

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
06 DHC 8

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Plaintiff

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V.

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## FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

EDWARD V. ZOTIAN, Attorney,  
Defendant

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On June 30, 2006, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of Charles M. Davis, Chair; Tommy W. Jarrett, and R. Mitchel Tyler. A. Root Edmonson represented the North Carolina State Bar and Alan M. Schneider represented Edward V. Zotian. Based upon the admissions in the Answer, the stipulations of fact in the Pre-Hearing Order, and the evidence presented at the hearing, the hearing committee finds that the following has been established by clear, cogent and convincing evidence:

## FINDINGS OF FACT

1. The 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. The defendant, Edward V. Zotian (hereinafter, “Zotian”), was admitted to the North Carolina State Bar on July 1, 1979, and at all times mentioned herein, was 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. After a hearing on August 18, 2004, Zotian was suspended from the practice of law in North Carolina by an order of discipline entered on September 3, 2004 and served upon Zotian on September 15, 2004 in 04 DHC 1 ("order of discipline").

4. Pursuant to 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0124(a), Zotian was required to promptly notify by certified mail, return receipt requested, all clients being represented in pending matters of his suspension, the reasons for the suspension, and his inability to act as an attorney after the effective date of his suspension.

5. Pursuant to 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0124(c), Zotian was required to complete all of his clients' matters by the October 15, 2004 effective date of the order of discipline.

6. At no time since the effective date of the order of discipline has Zotian been reinstated to the active practice of law in North Carolina.

7. On or prior to October 4, 2004, Zotian prepared an 11-page proposed sales contract ("sales contract") for his clients, C. Doug and Adrienne Witcher ("the Witchers"), setting forth the Witchers' terms for purchasing a lawn care equipment business in Ronda, NC from J & B Greene, a North Carolina General Partnership ("J & B Greene").

8. On October 4, 2004, Zotian emailed the proposed sales contract and a two-page non-competition agreement ("non-compete") to a business broker, Bob Baker ("Baker").

9. Baker forwarded the sales contract and non-compete Zotian had prepared to Michael Duncan ("Duncan"), the attorney who was representing J & B Greene in the prospective sale.

10. Between October 5, 2004 and October 7, 2004, Zotian made revisions to the sales contract and non-compete and prepared a closing agenda that had a checklist of things that needed to be completed prior to closing ("checklist"). The closing agenda listed Zotian as counsel for the purchaser. Included in the revisions to the sales contract was a change substituting a corporation for the individual purchasers.

11. On October 14, 2004, Zotian responded to numerous requests for modifications to the terms of the sales contract suggested by Duncan.

12. On October 16, 2004, Zotian sent Duncan a clarification of some of the terms of the sales contract.

13. After further negotiation with Duncan about the terms of the sales contract, Zotian revised the sales contract and non-compete and emailed the revised documents to Duncan on October 20, 2004.

14. On October 22, 2004, Zotian emailed Duncan to determine when they could discuss the outstanding items on the checklist that needed to be addressed before the parties could close the sale of the business.

15. On November 3, 2004, Zotian sent Duncan modifications to the sales contract and inquired about items that needed to be concluded to close the sale of the business.

16. Between November 8, 2004 and November 10, 2004, Zotian negotiated with Duncan concerning items that needed to be concluded for the parties to close the sale of the business.

17. On November 10, 2004, Zotian emailed Duncan by-laws he had prepared for the corporation the Witchers intended to form to purchase the business.

18. In December 2004, the Witchers ceased their attempt to purchase the business.

19. In his communications with Duncan concerning the business purchase, before and after October 15, 2004, Zotian held himself out as the attorney for the Witchers. Zotian failed to inform Duncan of his suspension.

20. On May 9, 2005, Zotian appeared before the Forsyth County Board of Commissioners ("Commissioners") on behalf of Clarence Walker, his wife, and others in opposition to the petition of Stephen K. Stultz and wife (the Stultz's) to amend the zoning map and a previous site plan relating to their commercial property on Bethel Church Road in Kernersville.

21. During the May 9, 2005 meeting, the Commissioners first conducted a public hearing on the zoning amendment and, after some discussion among them, then conducted a public hearing on the amendment to the site plan.

22. When Zotian first spoke to the Commissioners on the zoning amendment, he said: "I represent the residents that oppose this rezoning petition."

23. Zotian also made a legal argument to the Commissioners while speaking in opposition to the zoning matter. Zotian read an excerpt from a case and argued that the zoning petition before the Commissioners was an "illegal spot zone."

24. After the public hearing on the zoning matter was closed, there was some discussion among the Commissioners about the matter. During this discussion, Commissioner Marshall referred to Zotian as an attorney although Zotian had informed Commissioner Marshall and the other Commissioners of his suspension.

25. During the public hearing on the site plan amendment, the Stultz's attorney, Raymond D. Thomas ("Thomas") told the Commissioners: "We have met with the attorney, Mr. Zotian, in regard to this matter in trying to find a resolution in regards to certain things in that site plan." Prior to May 9, 2005, Zotian had informed Thomas of his suspension.

26. Zotian then spoke in opposition to the site plan amendment without correcting Commissioner Marshall's or Thomas' erroneous reference to him as being an attorney.

27. Zotian also made a legal argument to the Commissioners while speaking in opposition to the site plan amendment. He argued that the existing special use plan was an ordinance, that purchasers of the property had "constructive knowledge" of it, that it constituted an "encumbrance" on the land and that the courts are unified on this: "Ignorance of the law is no excuse."

28. On October 31, 2005, the Authorized Practice Committee of the North Carolina State Bar issued an opinion to Zotian generally authorizing his appearance in zoning matters before a City Planning Board or before the City Council, with certain limitations. The opinion cautioned Zotian that the general prohibitions of the unauthorized practice of law statutes still applied to him. By making legal arguments to the Commission, Zotian violated one of the limitations.

29. After the North Carolina State Bar became aware of the allegations set out above, a grievance was opened against Zotian that was designated as 04G1504.

30. On or about June 15, 2005, pursuant to 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0112(b)(3), Zotian was sent a letter of notice issued in the name of the Chair of the Grievance Committee of the North Carolina State Bar.

31. On June 28, 2005, pursuant to 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0112(c), Zotian responded to the letter of notice. In his response, Zotian made the following false statements or misrepresentations to the Grievance Committee:

**Relating to the Witchers Matter**

- (a) "Later drafts of the contract did not contain the Zotian, PLLC trust account language which was in the earlier version." Drafts that Zotian prepared and sent to Duncan after the effective date of his suspension contained the Zotian, PLLC trust account language.
- (b) "I know I did not intentionally mislead Mr. Duncan about my license status and never submitted anything to him after my suspension that indicated I was acting as an attorney." Without telling Duncan that his license had been suspended, Zotian continued to negotiate with Duncan and send him drafts of legal documents as though he was an attorney after the effective date of his suspension.

32. On October 19, 2004, Zotian executed an affidavit that he filed with the Disciplinary Hearing Commission in 04 DHC 1 that averred that the letters required pursuant to 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0124 were sent certified mail, return receipt requested.

33. At the time that he executed the affidavit, Zotian had not notified the Witchers of his suspension by certified mail.

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

## CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Zotian and the subject matter.

2. Zotian's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Zotian violated the Revised Rules of Professional Conduct as follows:

- (a) by continuing to engage in the practice of law on behalf of the Witchers after the effective date of his suspension, Zotian practiced law in a jurisdiction where doing so violated the regulation of the legal profession in that jurisdiction in violation of Rule 5.5(a);
- (b) by failing to notify Duncan of his suspension while he continued to represent the Witchers in their attempt to purchase the business, and by holding himself out to Duncan as attorney for the Wichers, Zotian held himself out as being admitted to practice law in this jurisdiction in violation of Rule 5.5(b)(2);
- (c) by making legal arguments to the Commissioners while representing the Walkers and others in opposition to the Stultz's petition to amend the zoning map and a previous site plan while suspended from the practice of law in North Carolina, Zotian practiced law in a jurisdiction where doing so violated the regulation of the legal profession in that jurisdiction in violation of Rule 5.5(a);
- (d) by making false statements to the grievance committee in his June 28, 2005 response to the letter of notice, Zotian offered evidence that he knew was false in violation of Rule 3.3(a)(3) and knowingly made a false statement of material fact in a disciplinary matter in violation of Rule 8.1; and
- (e) by making a false statement to the Disciplinary Hearing Commission concerning his compliance with 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0124, Zotian offered evidence that he knew was false in violation of Rule 3.3(a)(3); and knowingly made a false statement of material fact in a disciplinary matter in violation of Rule 8.1.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the evidence presented at the hearing and the arguments of counsel, the hearing committee hereby makes the following:

## FINDINGS OF FACT REGARDING DISCIPLINE

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

- (a) a prior disciplinary offense in 04 DHC 1;

- (b) a pattern of misconduct;
  - (c) multiple offenses;
  - (d) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
  - (e) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
  - (f) refusal to acknowledge the wrongful nature of his conduct; and
  - (g) substantial experience in the practice of law.
2. Zotian's misconduct is mitigated by the following factors:
- (a) a cooperative attitude toward the proceeding; and
  - (b) remorse.
3. The aggravating factors outweigh the mitigating factors.

#### CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing committee specifically finds that Zotian's conduct involved his continuing to practice law and represent clients after the effective date of his suspension in 04 DHC 1.
2. Zotian failed to notify an attorney with whom he was working on the effective date of his suspension in 04 DHC1 of his suspension.
3. Zotian made false statements to the North Carolina State Bar Grievance Committee when he knew the statements were false.
4. Suspension of Zotian's license is the only sanction that can adequately protect the public for the following reasons:
  - (a) An order of discipline less than suspension would not sufficiently protect the public because Zotian's misconduct involved a flagrant and total disregard for orders of the Disciplinary Hearing Commission.
  - (b) Zotian's false statements to the Grievance Committee during the investigation of this matter undermines the State Bar's ability to regulate attorneys and undermines the privilege of attorneys in this state to remain self-regulating.

(c) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Zotian committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

(d) A suspension to run concurrently with the suspension imposed in 04 DHC 1 would not provide adequate protection to the public.

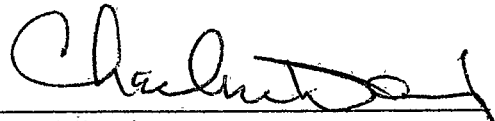
BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The Defendant, Edward V. Zotian, is hereby suspended from the practice of law for a period of five years to begin at the expiration of the suspension imposed in 04 DHC 1.

2. The costs of this proceeding are taxed to Zotian and shall be paid as assessed by the Secretary with 90 days of the entry date of this order.

Signed by the Chair with the consent of the other members of the hearing committee this  
the 19 day of October 2006.



Charles M. Davis  
Chair  
Hearing Committee