Discipline in case numbers 07 DHC 21 and 09 DHC 19.

2. Defendant has already submitted his license and membership card to the Secretary of the North Carolina State Bar. Defendant has also complied with the wind down

provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B § .0124.

3. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within 60 days of service of the statement of costs upon him.

4. At the end of the five-year active period of suspension, Defendant may apply for reinstatement by filing a petition with the DHC in accordance with the North Carolina State Bar Discipline and Disability Rules and by showing by clear, cogent, and convincing evidence that he has complied with the following conditions for reinstatement:

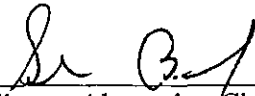
- (a) That he has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, including attaining a passing grade on a regularly scheduled North Carolina Bar Exam within one year prior to the date of Defendant's reinstatement petition;
- (b) That he has completed a course in law office management approved in advance by the Office of Counsel of the North Carolina State Bar;
- (c) That he has established a plan for ensuring that appointments with clients will be made for dates and times when Defendant is certain he will be physically present at his office and available to meet with the clients and provided that plan in writing with his application for reinstatement;
- (d) That, within 90 days prior to filing his petition for reinstatement, he has been evaluated by a licensed and qualified psychiatrist or psychologist who certifies under oath, based on his or her independent and comprehensive evaluation of Defendant, that in his or her professional opinion Defendant does not currently have any mental, psychological, behavioral, cognitive, or emotional condition or disorder that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Such psychiatrist/psychologist shall be approved in advance by the North Carolina State Bar Office of Counsel. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant will not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the psychiatrist/psychologist. Defendant shall direct the evaluating psychiatrist/psychologist described herein to provide a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within thirty (30) days of the evaluation taking place. All expenses of such evaluation and report shall be borne by Defendant;
- (e) That he has complied with all treatment recommendations of the evaluating psychiatrist/psychologist described in paragraph (d) above. Defendant shall

sign an authorization form consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel. Defendant will not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his treatment provider. Defendant shall direct his treatment provider to provide the Office of Counsel with a written report detailing Defendant's treatment plan and Defendant's compliance or lack of compliance with such plan. All expenses of such treatment and reports shall be borne by Defendant;

- (f) That he has paid all outstanding membership dues and Client Security Fund assessments and that there is no deficit in his fulfillment of any obligation of membership;
- (g) That he has kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers (not a P.O. box), and that he has accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen (15) days of receipt of such communication, whichever is sooner;
- (h) That he has not violated any state or federal laws or any provisions of the Rules of Professional Conduct; and
- (i) That he has paid all costs and administrative fees associated with this case as assessed by the Secretary.

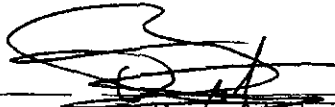
5. Defendant may file a petition seeking reinstatement pursuant to 27 N.C. Admin. Code 1B § .0125 up to 30 days prior to the end of the five year period but shall not be reinstated prior to the end of that five year period.

Signed by the Chair with the consent of the other hearing panel members, this the 20 day of December, 2013.


Sharon Alexander, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Brian P.D. Oten
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff


D. Bernard Alston
Defendant