



STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
20DHC 8

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN E. WAY, Attorney,

Defendant

CONSENT ORDER
OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Shannon R. Joseph, Chair, Maya Madura Engle, and Synthia Scott Kearney pursuant to 27 N.C. Admin. Code 18.0114. Plaintiff, the North Carolina State Bar, was represented by J. Cameron Lee and Maria J. Brown. Defendant, John E. Way, was represented by Douglas J. Brocker and Crystal Carlisle. Defendant waives a formal hearing in this matter and 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 consents to entry of this order of discipline and freely and voluntarily waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings contained herein.

Based upon the pleadings, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel finds by clear, cogent and convincing evidence, 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, John E. Way, was admitted to the North Carolina State Bar in 1981 and is an Attorney at Law 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. Defendant was properly served with the summons and complaint in this matter.

4. During the relevant period referred to herein, Defendant was actively engaged in the practice of law in Morehead City, Carteret County, North Carolina.

5. In 2004, Robert Touhey purchased a piece of property on Ocracoke Island (the "Ocracoke Property").

6. Touhey subsequently conveyed a half-interest in the Ocracoke Property to Edmund Piaski.

7. At the time Touhey and Piaski became joint owners of the Ocracoke Property, they agreed that they would each pay half of the costs associated with the Ocracoke Property.

8. Beginning in 2009, Touhey was unable to pay his half of the costs associated with the Ocracoke Property. Thereafter, Piaski paid all costs associated with the Ocracoke Property.

9. Thereafter, Piaski initiated a series of lawsuits to recover Touhey's portion of the costs owed on the Ocracoke Property.

10. Defendant represented Touhey in the various lawsuits.

11. In 2014, Piaski sued Touhey in Wake County, file no. 14CVD01194.

12. In 2015, Piaski and Touhey entered into a consent judgment in 14CVD01194.

13. On September 3, 2015, Piaski recorded the judgment with the Carteret County Clerk of Superior Court, thereby creating a lien against any real property Touhey owned in Carteret County.

14. In the fall of 2016, Piaski again filed suit against Touhey in Wake County, file no. 16CVD010770.

15. On October 26, 2016, Defendant served Piaski with a copy of Touhey's answer in 16CVD010770.

16. Touhey owned a home (the "Touhey Residence") in Carteret County which he used as his personal residence.

17. On October 28, 2016, Defendant prepared a general warranty deed conveying the Touhey Residence from Touhey to Touhey and Touhey's wife (the "Touheys") as tenants by the entireties.

18. The Touheys had married in 2009 and, pursuant to the terms of a prenuptial agreement, maintained separate ownership of all real property.

19. Touhey received no consideration from his wife in exchange for the interest in the Touhey Residence.

20. Touhey had approximately \$25,000.00 in equity in the Touhey Residence when he deeded it to himself and his wife.

21. The October 28, 2016, deed Defendant prepared falsely stated that the Touheys took title to the Touhey Residence "free and clear of all encumbrances."

22. At the time he prepared the October 28, 2016 deed, Defendant knew about the lien on the Touhey Residence arising from Piaski's recording of the judgment in 14CVD01194.

23. On November 14, 2016, the deed Defendant prepared was recorded with the Carteret County Register of Deeds in Book 1559, Page 115.

24. Aside from the Touhey Residence and the Ocracoke Property, at the time of the October 28, 2016 transfer of the Touhey Residence, Touhey owned no substantial property.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Disciplinary Hearing Commission has jurisdiction over Defendant, John E. Way, 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) in that Defendant violated the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By recording the October 28, 2016 deed which falsely stated that the Touheys took title to the Touhey Residence "free and clear of all encumbrances," Defendant engaged in conduct involving 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).

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel finds by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 24 are reincorporated as if fully set forth herein.

2. In paragraph (a) of the complaint, the State Bar alleged that, by preparing and recording the October 28 2016 deed, Defendant aided in the transfer of the Touhey Residence from Touhey to the Touheys with intent to hinder, delay, or defraud a creditor of Touhey, thereby knowingly assisting a client in conduct Defendant knew to be fraudulent in violation of Rule 1.2(d), engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaging in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

3. The State Bar is voluntarily dismissing the alleged violations contained in paragraph (a) of the complaint. The North Carolina Uniform Voidable Transactions Act ("the NCUVTA") defines a "Transaction" as: "every mode . . . of disposing of or parting with an *asset* or an interest in an asset . . ." N.C. Gen. Stat. § 39-23.1(12) (emphasis added). The NCUVTA defines an "Asset" as: "property of a debtor" not including "property to the extent it is encumbered by a valid lien," and "property to the extent that it is generally exempt under non-bankruptcy law." N.C. Gen. Stat. § 39-23.1(2). At the time of the transfer, the Touhey Residence was encumbered by a valid lien held by Piaski. Additionally, at the time of the transfer, Touhey owned less than \$35,000.00 in equity in the Touhey Residence, which interest Touhey could have excepted from levy by Piaski

under N.G. Gen. Stat. § 1C-1601(a)(1). Thus, the transfer of the Touhey Residence was not a transfer of an "asset" that could be voided under the Uniform Voidable Transaction Act, and the State Bar cannot prove the alleged violations contained in paragraph (a) of the complaint.

4. Though not a fraudulent transfer under the UVTA, Defendant's preparation and recordation of the October 28, 2016 deed led to additional protracted litigation over the nature of the transfer, unnecessarily wasting court time and resources and causing significant harm to the administration of justice.

5. By preparing and recording the October 28, 2016 deed when he knew Piaski held a valid lien against the Touhey Residence, thereby creating a defect in the title to the Touhey Residence, Defendant caused the potential for harm to third parties.

Based upon the foregoing Findings of Fact and Conclusions of Law, the additional Findings of Fact Regarding Discipline, and the consent of the parties, 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.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B.0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors warranting consideration of suspension of Defendant's license are applicable in this case:

(a) Factor (F): Negative impact of Defendant's actions on the administration of justice; and

(b) Factor (I): Acts of misrepresentation.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B.0116(f)(2) and concludes that no factors warranting disbarment are present in this case.

4. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B.0116(f)(3) and concludes that the following factors are applicable in this case:

(a) Factor (A): Absence of prior disciplinary offenses in this state or any other jurisdiction in thirty-nine years of practice;

(b) Factor (K): Full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;

(c) Factor (P): Remorse;

(d) Factor (Q): Good character or reputation; and

(e) Factor (S): Degree of experience in the practice of law.


5. The Hearing Panel has considered the misconduct at issue, the significant harm Defendant's misconduct caused to the administration of justice, and the potential for harm to third parties caused by Defendant's actions and concludes that issuing a censure is sufficient discipline in this case.

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


ORDER OF DISCIPLINE

1. Defendant, John E. Way, is hereby Censured.
2. Defendant is taxed with administrative fees and costs of this action as assessed by the Secretary. Defendant shall pay the administrative fees and costs within thirty (30) days of service of the notice of costs upon Defendant.

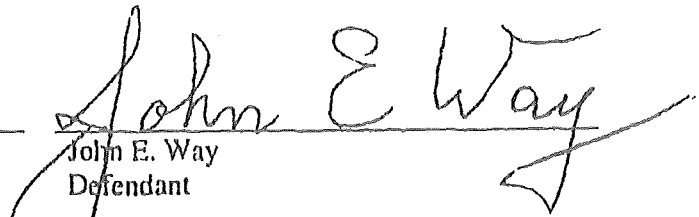
Signed by the Chair with the consent of the other Hearing Panel members, this the 19 day of August, 2020.


Shannon R. Joseph, Chair
Disciplinary Hearing Panel


CONSENTED TO BY:



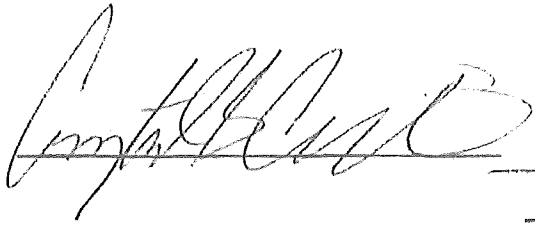
J. Cameron Lee
Attorney for Plaintiff



John E. Way
Defendant



Maria J. Brown
Attorney for Plaintiff

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Douglas J. Blocker
Attorney for Plaintiff