

10940

WAKE COUNTY

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
97 DHC 16

NORTH CAROLINA

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

SANDRA J. BARRETT, Attorney
DefendantFINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard pursuant to an order of the North Carolina Court of Appeals filed on January 19, 1999 which remanded this case to the Disciplinary Hearing Commission for further proceedings. The hearing committee which originally heard this case on September 26, 1997 also considered it on remand on February 12, 1999. The hearing committee consisted of Richard T. Gammon, Chair; Franklin E. Martin, and Anthony E. Foriest. The North Carolina State Bar was represented by Fern Gunn Simeon. The defendant, Sandra J. Barrett, was represented by George G. Hearn and Reed J. Hollander. Based upon the pleadings, the evidence introduced at the hearing and the order of the North Carolina Court of Appeals, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.

2. Sandra J. Barrett (hereafter defendant) was admitted to the North Carolina State Bar in 1983 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.

3. During all times relevant hereto the defendant was actively engaged in the practice of law in Asheville, North Carolina, and maintained a law office in Asheville, North Carolina.

4. The defendant was properly served with process and the hearing was held with due notice to all parties.

5. In 1996, defendant agreed to act as agent for Mark Ferguson (hereafter Ferguson) in collecting rental payments from Daniel and Ellen Meekins (hereafter the Meekins), who rented Ferguson's property located at 115 Guffy Mountain Road in Fairview, North Carolina. Defendant's duties included procuring tenants, repairing and maintaining the property, collecting rental proceeds, and forwarding the net rental proceeds to Ferguson.

6. No attorney-client relationship existed between Ferguson and defendant at any time from January, 1996 to August, 1997.

7. The Meekins' lease began on May 24, 1996 and they paid their rent each month to defendant.

8. Defendant deposited the rental payments for Ferguson's property in her personal bank

00669

account at Blue Ridge Savings Bank, account number 53-202627-6 (hereafter 6276 account). This bank account held money belonging to defendant, Ferguson, and another landlord, R. Clay Chandley (hereafter Chandley).

9. Defendant did not establish and maintain a separate bank account to hold rent monies that she collected on behalf of Ferguson and Chandley.

10. Defendant wrote checks for personal expenses on her 6276 account at Blue Ridge Savings Bank.

11. From May 24, 1996 to August 1, 1996, defendant did not send Ferguson net rental proceeds due him. In August 1996, defendant sent Ferguson rental proceeds for June and July 1996, net of maintenance costs and management fees.

12. Mr. and Mrs. Rhea Ferguson (hereafter the Fergusons), Ferguson's parents, telephoned defendant on several occasions and asked about the rental payments that their son had not received.

13. The Fergusons wrote defendant on January 18, 1997 and asked about their son's rental money that defendant was collecting.

14. Defendant did not turn over net rentals from August 1996 to January 1997 due to Ferguson, despite the Fergusons' requests.

15. In January 1997, defendant promised to turn over all money owed to Ferguson to Michael Ross (Ross), a realtor. On January 15, 1997, defendant sent the security deposit, written on her 6276 account, in the amount of \$595.00 to Ross. However, defendant did not send Ross the rental payments that Ferguson was owed.

16. On February 4, 1997, the Fergusons filed a grievance against defendant with the North Carolina State Bar.

17. Defendant's 6276 bank account balance was below the amount that should have been in her account on behalf of Ferguson from October 29, 1996 to December 12, 1996 and again from December 23, 1996 to January 31, 1997.

18. At all times when defendant's 6276 bank account balance was below the amount needed to pay Ferguson, this amount should have been in the account on Ferguson's behalf since he had not been paid.

19. Defendant unintentionally appropriated Ferguson's funds which she held in a fiduciary capacity to her own use.

20. Defendant did not have permission to use Ferguson's money for any purpose other than that authorized by Ferguson.

21. Ferguson gave defendant permission to spend the rental proceeds for repair and maintenance of his rental property, and to deduct her management fee from the proceeds. Ferguson did not give defendant permission to use the rental proceeds for any purposes other than those stated above.

22. On or about February 14, 1997, defendant deposited \$3,675.00 of her personal money into her 6272 account at Blue Ridge Savings Bank.

23. On February 14, 1997, defendant gave Ferguson's parents checks which represented Ferguson's rental proceeds for August 1996 through January 1997, net of maintenance costs and management fees, and with six percent (6%) interest added.

24. Defendant ordered from the bank several bank statements for her 6276 account where she kept Ferguson's money because she did not maintain the bank statements in her possession.

25. Defendant also did not maintain cancelled checks and deposit slips pertaining to her 6276 account.

26. Defendant did not reconcile on a quarterly basis the balances of funds which were in her 6276 account for Ferguson, Chandley, and defendant.

27. Sandra J. Barrett's attorney trust accounts at NationsBank and Blue Ridge Savings Bank were audited by the North Carolina State Bar for the period of January 1, 1995 through December 31, 1996 and no evidence of misappropriation was found.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter.

2. The 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 hold, maintain, and safeguard Ferguson's funds that she received in a fiduciary capacity, defendant unintentionally misappropriated fiduciary funds in violation of Rule 10.1(a) of the North Carolina Rules of Professional Conduct.

(b) By not maintaining a bank account, separately identifiable from her business or personal account, to hold funds that she held in a fiduciary capacity, defendant violated Rule 10.1(b) of the North Carolina Rules of Professional Conduct.

(c) By depositing Ferguson's funds into an account which contained her personal funds, defendant commingled fiduciary and personal funds in violation of Rule 10.1(a) of the North Carolina Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:

(a) defendant's conduct involved multiple offenses; and

(b) defendant's conduct resulted in misappropriation of funds that she held in a fiduciary relationship.

2. The defendant's misconduct is mitigated by the following factors:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) full and free disclosure to the hearing committee or a cooperative attitude toward the disciplinary proceedings; and

(d) good character and reputation.

3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

The license of the defendant, Sandra J. Barrett, is hereby suspended for one year. This suspension is stayed for two years upon the following terms and conditions:

a. During the two-year stay of suspension, defendant shall not enter into any fiduciary relationship with anyone and accept funds or property of a client or third party without first complying with the provisions of Rule 10.1, as well as all other North Carolina Rules of Professional Conduct;

b. During the two-year stay of suspension, defendant shall provide to the North Carolina State Bar every six months from the date of this order of discipline a verified statement identifying every bank account in which she has placed funds of a client or a third party pursuant to a fiduciary relationship. This does not apply to her regular attorney trust accounts. In the event that defendant holds no bank accounts, other than her attorney trust accounts, in which she has placed funds of a client or a third party pursuant to a fiduciary relationship, defendant is required to certify in writing each six months to the North Carolina State Bar during the period of stayed suspension that no such funds are held in her bank accounts.

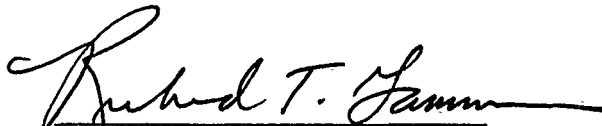
c. During the two-year stay of suspension, defendant shall not violate any state or federal laws.

d. During the two-year stay of suspension, defendant shall not violate any provisions of the North Carolina Rules of Professional Conduct.

e. Defendant shall pay all costs incurred in the original hearing of this matter and taxed against her.

Signed by the chair with the consent of the other hearing committee members, this the 10th day of ~~February~~, 1999.

March


Richard T. Gammon
Hearing Committee Chair