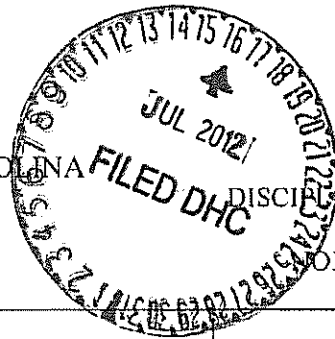


STATE OF NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARK A. MANGIARELLI, Attorney,

Defendant

CONSENT ORDER
OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, and members William M. Claytor and Patti Head, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant Mark A. Mangiarelli ("Mangiarelli") was represented by Alan M. Schneider. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Mangiarelli has freely and voluntarily stipulated to the foregoing findings of fact and consent to the conclusions of law and entry of the order of discipline. Mangiarelli freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters the following:

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, Mark A. Mangiarelli ("Mangiarelli"), was admitted to the North Carolina State Bar in 2002 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. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Mangiarelli was engaged in the practice of law in the State of North Carolina and maintained a law office in Huntersville, Mecklenburg County, North Carolina.

5. Mangiarelli was the closing attorney in various real estate closings in 2010 and 2011. In these closings he represented the buyer and the lender. In several of these closings, he failed to timely submit the final title opinion and premium payment to obtain the title insurance policy for the owner and/or lender. At times, Mangiarelli failed to respond to inquiries from borrowers and lenders concerning outstanding policies.

6. Mangiarelli was the closing attorney for a transaction referenced as SHAH3. The HUD-1A Settlement Statement showed \$125.00 disbursed to Meridian Title Company for title examination. This amount should have been shown as disbursed to Mangiarelli. Mangiarelli disbursed the \$125.00 to himself without revising the HUD-1A Settlement Statement or otherwise communicating to the lender and the parties this alternate disbursement.

7. In three closings, Mangiarelli disbursed funds for the closing from one trust account prior to transferring certain funds for those closings from his other trust account, thereby using other clients' entrusted funds until those transfers were made. One transfer occurred a week after the disbursements. The other transfers occurred within a day or two of the disbursements.

8. Mangiarelli maintained attorney trust accounts in at least 2010, 2011 and 2012. Mangiarelli failed to conduct quarterly reconciliations of his trust accounts from at least January 1, 2010 through December 30, 2011.

9. The State Bar sent Mangiarelli a letter dated November 9, 2011 seeking information as part of a formal grievance inquiry. The deadline for Mangiarelli's response was extended to January 13, 2012. Mangiarelli failed to timely respond by January 13, 2012. Mangiarelli did not respond until April 2012.

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

Conclusions Of Law

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

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

- (a) By failing to timely complete final title opinions and disburse title insurance premiums to obtain title policies for owners and/or lenders, Mangiarelli failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to promptly disburse client funds in violation of Rule 1.15-2(m);

- (b) By failing to respond to inquiries regarding the overdue title policies from buyers and lenders, Mangiarelli failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep clients reasonably informed about the status of the matters in violation of Rule 1.4(a)(3);
- (c) By failing to conduct quarterly reconciliations of his trust accounts, Mangiarelli failed to conduct requisite reconciliations in violation of Rule 1.15-3(d)(1);
- (d) By disbursing funds differently than as listed on the HUD-1A Settlement Statement without first correcting the Statement, Mangiarelli improperly disbursed funds in violation of Rule 1.15-2(m) and failed to keep clients reasonably informed in violation of Rule 1.4(a)(3);
- (e) By disbursing funds for closings from one trust account prior to transferring funds for those closings from another trust account, Mangiarelli improperly disbursed other clients' funds in violation of Rule 1.15-2(m); and
- (f) By failing to timely respond to the State Bar's November 2011 letter by the applicable deadline, Mangiarelli failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

Upon the consent of the parties, the Hearing Panel also enters the following:

Findings Of Fact Regarding Discipline

1. Accurate HUD-1 Settlement Statements are necessary for the system of finance in real estate to function. Lenders rely upon the HUD-1 Settlement Statements to accurately reflect the receipt and disbursement of funds in real estate closings.
2. Although Defendant disbursed \$125.00 in a manner differently than as reflected on the HUD-1A Settlement Statement, Meridian Title Company verified it was not entitled to this \$125.00 and had not been expecting to receive that payment.
3. Defendant has no prior discipline.
4. There is no evidence of any dishonest or selfish motive on the part of Defendant.
5. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds.
6. Defendant was not aware that the title policy had not been procured and the premium disbursed in at least one closing. Had Defendant been conducting quarterly

reconciliations, he would have realized that the premium had not been disbursed, which would have signaled that work might still need to be done in the file.

7. The legal profession has the privilege of being self-regulating. It can only fulfill its regulatory duty, however, if its members participate in the self-regulation process. When attorneys fail to respond to inquiries of the State Bar, it jeopardizes the effectiveness of self-regulation.

8. Although Defendant failed to timely respond to the State Bar's November 2011 letter, he did respond to other State Bar inquiries after that time and did belatedly respond to the November 2011 letter once prompted.

9. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, 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. 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 factors warrant suspension of Defendant's license:

a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable, to wit: failing to conduct quarterly reconciliations and thus failing to recognize work remained to be done and a premium remained to be disbursed from a closing;

b. Negative impact of Defendant's actions on client's or public's perception of the profession; and

c. Impairment of the client's ability to achieve the goals of the representation, to wit: timely procurement of title insurance policies.

2. The Hearing Panel has 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 no factors are present in this instance that would warrant disbarment.

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 factors are applicable in this matter:

a. Absence of prior disciplinary offenses;

- b. Absence of a dishonest or selfish motive;
- c. Multiple offenses;
- d. A pattern of misconduct;
- e. Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- f. Remorse; and
- g. Vulnerability of Defendant's clients.

4. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Defendant's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

Order Of Discipline

1. Defendant, Mark A. Mangiarelli, is hereby suspended from the practice of law for three years.

2. Defendant is taxed with the administrative fees and the costs of this action as assessed by the Secretary. Defendant shall be served with a statement of costs stating the costs assessed against Defendant. Defendant shall pay the costs within thirty days of service of the statement of costs upon him.

3. The three-year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

a. Each month Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s) during that month, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. These documents are due on the 15th day of the following month – for example, the three-way reconciliation for the month of January is due on February 15;

b. Each month Defendant shall provide the Office of Counsel of the State Bar with a list of clients for whom Defendant collected funds for title insurance premiums but for whom Defendant has not submitted the final title opinion and premium to the title insurance company. The list shall contain the name of the client, the date of the closing, the reason why the final title opinion and premium has not been submitted, and an estimated date for completion. This list is due on the same day each month as the three-way quarterly reconciliation required in the above paragraph;

c. Each quarter, Defendant shall have a CPA audit his trust accounts. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the Accountant Checklist for Probation Cases which will be provided by the State Bar to Defendant's counsel. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter -- for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30;

d. If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action;

e. Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust accounts or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account, by the deadline stated in the request;

f. Within six months of the effective date of this order, Defendant shall each complete an accounting course or continuing legal education course focused on trust account practices and methods and compliance with the requirements of the Rules of Professional Conduct related to entrusted funds. This course must be approved in advance by the Office of Counsel of the State

Bar. Defendant must provide the Office of Counsel with proof of completion within ten days of completion of the course;

g. Defendant shall keep the North Carolina State Bar Membership Department advised of his current physical business address (not a Post Office box), telephone number, and e-mail address and shall notify the Bar of any change in address, telephone number, or e-mail address within ten (10) days of such change;

h. Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;

i. Defendant shall respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation;

j. Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;

k. Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;

l. Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;

m. Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and

n. Defendant shall pay the costs of this proceeding as assessed by the Secretary within thirty days after the statement of costs was served upon him.

4. If at any point during the stay of the suspension, Defendant disburses all funds in his attorney trust account(s), closes all attorney trust accounts, and no longer receives, maintains, or otherwise handles entrusted or fiduciary funds in the course of his law practice, Defendant shall provide the Office of Counsel of the State Bar with an affidavit of this information and attach supporting documentation, including but not limited to documentation showing disbursement of all funds and the closing of any and all trust accounts. Thereafter, on a monthly basis, Defendant shall submit to the Office of Counsel an affidavit certifying that he did not handle any entrusted or fiduciary funds in that month; this affidavit shall be executed on the last day of each month and provided to the Office of Counsel by the 5th day of the following month (e.g. the affidavit for January would be executed January 31st and due to the Office of Counsel by February 5th). Upon receipt of the affidavits described in this paragraph, and for as long as Defendant does not handle entrusted or fiduciary funds and submits these affidavits to the Office of Counsel, the requirements of paragraphs 3a to 3d above shall be tolled.

5. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to § .0125 of the North Carolina State Bar Discipline and Disability Rules demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;

b. Defendant disbursed all funds held in trust, to the extent permitted by law. Defendant must provide trust account records and client records showing the disbursement of funds and the current state of any and all trust accounts. If any funds remained in any of Defendant's trust accounts, Defendant shall provide the following: 1) the client ledgers showing whose money is in the trust account(s); 2) explanations for how the funds should be disbursed, why they were not disbursed, and an estimated time for disbursement; 3) a three-way reconciliation for the quarter immediately preceding his application for reinstatement; and 4) a CPA audit as described in paragraph 3.c. above for the quarter immediately preceding his application for reinstatement;

c. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;

d. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;

e. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;

f. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;

g. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;

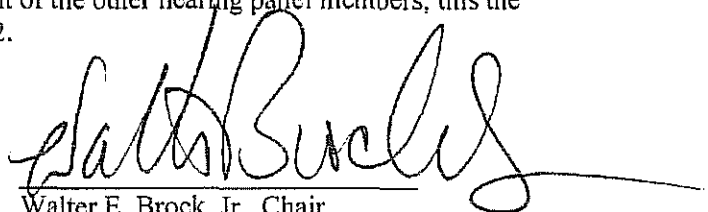
h. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and

i. Defendant paid all administrative fees and costs of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.

6. Any order of the Administrative Committee of the North Carolina State Bar placing Defendant in inactive status for any reason shall toll the running of the suspension, the period of the stay of the suspension, and Defendant's obligation to comply with the terms of the stay of the suspension under this order. Upon Defendant's reinstatement to active status by the Administrative Committee, the tolling of the running of the suspension and the stay of the suspension under this order shall be lifted, at which time Defendant's obligation to comply with the conditions of the stay of the suspension in this order will resume.

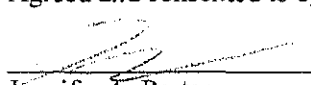
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.


13th day of July 2012. Signed by the Chair with the consent of the other hearing panel members, this the

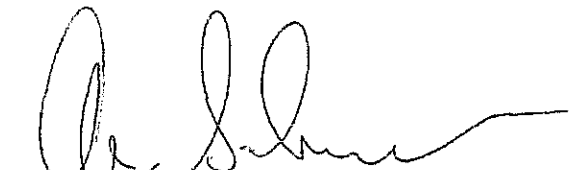

Walter E. Brock, Jr., Chair
Disciplinary Hearing Panel

Consent Order of Discipline concerning Mark A. Mangiarelli
12 DHC 23

Agreed and consented to by:


Jennifer A. Porter
Attorney for Plaintiff


Mark A. Mangiarelli
Defendant


Alan M. Schneider
Attorney for Defendant