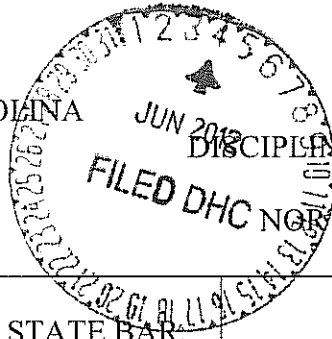


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

12 DHC 8

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

CHARLES M. OLDHAM III, Attorney
Defendant.

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of C. Colon Willoughby, Jr., Chair, Harriett Smalls, and Joe Castro. Carmen H. Bannon represented the Plaintiff. Alan M. Schneider represented the Defendant. Defendant waives a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties 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. Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes 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, Charles M. Oldham III, was admitted to the North Carolina State Bar on 18 August 2000 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. During the relevant period referred to herein, Oldham was actively engaged in the practice of law in Matthews, Mecklenburg County, North Carolina.

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

5. Debt adjusting is the "practice ...whereby any person holds himself...out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, ... and receives a fee or other consideration for reducing, settling, or altering the terms of the

payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.” N.C. Gen. Stat. § 14-423. Debt adjusting is a Class 2 misdemeanor.

6. An exception to the North Carolina debt adjusting statute provides that an attorney *who is not employed by a debt adjuster* may engage in the practice described in paragraph 5, above. N.C. Gen. Stat. § 14-426 (emphasis added).

7. NovusDirect was a North Carolina corporation that purported to offer mortgage loan modification services to debtors who were unable to make their mortgage payments and were in danger of losing their homes to foreclosure.

8. NovusDirect collected up-front fees from debtors for the promised loan modification services. The fees ranged from \$2,500.00 to \$5,000.00

9. NovusDirect employed approximately a dozen sales representatives, plus several people designated as “negotiators” and “processors.” Sales representatives received a base salary plus commissions for each debtor “enrolled” in the loan modification program.

10. In February 2010, Oldham entered into a contract with NovusDirect. The contract was entitled “Operations Agreement.”

11. The Operations Agreement provided that Oldham would receive a \$150.00 flat fee for every loan modification performed by NovusDirect, and NovusDirect would receive the balance of the fee collected from the debtor.

12. NovusDirect also provided Oldham with office space in the suite where NovusDirect operated. Oldham was not required to pay rent or utilities for this office.

13. In exchange for the consideration described in paragraphs 11 and 12, above, Oldham permitted NovusDirect to operate under the auspices of The Law Offices of Charles M. Oldham (“TLOCO”).

14. Oldham authorized the owner of NovusDirect to publish a website for TLOCO that was devoted to the loan modification services offered by NovusDirect.

15. The TLOCO website published by NovusDirect stated, among other things, “Our firm has helped thousands of homeowners just like you to not only save their homes, but get a monthly payment they can afford.” At the time this website was published, Oldham had no experience with loan modification.

16. The TLOCO website published by NovusDirect also provided testimonials captioned “Success Stories” from individuals in Florida, Texas, Georgia, and Wisconsin. These individuals were not, and had never been, Oldham’s clients.

17. Oldham is not, and has never been, licensed to practice law in any state other than North Carolina.

18. The TLOCO website published by NovusDirect did not explain that Oldham was only licensed to practice law in North Carolina.

19. From February through October 2010, NovusDirect d/b/a TLOCO solicited business via targeted telemarketing based on “internet leads” purchased from a third-party vendor. The internet leads provided contact information for individuals whose internet activity indicated they were seeking to modify a loan or were having trouble paying their mortgage. (Targeted individuals who entered into a contract with TLOCO for debt modification services are referred to hereafter as “debtor clients”).

20. Oldham was aware that NovusDirect was soliciting professional employment from targeted individuals by telemarketing.

21. In communicating with the targeted individuals and debtor clients, NovusDirect employees held themselves out as part of a law firm (TLOCO) and never mentioned NovusDirect.

22. Debtor clients solicited by NovusDirect signed an “Attorney/Client Engagement Agreement” with TLOCO and were led to believe that they were receiving loan modification services from a *bona fide* law firm.

23. Debtor clients were not informed that Oldham would receive only \$150.00 of the total fee they paid to TLOCO.

24. Oldham did not exercise the appropriate oversight regarding the operating policies of NovusDirect nor did Oldham properly supervise its employees. He failed to exercise the necessary degree of oversight of the bank accounts into which fees paid by debtor clients were deposited. Oldham reviewed, but did not draft, the Engagement Agreement and other forms used by NovusDirect d/b/a TLOCO.

25. Notwithstanding the language in the Operations Agreement between Oldham and NovusDirect characterizing NovusDirect as a contractor for TLOCO, Oldham was in fact an employee of NovusDirect.

26. During his employment with NovusDirect, Oldham continued to represent clients in his usual areas of practice: criminal defense, business law, and civil litigation.

27. Oldham relied on NovusDirect employees to provide the loan modification “services” to, and had little contact with, debtor clients.

28. In March 2010, Joseph Eisa, a Florida resident, hired Oldham to pursue a loan modification by negotiating with Eisa’s mortgage lender, Chase Manhattan.

29. In August 2010, Shawn Cauthon, a Pennsylvania resident, hired Oldham to pursue a loan modification by negotiating with Cauthon’s mortgage lender, Wells Fargo.

30. Both Cauthon and Eisa hired Oldham by entering into a written contract entitled “Engagement Agreement,” which provided that Oldham would determine the client’s “legal

rights and remedies” pertaining to modification of mortgage debt, including the possibility of “providing [the] lender . . . with a deed in lieu of foreclosure.”

31. Oldham has never been licensed to practice law in Florida, where Eisa’s property was located. It was therefore misleading for Oldham to enter into an agreement stating that he could provide advice and/or representation to Eisa related to property in Florida and on matters of Florida law.

32. Oldham has never been licensed to practice law in Pennsylvania, where Cauthon’s property was located. It was therefore misleading for Oldham to enter into an agreement stating that he could provide advice and/or representation to Cauthon related to property in Pennsylvania and on matters of Pennsylvania law.

33. In October 2010, Oldham learned that Cauthon had received a notice of foreclosure, but he did not communicate with her about the foreclosure action.

34. In October 2010, Oldham terminated his partnership with NovusDirect and assumed personal responsibility for representing the debtor clients.

Based on 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 Panel has jurisdiction over Defendant, Charles Oldham III, and over the subject matter.

2. Defendant’s conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) and N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By entering into an agreement with NovusDirect that permitted NovusDirect to hold itself out as a law firm and purport to offer legal services, Defendant formed a partnership with a non-lawyer wherein the activities of the partnership included the practice of law in violation of Rule 5.4(b);
- (b) By sharing with NovusDirect legal fees paid by debtor clients to TLOCO, Defendant shared legal fees with a non-lawyer in violation of Rule 5.4(a);
- (c) By authorizing the publication of a website for his law firm that did not indicate his state of licensure and contained testimonials implying that he had represented people in other states, Defendant held himself out to the public as able to practice law in jurisdictions where he was not licensed in violation of Rule 5.5(a) and made misleading communications about his services in violation of Rule 7.1(a);
- (d) By authorizing the publication of a website for his law firm that contained “testimonials” from people who were not his clients and falsely asserted “[o]ur

firm has helped thousands of homeowners just like you,” Defendant made misleading communications about his services in violation of Rule 7.1(a);

- (e) By permitting NovusDirect d/b/a/ TCLOCO to solicit professional employment by live-telephone contact, Defendant violated the Rules of Professional Conduct through the acts of another in violation of Rule 8.4(a);
- (f) By permitting NovusDirect to operate under the auspices of The Law Offices of Charles Oldham and thereby misleading debtors into believing they were receiving services from a *bona fide* law firm, Defendant assisted another in the unauthorized practice of law (by holding itself out as a law firm) in violation of Rule 5.5(d) and engaged in conduct involving misrepresentation in violation of Rule 8.4(c);
- (g) By using a contract that stated he could provide legal advice and/or representation in states where he was not licensed to practice law, Defendant held himself out as able to practice law in jurisdictions where he was not licensed in violation of Rule 5.5(a) and made misleading communications about his services in violation of Rule 7.1(a); and
- (h) By failing to communicate with Cauthon about her foreclosure, Defendant failed to reasonably consult with his client about the means by which the client’s objectives were to be accomplished in violation of Rule 1.4(a).

Based on the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Oldham relied on representations that were made to him by NovusDirect regarding the permissibility of NovusDirect’s operations;
2. Oldham relied on representations by NovusDirect that the protocols, policies and guidelines developed by NovusDirect were consistent with applicable law. These protocols, policies, and guidelines included those contained within a written employee handbook, prepared by NovusDirect, which NovusDirect assured Oldham would be used in training NovusDirect’s employees.
3. NovusDirect concealed deceptive business practices from Oldham, and instructed its employees not to reveal to Oldham that such practices were being utilized.
4. The loan modification services offered by NovusDirect d/b/a TLOCO were available free of charge from various nonprofit and governmental organizations.
5. Many of the debtor clients were induced to pay for services from NovusDirect d/b/a TLOCO by a “money back guarantee” offered by NovusDirect employees.

6. For a majority of the debtor clients, NovusDirect d/b/a TLOCO did not successfully negotiate modification of their mortgages. Most of the debtor clients did not receive refunds.

7. When the deceptive conduct of NovusDirect was brought to Oldham's attention, he acted affirmatively to terminate his business relationship with NovusDirect.

8. Oldham cooperated with the North Carolina Attorney General's investigation of NovusDirect and with the State Bar's investigation of this matter.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) and concludes no factors are present that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) and (3) and determines the following factors are applicable:

- (a) Negative impact of Defendant's actions on public's perception of the profession;
- (b) Absence of prior disciplinary offenses;
- (c) Multiple offenses;
- (d) Cooperative attitude toward the proceedings; and
- (e) Remorse;

4. The Hearing Panel finds that a censure, reprimand, or admonition would be insufficient discipline because of the significant harm to the debtor clients and potential significant harm to the legal profession caused by Defendant's conduct.

5. The Hearing Panel finds that although Defendant's conduct is serious enough to warrant more discipline than a censure, it does not warrant an active suspension of his license.

6. The Hearing Panel finds that a stayed suspension of Defendant's law license is warranted insofar as entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE

1. The law license of Defendant, Charles M. Oldham III, is hereby suspended for two years effective from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years as long as Defendant complies and continues to comply with the following conditions:

- (a) During the period of the stay, Defendant shall take an additional three hours of accredited ethics CLE each year, over and above the standard annual requirements for CLE;
- (b) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;
- (c) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (d) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- (e) Defendant shall promptly accept service of all certified mail from the State Bar that is sent to him; and
- (f) Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (f) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

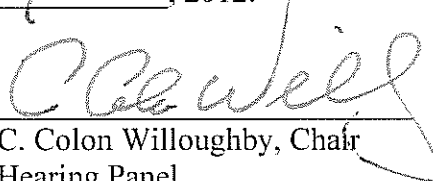
3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

- (a) Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;


- (b) Defendant complied with all provisions of 27 N.C.A.C. 1B § .0124 following the order lifting the stay and/or activating the suspension of his law license;
- (c) Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (d) Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution process for any petition of which he received notice after the effective date of this Order;
- (e) Defendant promptly accepted all certified mail sent to him by the State Bar;
- (f) That at the time of his petition for stay, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, as well as all judicial district dues, fees and assessments;
- (g) That at the time of his petition for stay, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (h) Defendant has completed an additional three hours of accredited ethics CLE each year, over and above the standard annual requirements for CLE, during the period of suspension;
- (i) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;
- (j) Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar; and
- (k) Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

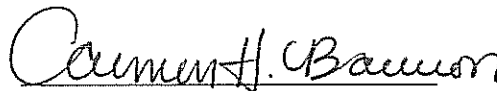
4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which Defendant shall pay within thirty days of service of the notice of costs upon the Defendant.


Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 29 day of May, 2012.


C. Colon Willoughby, Chair
Hearing Panel

CONSENTED TO BY:


Alan M. Schneider
Attorney for Defendant


Carmen H. Bannon
Attorney for Plaintiff


Charles M. Oldham, III
Defendant