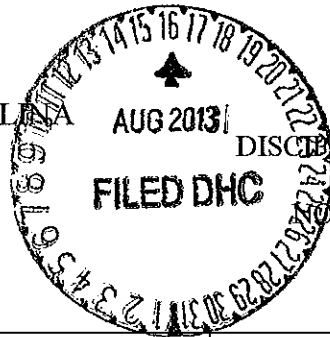


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 7

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

BARRY B. KEMPSON, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, and members Barbara B. Weyher and Scott A. Sutton pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Margaret T. Cloutier. Defendant, Barry B. Kempson ("Kempson") was represented by Douglas Brocker and Carolin Bakewell.

Based upon the pleadings in this matter, the parties' stipulations of fact, and the evidence presented, 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, Barry B. Kempson ("Kempson"), was admitted to the North Carolina State Bar in 1974, 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, Kempson was engaged in the practice of law in the State of North Carolina and was a principal in the

law firm of VanWinkle, Buck, Wall, Starnes & Davis, P.A. in Asheville, Buncombe County, North Carolina.

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

5. Kempson was attorney-in-fact for Mrs. D., an elderly client with dementia, pursuant to a power of attorney prepared by Kempson.

6. Kempson's fiduciary services as attorney-in-fact were law related services as defined in Rule 5.7.

7. As attorney-in-fact Kempson was responsible for managing Mrs. D.'s personal checking account, money market account and brokerage account, and for payment of Mrs. D.'s living expenses from those accounts.

8. The law firm employed Susanne M. Crotty as a non-lawyer assistant between December 2005 and February 2011, and she worked with Kempson and other lawyers in the firm.

9. Crotty was responsible for periodically reconciling the checking account bank balance with the checkbook balance for Mrs. D.'s accounts.

10. Although Kempson reviewed monthly reports for Mrs. D.'s accounts that Crotty prepared using a computer software system designed for use with fiduciary accounts, Kempson did not have in place an adequate system of checks and balances to reasonably ensure the accuracy of the reports.

11. Kempson did not review the bank statements for Mrs. D.'s checking and money market accounts, and no employee other than Crotty handled the statements.

12. Kempson reviewed the statements from Mrs. D.'s brokerage account.

13. Crotty embezzled funds from Mrs. D.'s accounts between December 2008 and February 2011.

14. Kempson detected Crotty's theft of Mrs. D.'s funds in late February 2011.

13. Kempson promptly reported Crotty's theft to law enforcement and the North Carolina State Bar.

Based upon the evidence and the foregoing 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 Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By failing to have in place sufficient policies or procedures regarding the review of Mrs. D.'s checking and money market accounts such that he did not know for over two years that Crotty was embezzling Mrs. D.'s funds, Defendant failed to supervise his non-lawyer assistant to the extent necessary to reasonably ensure her conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(b), failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), and failed to act with reasonable diligence and promptness in supervising his non-lawyer assistant in violation of Rule 1.3.

Based upon the foregoing Findings of Fact, Conclusions of Law and the evidence presented at the hearing, the Hearing Panel enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Kempson failed to properly supervise his assistant's involvement with the entrusted funds in Mrs. D.'s accounts for over two years.
2. Kempson's delegation without appropriate supervision created circumstances that enabled his assistant to embezzle entrusted funds.
3. Mrs. D. entrusted her funds to Kempson with the expectation that the funds would be available to ensure her comfort and security and not be at risk.
4. Kempson took prompt and appropriate action when he became aware of his assistant's misconduct.
5. Kempson promptly and truthfully informed his client and her closest relative about the incident.
6. Kempson and/or his firm promptly reimbursed the funds that were embezzled from Mrs. D.'s accounts.
7. Kempson and his firm made prompt and appropriate changes in the policies and procedures regarding the handling of fiduciary accounts.

8. Kempson promptly reported Crotty to law enforcement authorities and cooperated in the criminal action brought against her.

9. Kempson has expressed remorse concerning this matter.

10. Kempson voluntarily self-reported the matter to the State Bar and has fully cooperated with the State Bar's review of this matter.

11. Kempson is of admirable character and enjoys an excellent reputation in the legal community and the community at large. Kempson contributes his efforts and energies to the betterment of his community through his extensive involvement in pro bono legal field services organizations and various other non-profits and charitable organizations.

12. Kempson has more than 38 years experience in the practice of law.

13. Kempson has no prior discipline.

14. 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 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 that while the following factor is present, it does not warrant suspension of Defendant's license:

(a) Impairment of the client's ability to achieve the goals of the representation.

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 discipline;

- (b) Absence of dishonest or selfish motive;
- (c) Timely good faith effort to make restitution;
- (d) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (e) Defendant's remorse;
- (f) Defendant's excellent character and reputation, including his extensive contributions to the community;
- (g) Vulnerability of the victim;
- (h) Defendant's substantial experience in the practice of law; and
- (i) Other factors pertinent to the imposition of discipline in this matter, including:
 - (i) Defendant's prompt and candid notification to his client;
 - (ii) Defendant's prompt report to the State Bar;
 - (iii) Defendant's prompt report to the criminal authorities and cooperation with them; and
 - (iv) The reasonable remedial measures taken by Defendant regarding the handling of fiduciary accounts prior to any notice of disciplinary proceedings or action in this matter.

4. The Hearing Panel has considered issuing an admonition but concludes that such discipline would not be sufficient discipline because Defendant violated one or more provisions of the Rules of Professional Conduct. The Hearing Panel also considered a censure and suspension, but concludes that, given all the factors set forth in paragraph three above, the conduct was an aberration and is unlikely to be repeated.

5. The Hearing Panel further concludes that the public will be adequately protected by the issuance of a reprimand to Defendant and that Defendant should be taxed with the administrative fees and costs, including the expenses incurred by the State Bar for deposition videos and transcripts which are hereby found to be reasonable and necessary.

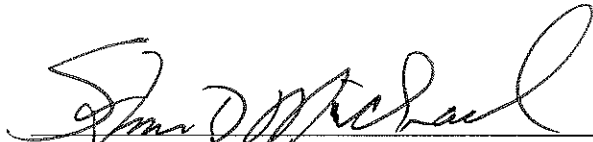
Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact and Conclusions Regarding Discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Barry B. Kempson, is hereby REPRIMANDED for his misconduct.

2. Defendant shall pay all administrative fees and costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on him.

Signed by the Chair with the consent of the other Hearing Panel members, this the 15th day of August, 2013.


STEVEN D. MICHAEL
Chair, Disciplinary Hearing Panel