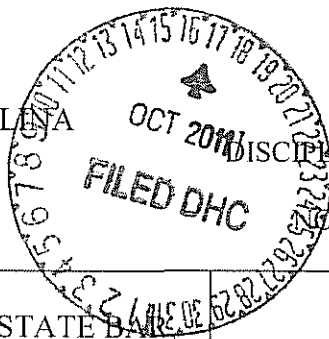


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR

Plaintiff

ORDER OF DISCIPLINE

v.

W. RAY HUDSON, Attorney,

Defendant

This matter was heard on September 30, 2011 before a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, Theodore C. Edwards, II, and members Harriett Smalls and Patti Head. William N. Farrell represented Plaintiff, the North Carolina State Bar. Defendant did not appear in person or by counsel. A default judgment having been previously entered, the Hearing Panel addressed the discipline to be imposed. The default judgment found facts and violations of the Rules of Professional Conduct as follows:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, W. Ray Hudson ("Hudson" or "Defendant"), was admitted to the North Carolina State Bar in 1999, 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, Hudson was engaged in the practice of law in the State of North Carolina and maintained a law office in Troy, Montgomery County, North Carolina.

4. Hudson was the closing attorney for a real estate refinance transaction for borrower Albert Lee Hudson ("A. Hudson") on October 2, 2008 for property located at 216 Pine Street, Biscoe, North Carolina.

5. As the closing attorney, Defendant represented the borrower, A. Hudson, and the lender, the State Employees Credit Union.

6. The State Employees Credit Union, as part of its closing instructions, required that the Defendant obtain title insurance for the refinance transaction.

7. Defendant prepared a Hud-1 Settlement Statement for the transaction which showed a disbursement for title insurance in the amount of \$192.50 to Beacon Title Agency.

8. Defendant collected the \$192.50 for the title insurance as part of the proceeds to close the loan but did not disburse said amount to the Beacon Title Agency, as agent for Investors Title Insurance Company.

9. As the closing attorney, Defendant was obligated to provide a final title opinion and disburse the title insurance premium of \$192.50 from that closing to Beacon Title Agency, acting as agent for Investors Title Insurance Company.

10. Defendant did not provide a final title opinion to Investors Title and did not disburse the \$192.50 to Investors Title or to its agent, Beacon Title Agency.

11. The funds for the title insurance were deposited in Defendant's trust account at Fidelity Bank on or about October 1 and 2, 2008. Defendant should have maintained \$192.50 in his trust account from October 2, 2008 until said amount was disbursed for the title insurance premium.

12. Defendant failed to continuously maintain the title insurance premium funds in his trust account at Fidelity Bank.

13. On or about January 16, 2009, the balance of Defendant's Fidelity Bank trust account fell to \$26.68.

14. On or about March 25, 2009, the balance of Defendant's Fidelity Bank trust account fell to \$7.59.

15. The funds in Defendant's Fidelity Bank trust account remained below \$192.50 from March 25, 2009 until May 15, 2009.

16. On or about May 19, 2009 the balance of Defendant's Fidelity Bank trust account fell to \$27.59.

17. On or about June 5, 2009, the balance of Defendant's Fidelity Bank trust account fell to \$164.15.

18. The funds in Defendant's Fidelity Bank trust account remained below \$192.50 from June 5, 2009 through the last known balance on September 21, 2010.

19. From March to June 2009, Defendant wrote a series of trust account checks to himself for legal fees from his Fidelity Bank trust account.

20. Defendant failed to identify the client balance against which the checks were drawn.

21. Defendant failed to produce the records and client ledgers requested by the State Bar to determine whether any of these checks were for legitimate client fees.

22. By letter dated January 11, 2011 the State Bar requested documentation regarding the property located at 216 Pine Street including, but not limited to, proof of payment of the title insurance premium, documentation proving Defendant maintained the premium's balance in his Fidelity Bank trust account, the client ledger card for the transaction, and bank statements.

23. Defendant failed to respond to the request or provide the requested documents by the due date of February 12, 2010.

24. On or about May 4, 2010 the State Bar served Defendant with a subpoena requesting production of trust account records, client ledgers, settlement statements, disbursement summaries, HUD-1 Settlement Statements, quarterly reconciliations, and two client files.

25. Defendant faxed an authorization allowing the State Bar to obtain his bank records directly from Fidelity Bank.

26. Although Defendant stated in his fax that the other requested material would be placed in the mail to the Bar, no other documents were received and Defendant failed to otherwise respond to the subpoena.

27. On or about August 5, 2010, the State Bar served Defendant with a second subpoena requesting additional records. This subpoena again demanded production of trust account records, client ledgers, settlement statements, quarterly reconciliations, and four client files.

28. At the time the second subpoena was served, Defendant provided one client file and a portion of his bank records but did not provide any client ledgers or reconciliations.

29. Upon Defendant's request he was given until August 27, 2010 to produce the remaining documents that he had not provided.

30. On August 25, 2010, Defendant called the Bar and requested additional time to produce the documents demanded by the second subpoena.

31. The deadline to produce the documents was extended to September 10, 2010.

32. On September 10, 2010 Defendant called the Bar and requested additional to produce the documents demanded by the second subpoena. Defendant indicated on September 10, 2010 that he would put the subpoenaed documents in the mail on that date and meet with the State Bar investigator on September 17, 2010, pursuant to the second subpoena.

33. Defendant failed to appear at the State Bar pursuant to the subpoena on September 17, 2010 and no documents were received by mail from him.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over the Defendant, W. Ray Hudson, and the subject matter.

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), for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By failing to maintain the funds for the title insurance and use it as intended by the client, Defendant failed to hold and deliver entrusted property in violation of Rule 1.15-2(a) and (m);
- (b) By writing checks which failed to identify the client balances against which the checks were drawn from the trust account and by failing to maintain a ledger for each person or entity with funds in the trust account, Defendant failed to maintain the minimum record requirements for trust accounts in violation of Rule 1.15-3(a)(2) and (5);
- (c) By failing to timely respond to subpoenas and other multiple inquiries by the State Bar and , Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (d) By failing to complete the final title opinion, submit the title opinion with the funds for the title insurance and by failing to obtain the title insurance, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3. and intentionally prejudiced or damaged his client in violation of Rule 8.4(g);
- (e) By making the false statement to the Bar that he had sent the final title opinion and the title insurance premium for the 216 Pine Street refinance to Investors Title, Defendant made a false statement to the disciplinary

authority in connection with a disciplinary matter in violation of Rule 8.1 and Rule 8.4(c); and

- (f) By misappropriating the title insurance funds for the 216 Pine Street refinance, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at this hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant was deceptive in his response to the State Bar's letter of notice in this matter. The Defendant indicated in his response to the letter of notice that "a final opinion had been prepared and sent to Investors title. Along with the appropriate fee." In fact Defendant had not sent a final title opinion to Investors Title and had not sent the money for the title insurance premium to Investors Title.

2. Investors Title and the State Employee's Credit Union were harmed by Defendant's action in the refinance of the 216 Pine Street closing. Defendant did not attach a property description to the deed of trust in favor of the State Employee's Credit Union such that the Credit Union filed a claim with Investors Title which required Investor's to have another attorney correct the deed of trust and complete the title work. Investors incurred legal expenses in the amount of \$2,000.00 in this regard. Defendant failed to respond to the Credit Union or Investor's Title in their attempts to address issues regarding the closing.

3. Defendant's conduct involved misappropriation, misrepresentation and deceit.

4. Defendant, by engaging in such conduct, has shown himself to be untrustworthy.

5. Defendant failed to participate in this proceeding. He filed no Answer to the Complaint, did not respond to the Plaintiff's Motion for a Default Order, and did not appear at the hearing of this matter.

6. Defendant was previously given a REPRIMAND by the Grievance Committee of the State Bar in 09G1266 for failing to respond to supplemental requests for information from the Bar and for failing to appear and respond to Bar subpoenas.

7. Defendant's license to practice law was suspended in September 2010 for failure to comply with mandatory continuing legal education requirements for 2009 and was in a state of suspension during all proceedings in this matter.

8. Defendant committed multiple violations of the Rules of Professional Conduct governing entrusted funds for the reporting and accounting required for same.

9. Defendant has refused to acknowledge the wrongful nature of his conduct and has refused to give any explanation for his conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, additional Findings of Fact Regarding Discipline, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the Hearing Panel hereby 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.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following suspension and disbarment factors are applicable in this matter:

- a. intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b. elevation of the defendant's own interest above that of the client;
- c. negative impact of defendant's actions on client's or public's perception of the profession;
- d. negative impact of the defendant's action on the administration of justice;
- e. impairment of the client's ability to achieve the goals of the representation;
- f. effect of defendant's conduct on third parties;
- g. acts of dishonestly, misrepresentation, deceit, or fabrication; and
- h. multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel has also 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 the following factors disbarment factors are applicable in this matter:

- a. acts of dishonesty, misrepresentation, deceit, or fabrication; and
- b. misappropriation or conversion of assets to which the Defendant was not entitled.

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 general factors are applicable in this matter:

- a. prior disciplinary offenses in this state or any other jurisdiction, or the absence thereof;
- b. dishonest or selfish motive;
- c. indifference to making restitution;
- d. multiple offenses;
- e. bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
- f. submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- g. vulnerability of victim; and
- h. degree of experience in the practice of law.

4. The Hearing Panel has considered all lesser forms of sanctions available to it and finds that disbarment is the only appropriate discipline in this case, for the following reasons:

- a. Defendant committed misconduct involving misappropriation and deceit. Misconduct involving misappropriation and deceit is among the most serious that an attorney can commit. Such misconduct demonstrates that the offending attorney is not trustworthy. The public is entitled to have trustworthy attorneys and should be able to assume that all lawyers are trustworthy;
- b. Defendant has not participated in this disciplinary action and has been previously disciplined for failure to participate in the disciplinary process. Self regulation of the legal profession requires that members of the profession participate in the grievance and disciplinary processes of the North Carolina State Bar;
- c. Entry of an order imposing lesser discipline than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant , would be inconsistent with discipline issued in other cases involving similar misconduct, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar; and

- d. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarment requires an attorney to make such a showing before he or she may be reinstated.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, and Conclusions Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, W. Ray Hudson, is hereby DISBARRED from the practice of law in North Carolina.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.
3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.
4. The costs and all administrative fees of this action are taxed to Defendant. Defendant must pay the costs and administrative fees within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.

Signed by the Chair with the consent of the other Hearing Panel members, this the 14th day of October 2011.



Theodore C. Edwards, II, Chair
Disciplinary Hearing Panel