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BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

THE NORTH CAROLINA STATE BAR,

Plaintiff

vs.

J. BRUCE MULLIGAN, ATTORNEY

Defendant

92 DHC 13

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

This matter cause was heard by a hearing committee of the Disciplinary Hearing Commission consisting of W. Harold Mitchell, Chairman; Henry C. Babb, Jr.; and Frank L. Boushee on Friday, October 23, 1992. R. David Henderson represented the North Carolina State Bar and the defendant, J. Bruce Mulligan appeared pro se. Based upon the pleadings, the Stipulation on Prehearing Conference, and the evidence presented at the hearing, the hearing committee finds, by clear, cogent and convincing evidence, 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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. J. Bruce Mulligan was admitted to the North Carolina State Bar on August 31, 1971 and was at all times relevant herein an attorney at law licensed to practice in North Carolina 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 all times relevant hereto, defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Winston-Salem, Forsyth County, North Carolina.

4. Defendant was retained by Mr. Howard Teller in August of 1989 to: (1) incorporate Portrait Computer Corporation ("Portrait"), (2) act as the registered agent and office for Portrait and to do all work required in that capacity.
5. Defendant failed to complete the corporate bylaws and the minutes of the first shareholder's meeting. In addition, defendant never issued the corporate shares and never filed a subchapter S election as requested by Portrait.
6. On March 1, 1990, defendant submitted his hand-written statement of services to Portrait for payment. On or about March 13, 1992, defendant had the hand-written statement typed. A copy of the March statement is attached to the complaint filed in this matter as plaintiff's exhibit 2.
7. Defendant falsely represented in the statement that on August 22, 1989 he prepared minutes of the first shareholder's meeting, prepared the corporate bylaws, issued corporate shares and filed the subchapter S election. As indicated above, defendant never did this work.
8. Of the \$2,515.50 paid to defendant by Portrait, \$765.50 was to be paid to defendant for services allegedly rendered prior to March of 1990, \$750 was to be held in trust to pay estimated tax preparation fees and \$1,000 was to be held in trust for services to be rendered during the remainder of 1990. This allocation is reflected on page 3 of the March 1990 statement, a copy of which is attached to the complaint filed in this matter as plaintiff's exhibit 2.
9. Instead of depositing the \$2,515.50 in his trust account as required by Rule 10.1(C)(2) of the Rules of Professional Conduct, defendant deposited this check in his firm operating account.
10. Defendant's operating account balance after the March 1, 1990 deposit was \$3,262.82. As stated above, \$1,750 of the \$3,262.82 on deposit should have remained in this account until the accountant's bill was paid and defendant began billing against the \$1,000.00 advance deposit.

11. However, on March 2, 1990, the operating balance dropped to only \$171.59 - even with an additional deposit of \$300.00 on March 2, 1990.
12. One of the checks debited to the operating account on March 2 was a check defendant wrote to himself for \$2,400.00.
13. No portion of the \$2,400.00 paid by defendant to himself was for tax preparation fees or for legal services rendered Portrait. Defendant did not seek or obtain permission from Portrait prior to disbursing these funds to himself. Defendant used the \$2,400 for his own benefit or for the benefit of someone other than Portrait.
14. On April 13, 1989, defendant was ordered not to write any checks against any account in which client funds or fiduciary funds had been deposited unless said checks were co-signed by Gray Robinson, Esq.
15. Said order had not been modified or terminated when defendant wrote the \$2,400.00 check to himself on March 2, 1990.
16. Defendant wrote the \$2,400 check without the co-signature of Gray Robinson in violation of the April 13, 1989 order.
17. As indicated above, \$750 out of the \$2,515.50 paid to defendant by Portrait on March 1, 1990, was to held in trust to pay the tax preparation fee.
18. Mark S. Eldridge, CPA, was hired by defendant to prepare Portrait's 1989 income tax return. Mr. Eldridge sent several statements to defendant requesting payment for these services.
19. Defendant failed and refused to pay this bill. Ultimately Mr. Eldridge contacted Ms. Betty March, Vice-President of Portrait, and notified her that his bill had not been paid.
20. Portrait decided to pay Mr. Eldridge directly and thereafter seek reimbursement of the \$750.00 from defendant.
21. Julie M. O'Connor, Esq., as attorney for Portrait, made repeated demands for reimbursement of the \$750 fee entrusted to defendant. On March 25, 1991, defendant presented an operating account check at Ms. O'Connor's office for \$750. However, when this

check was presented for payment, it was returned because of insufficient funds. On April 17, 1991, defendant paid Ms. O'Connor \$750 in cash as reimbursement of the \$750 fee entrusted to defendant.

22. As indicated above, \$1,000 out of the \$2,515.50 paid to defendant by Portrait on March 1, 1990, was to be held in trust for payment of future services to be rendered by defendant on behalf of Portrait. Between March of 1990 (date of last billing and payment) and January of 1991 (when defendant was discharged by Portrait), no legal services were requested of or performed by defendant.
23. After Portrait discharged defendant in January 1991, Portrait requested either an accounting of legal services rendered by defendant after the March, 1990 bill or a refund of the \$1,000 deposit. However, despite repeated demands, defendant failed and refused to produce either an itemization of services rendered or the \$1,000 deposit.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

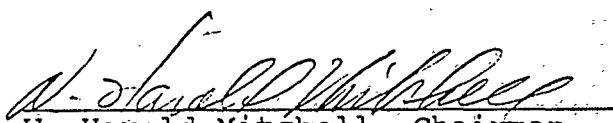
CONCLUSIONS OF LAW

The conduct of Defendant, as set forth above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

1. By failing to: complete the minutes of the first shareholder's meeting, prepare the corporate bylaws, issue the corporate stock, and file subchapter S election for Portrait, defendant failed to act with reasonable diligence and promptness in representing Portrait in violation of Rule 6(B)(3) of the Rules of Professional Conduct.
2. By misrepresenting to Portrait that he had completed the minutes of the first shareholder's meeting, prepared the corporate bylaws, issued shares and filed the subchapter S election, defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and knowingly made a false statement of fact in violation of Rule 7.2(A)(4) of the Rules of Professional Conduct.

3. By appropriating funds entrusted to him in a fiduciary capacity for his own use without Portrait's knowledge or consent, defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) of the Rules of Professional Conduct and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.
4. By depositing the March 1, 1990 check in the amount of \$2,515.50 into his law firm operating account, defendant failed to deposit funds belonging in part to defendant and in part to others in his trust account as required by Rule 10.1(C)(2) of the Rules of Professional Conduct.
5. By writing a check in violation of the April 13, 1989 injunction, defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B).
6. By failing to pay Mr. Eldridge and by failing to promptly reimburse Portrait, defendant failed to promptly pay to Portrait or Mr. Eldridge as directed by Portrait the \$750 which Portrait entrusted to defendant for the purpose of paying the tax preparation fee in violation of Rule 10.2(E) of the Rules of Professional Conduct.
7. By failing to return the unearned deposit of \$1,000 paid by Portrait to defendant or render an accounting as reasonably requested by Portrait, defendant failed to: refund promptly any part of the advance fee that was not earned in violation of Rule 2.8(A)(3) of the Rules of Professional Conduct, promptly pay Portrait the funds to which it is entitled in violation of Rule 10.2(E) of the Rules of Professional Conduct, and render an accounting as reasonably requested by Portrait in violation of Rule 10.2(D) of the Rules of Professional Conduct.

Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 18th day of November, 1992.


W. Harold Mitchell, Chairman
Hearing Committee

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

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THE NORTH CAROLINA STATE BAR,)	
)	
Plaintiff)	
)	92 DHC 13
vs.)	
)	ORDER OF DISCIPLINE
J. BRUCE MULLIGAN, ATTORNEY)	
)	
Defendant)	

This cause was heard by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of W. Harold Mitchell, Chairman; Henry C. Babb, Jr.; and Frank L. Boushee on Friday, October 23, 1992. After entering the Findings of Fact and Conclusions of Law in this matter, the committee heard arguments concerning the appropriate discipline to be imposed. Prior to finally entering this Order of Discipline, defendant filed a posttrial motion pursuant to Article IX, Section 14(2)(1)(a) of the Rules, Regulations, and Organization of the North Carolina State Bar supported by additional affidavits, letters and arguments which were all considered by the committee. Based upon the arguments presented at trial and the additional material presented in defendant's posttrial motion, the committee finds the following AGGRAVATING FACTORS:

1. The serious nature of defendant's misconduct.
2. Defendant's suspension for a period of three years for misappropriating clients funds.
3. Defendant's dishonest or selfish motive.
4. Defendant's pattern of misconduct.
5. Defendant's violation of multiple Rules of Professional Conduct.
6. Defendant's refusal to acknowledge the wrongful nature of his conduct.
7. Defendant's substantial experience in the practice of law.
8. Defendant's indifference to making restitution.

Based upon the arguments presented, the committee finds the following MITIGATING FACTORS:


1. Defendant's character and reputation.
2. Defendant's personal and emotional problems.
3. Defendant's full and free disclosure throughout the disciplinary process and cooperative attitude towards these proceedings.
4. Defendant's remorse.
5. Defendant's interim rehabilitation.

The committee finds that the aggravating factors outweigh the mitigating factors and hereby enters this

ORDER OF DISCIPLINE

1. Defendant is hereby disbarred.
2. Plaintiff is taxed with Howard Teller's travel costs. Defendant is taxed with all other costs of this proceeding.

Signed by the Chairman of the hearing committee of the Disciplinary Hearing Commission with the full knowledge and consent of all parties and the other members of the hearing committee this the 18 day of November, 1992.


W. Harold Mitchell, Chairman
Disciplinary Hearing Committee

#112