



STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
23 DHC 3

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

ROBERT T. HEDRICK, Attorney,
Defendant

CONSENT ORDER
OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Margaret M. Hunt, Chair, and members, William A. Oden and Brandon Gosey. G. Patrick Murphy and Thomas L. Crosby represented Plaintiff, the North Carolina State Bar. Alan M. Schneider represented Defendant, Robert T. Hedrick. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings and conclusions herein.

Based on the pleadings and the stipulated facts, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (“State Bar”), is an entity 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, Robert T. Hedrick (“Hedrick” or “Defendant”), was admitted to the North Carolina State Bar in 1961, 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, Hedrick was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

Filing a Correction Deed

4. On or about April 11, 2018, Defendant prepared a deed on behalf of Fern Ross conveying her interest in a parcel of real property to Harley B. Gordon.
5. Defendant claims Ross wanted to convey the property to Gordon while retaining a life estate for herself.
6. The deed was recorded in the Wake County Registry of Deeds on April 26, 2018.
7. The deed conveyed a fee simple to Gordon and reserved to Ross a life estate.
8. On May 4, 2018, Gordon died.
9. Defendant claims that several weeks later, Ross came to Defendant and told him that, because of Gordon's death, the property would go to Crystal Thomas, Gordon's mother, and she was adamantly opposed to Thomas receiving any portion of her estate.
10. Defendant discussed with Ross the option of filing a correction deed.
11. Defendant explained to Ross that filing a correction deed could lead to having the deed set aside and declared a nullity.
12. Defendant claims that Ross wanted Defendant to prepare a correction deed.
13. When Defendant told Ross that he would need to prepare a correction deed, Defendant became subject to a potential malpractice claim.
14. The potential malpractice claim established a conflict of interest between Defendant's personal interest in defending himself and Ross's interests.
15. Defendant continued to represent Ross.
16. On or about May 29, 2018, Defendant prepared a "Deed of Correction" conveying the same parcel of real property from Fern Ross to "Harley B. Gordon and Fern Ann Ross, as joint tenants with Right of Survivorship."
17. A correction deed may be used to remove questions of title based on technical deficiencies in the original such as a typographical error.
18. An error that effects the rights of the parties to the deed is not correctable in a correction deed.
19. A correction deed must satisfy the requirements of a deed, including delivery and acceptance.

20. The second deed recites “This deed is being corrected to provide as the Grantor intended that there be a right of survivorship with respect to the interest of the Grantee.”
21. The second deed effected the rights of Gordon and his heirs to the property.
22. The second deed was recorded in the Wake County Registry of Deeds on May 30, 2018.
23. Defendant knew Gordon had died when he prepared the second deed.
24. Defendant did not seek the consent of Gordon’s estate when he prepared the second deed.
25. Defendant knew the second deed would introduce a question of title that would require courts to resolve.
26. Defendant had no legal basis to file a correction deed.

Lawsuit and Petition to Remedy Missed Lien

27. Defendant was closing attorney for a residential real estate transaction in May 2016. As closing attorney, Defendant was responsible for a title search to identify any possible cloud on the property and enable a clean sale by the parties.
29. In the transaction, M. and T. Shakhmaykin (“Buyers”) purchased property from K. Karmous and others (“Sellers”).
30. The Sellers had previously purchased the property through a foreclosure proceeding, 14 SP 2284, initiated by a lienholder in second lien position.
31. A deed of trust in the first lien position remained a valid lien against the property.
32. At the Buyers’ closing, Defendant failed to discover the first lien on the property.
33. Defendant learned of the first lien after the closing when he was notified by the Buyers that they had received a foreclosure notice in special proceeding file 17 SP 526 on or about March 6, 2017, related to the first lien that Defendant failed to discover.
34. When he failed to discover the first lien on the property, Defendant became subject to a potential malpractice claim.
35. The potential malpractice claim established a conflict of interest between Defendant’s personal interest in defending himself and the Buyers’ interests.
36. Notwithstanding his conflict of interest, Defendant continued to represent the Buyers.

37. On or about March 22, 2017, Defendant used \$102,216.84 of his own funds to pay off the first lien.

38. On or about June 6, 2017, Defendant brought a lawsuit in Wake County, *Shakhmaykin v. Karmous, et als.*, 17 CV 6932, on behalf of the Buyers against the Sellers, claiming damages in the amount of the payoff, based on the warranty in the deed signed by the Sellers.

39. The lawsuit stated the Buyers were due the amount of the payoff plus interest.

40. The lawsuit did not state that Defendant had paid off the lienholder with Defendant's personal funds.

41. The lawsuit did not state that Defendant sought to recover the amount of the payoff.

42. As a result of the Sellers' purchase of the property at the foreclosure sale, a surplus of funds from the sale was on deposit with the Clerk of Court in special proceeding file 14 SP 2284.

43. On or about September 13, 2017, Defendant filed an unverified Petition for Disbursement of Surplus Proceeds ("Petition") in the name of the Buyers, *Shakhmaykin v Goulette*, 17 SP 2326, (Wake County). Travis and Melissa Goulette (the Goulettes) had owned the property that Sellers bought in foreclosure.

44. In the Petition, Defendant stated that the Buyers were entitled to receive the surplus funds because they had paid the lienholder.

45. In the Petition, Defendant did not disclose that he had paid the obligation from his own funds and that he intended to recover for himself the surplus funds.

46. Months after filing the Petition, Defendant on November 3, 2017, filed an Assignment of Claim in which the Buyers assigned their rights to the surplus funds to Defendant's law firm.

47. Defendant, in his capacity as a notary public, acknowledged the signatures of the Buyers on the Assignment of Claim.

48. The Notary Public Act forbids a notary from performing a notarial act if they are a beneficiary of the record that is to be notarized, or will receive directly from a transaction any consideration exceeding in value the fees specified by statute. N.C. Gen. Stat. Chapter §10B-20(c)(5) and (6).

49. Defendant did not obtain the Buyers' permission to file the lawsuit or the Petition.

50. Defendant did not inform the Buyers in writing to seek independent legal advice.

51. On February 16, 2018, the court dismissed the Petition finding that the Petition and information presented at the hearing did not include evidence that the Buyers or the Respondents were entitled to the surplus funds.

52. Before entry of an order consistent with that determination, Defendant on December 15, 2017 filed a settlement agreement with the Goulettes for half of the surplus funds.

53. In his Response to the Letter of Notice in the State Bar's investigation of grievance file 18G0205, Defendant stated that he obtained the Assignment of Claim prior to filing the Petition.

54. The Buyers executed the Assignment of Claim months after Defendant filed the Petition.

Improper Specialization Claim

55. At all times relevant to this complaint, Defendant had a website that communicated information regarding his services.

56. On or about March 2, 2018, Defendant's website stated that his practice "specializes in real estate matters."

57. Defendant is not a specialist certified by the North Carolina State Bar or any organization accredited by the North Carolina State Bar or the American Bar Association.

Trust Account Mismanagement

58. In 2017 and 2018, as well as before those dates, Defendant maintained three trust accounts for his law practice.

59. Defendant maintained a trust account with PNC Bank, last four numbers 4582, and two trust accounts with Fidelity, Fidelity 1061 and Fidelity 5997.

60. Defendant did not properly reconcile his trust accounts.

61. PNC 4582 and Fidelity 5997 had little activity for years and contained client funds and funds owed to third parties for which Defendant had been unable to identify the owner.

62. Defendant had allowed the funds in PNC 4582 and Fidelity 5997 to remain undisbursed for years.

63. After receiving the Letter of Notice in connection with his filing of a lawsuit and petition to recover the funds paid to satisfy the missed lien noted above, Defendant was instructed to identify the beneficial owner(s) of the funds in PNC 4582 and Fidelity 5997 and disburse the entrusted funds in the two trust accounts.

64. Defendant was ultimately able to identify the beneficial owners of the funds in PNC 4582 and Fidelity 5997 and he disbursed the entrusted funds in the two accounts to the owners long after they were entitled to the funds.

65. Some of funds in in PNC 4582 and Fidelity 5997 included fees which Defendant failed to withdraw when earned.

Based upon the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel makes the following

CONCLUSIONS OF LAW

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

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline as follows:

(a) 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:

- i. By continuing to represent Ross in the recording of a correction deed when her interests concurrently conflicted with his personal interests, Defendant violated Rule 1.7(a)(2);
- ii. By advising Ross that he could file a correction deed when he had no basis for doing so, Defendant failed to adequately explain the matter to Ross in violation of Rule 1.4(b);
- iii. By recording a correction deed knowing it would create a cloud on title that would require courts to resolve, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- iv. By continuing to represent the Buyers, M. and T. Shakhmaykin, in a lawsuit and Petition to recover money Defendant paid for having missed a lien when the Buyers interests concurrently conflicted with Defendant's personal interests, Defendant violated Rule 1.7(a)(2);
- v. By filing a lawsuit and a Petition naming the Buyers as the parties and stating that the Buyers were entitled to either damages from the Sellers or the surplus from the foreclosure in 14 SP 2284 when Defendant himself paid the lien and sought to recover some or all of what he paid through the proceedings, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1) and engaged in misconduct involving a misrepresentation in violation of Rule 8.4(c);

- vi. By filing two matters with the court ostensibly on behalf of the Buyers but really for his own benefit, Defendant engaged in misconduct involving a 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);
 - vii. By notarizing a document in which he was the beneficiary and that benefited himself and not the Buyers, Defendant violated the notary statute, conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
 - viii. By stating in his response to the State Bar that he obtained the Assignment of Claim from the Buyers before filing the Petition, Defendant made a false statement of material fact to the Grievance Committee in violation of Rule 8.1(a);
 - ix. By indicating on his website that he specialized in real estate matters when Defendant is not a specialist certified by the North Carolina State Bar or any organization accredited by the North Carolina State Bar or the American Bar Association, Defendant violated Rule 7.2(c);
 - x. By failing to properly reconcile his trust accounts, Defendant violated Rule 1.15-3(d);
 - xi. By failing to promptly pay entrusted funds to his clients or to third persons as directed by his clients, Defendant violated Rule 1.15-2(n); and
 - xii. By failing to withdraw fees from his trust account when earned, Defendant violated Rule 1.15-2(f).
- (b) Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct.

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. The findings of fact and conclusions of law above are reincorporated as if set forth herein.
2. Defendant was licensed in North Carolina in 1961 and has substantial experience in the practice of law. At the time of his conduct, Defendant knew or should have known that his actions would result in significant harm or potential harm.
3. Defendant was previously disciplined in North Carolina. In 2003, Defendant received an admonition for failing to keep his client informed about the status of the case and failing to timely respond to lawful demands for information from a disciplinary authority in

violation of Rules 1.4(a) and 8.1(b). In 2005, Defendant received a censure for engaging in a conflict of interest, engaging in a business transaction with a client that was unfair and unreasonable, and engaging in conduct involving misrepresentation in violation of Rules 1.7(b), 1.8(a) and 8.4(c).

4. In the real estate transactions above, Defendant failed to advise his clients of a potential conflict of interest and continued to represent the clients despite that conflict.

5. A cornerstone of client trust in an attorney is that the attorney will properly protect, maintain, and disburse entrusted funds. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the profession. The trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct are designed to assist with the proper protection, maintenance, and disbursement of entrusted funds, and to facilitate prompt detection and correction of any errors. Defendant's failure to comply with those requirements resulted in harm to clients whose funds were not promptly disbursed.

6. Official certification signifies that the specialist has an advanced degree of knowledge and experience in the specialty area greater than is suggested by the general licensure to practice law. Truthfulness and candor required Defendant to not describe his practice as "specializing" in real estate matters.

7. Defendant's conduct, as set forth in the finding of facts, caused significant harm to clients and had the potential to cause significant harm to the public, the legal profession and the administration of justice.

Based upon the Findings of Fact, Conclusions of Law and Additional Findings Regarding Discipline, and with the consent of the parties, the Hearing Panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) of the Discipline and Disability Rules of the North Carolina State Bar and concludes that the following factors that warrant consideration of suspension or disbarment are present:

- (B) intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (D) elevation of Defendant's interest above that of the client;
- (E) negative impact of Defendant's actions on the client's or public's perception of the profession;
- (F) negative impact of Defendant's actions on the administration of justice;
- (G) impairment of the client's ability to achieve the goals of representation;
- (H) effect of Defendant's conduct on third parties; and
- (I) acts of misrepresentation.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Discipline and Disability Rules of the North Carolina State Bar and concludes the following factors are applicable in this matter and must be considered:

(A) acts of misrepresentation.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Discipline and Disability Rules of the North Carolina State Bar and concludes the following factors are applicable in this matter:

(A) prior disciplinary offenses in this State;

(B) remoteness of prior offenses;

(C) selfish motive;

(G) multiple offenses;

(N) submission of false statements during the disciplinary process; and

(S) significant experience in the practice of law.

4. The Hearing Panel has considered all forms of discipline available but concludes that discipline less than an active suspension would not be sufficient, would fail to acknowledge the seriousness of the violations committed by Defendant, would not sufficiently protect the public and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

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

ORDER OF DISCIPLINE

1. Defendant, Robert T. Hedrick, is hereby suspended from the practice of law for five years, effective thirty days from service of this order upon Defendant or through his attorney.

2. Defendant shall surrender his law license and membership card to the Secretary of the North Carolina State Bar no later than thirty days from the effective date of this order.

3. Defendant shall comply with all requirements of 27 N.C. Admin. Code 1B.0128, including the wind-down provisions contained therein by the effective date of this order.

4. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order, certifying he has complied with the provisions of 27 N.C. Admin. Code 1B.0128.

5. Within ten days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of their files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files

to clients upon request. Defendant shall promptly refund any unearned or excessive fees due to clients in accordance with Rules 1.5 and 1.16 of the Rules of Professional Conduct.

6. Defendant shall respond to all communications from the State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner.

7. Defendant shall keep the North Carolina State Bar Membership Department advised of Defendant's current physical address, telephone number and e-mail address, and notify the Bar of any change within ten days of such change during Defendant's suspension.


8. Defendant shall not violate the Rules of Professional Conduct, the laws of the United States or the laws of any state or local government during Defendant's suspension.

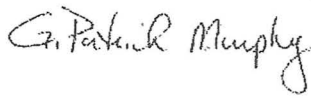
9. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees within ninety days of service of the statement of costs and administrative fees upon him.


10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 throughout the suspension, and any stay thereof, and until all conditions of this Order have been satisfied.

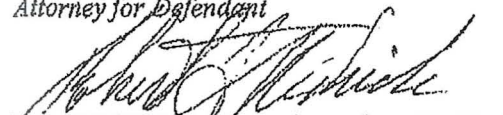
Signed by the Disciplinary Hearing Panel Chair with the consent of the other hearing panel members, this the 22 day of February, 2023.


Margaret M. Hunt, Chair
Disciplinary Hearing Panel


Alan M. Schneider
Attorney for Defendant


G. Patrick Murphy, Deputy Counsel
Attorney for Plaintiff


Thomas L. Crosby, Deputy Counsel
Attorney for Plaintiff


Robert T. Hedrick
Defendant