

2264

FILED

STATE OF NORTH CAROLINA 1979 MAY 10 PM 12:56 BEFORE THE
COUNTY OF WAKE B.E. JAMES, SEC. DISCIPLINARY HEARING COMMISSION
THE N.C. STATE BAR OF THE NORTH CAROLINA STATE BAR
79 DHC 2

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
vs.)
CLIFTON T. HUNT, JR., Attorney)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard before the undersigned hearing committee of the Disciplinary Hearing Commission of The North Carolina State Bar at a regularly scheduled hearing held on April 27, 1979, in the office of The North Carolina State Bar, 107 Fayetteville Street Mall, Raleigh, North Carolina, and said hearing committee having heard the evidence and arguments and contentions of counsel, made the following 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.
2. The Defendant, Clifton T. Hunt, Jr., is a citizen and resident of Mecklenburg County, North Carolina and was admitted to The North Carolina State Bar in 1953 and is, and was at all times relevant to this proceeding, an attorney at law licensed to practice law in the State of North Carolina and was and is subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and the laws of the State of North Carolina.
3. Hunt, who specializes in patent matters, was approached by Myers in June, 1974 to do a patentability study and then to prepare a patent application on a Waterslide disclosed by Myers to Hunt. The application was filed with the Patent Office September 19, 1974.

4. Myers had built a Waterslide, which is an amusement device comprising a concrete flume about 350 feet long dug into the side of a hill, at his campground in the spring of 1974. The slide proved so popular that Myers began the construction of a second Waterslide in Pigeon Forge, Tennessee in the fall of 1974.

5. Myers and Hunt met in Pigeon Forge in January, 1975 following an initial rejection of the patent application for the purpose of deciding the action to be taken on the patent application and discussing the commercial potential of the invention. There was a general discussion of Hunt owning a percentage of the patent if issued.

6. There were further discussions between Myers and Hunt concerning Hunt's owning a percentage of the patent if issued, and on June 12, 1975, Hunt wrote Myers offering to perform whatever legal work that was required in connection with the protection and commercialization of the invention in exchange for a one-third interest in the proceeds derived from future licensing of the invention.

7. During the summer of 1975, and subsequent to the aforementioned letter, Myers and Hunt agreed that Hunt would perform certain legal services in connection with the commercialization of the Waterslide in return for a ten percent (10%) interest in the invention and in the proceeds received from its commercialization.

8. Myers, caused the incorporation of a company called "Waterboggan, Inc." in which Myers owned all of the stock.

9. In September, 1975, at the suggestion of Hunt, Myers and Hunt consulted with Joseph B. Alala, Esquire, and S. Alan Albright, Esquire, of the law firm of Garland & Alala in Gastonia, North Carolina about arranging the ownership of the patent and stock in the corporation of Myers, Hunt and Waterboggan, Inc.

10. During the consultation, the office of Garland & Alala prepared several documents including an assignment of ten percent (10%) of the patent rights from Myers to Hunt dated January 31, 1975, and an assignment of all the patent rights in the Waterslide from Myers and Hunt to Waterboggan, Inc. dated September 23, 1975. The assignment of all patent rights to Waterboggan, Inc. was executed by Myers and Hunt before a Notary Public in the office of Garland & Alala September 23, 1975.

11. The assignment of ten percent (10%) of the patent rights to Hunt was executed by Myers before a Notary Public in Hunt's office September 23, 1975, although it had been dated January 31, 1975 when typed in the office of Garland & Alala.

12. Hunt instructed the Notary Public in his office to date the acknowledgement of Myers signature on the instrument January 31, 1975, even though it was actually signed September 23, 1975.

13. Hunt invoiced Myers and was paid for his legal services for all work performed prior to July 1, 1975.

14. Hunt and Myers entered into another written agreement dated October 28, 1975 and agreed to by Myers on November 1, 1975 setting forth the agreement of the parties concerning the consideration Hunt was to give in return for the assignment of ten percent (10%) of the patent to Hunt.

15. During the summer and fall of 1975 Hunt prepared and filed patent applications in fifteen foreign countries corresponding to the United States Patent application on the Waterslide, and during this same period of time Hunt continued work on the United States Patent application and conducted correspondence with prospective licensees and their attorneys for construction of the Waterslide throughout the United States. All of this work was performed by Hunt in consideration of the assignment of the ten percent (10%) interest in the patent.

16. The assignment of a ten percent (10%) interest

to Hunt and the assignment of all interest to Waterboggan, Inc. were both recorded in the Patent Office September 24, 1975.

17. Hunt acknowledges the Notary Public's Jurat should have been dated the date the assignment was executed rather than January 31, 1975.

18. Hunt acknowledges that the aforementioned assignment was prepared, executed and backdated to January 31, 1975 with his approval and knowledge; that there was no definite agreement between Myers and Hunt in January 1975 concerning the assignment from Myers to Hunt; that the agreement whereby Myers would assign 10% of the rights in the patent was reached during the summer of 1975; and that the execution and backdating of the assignment with his approval and knowledge constitutes conduct that is in violation of the Code of Professional Responsibility.

Based upon the foregoing findings of fact, the Hearing Committee hereby makes the following CONCLUSIONS OF LAW:

1. The Defendant, a duly licensed attorney in the State of North Carolina subject to the Code of Professional Responsibility and of the laws of the State of North Carolina knowingly and wilfully caused to be prepared and to be executed an assignment of a percentage in a patent reflecting a date previous to the actual date when the agreement had been reached whereby the Defendant would be assigned a percentage in the proceeds from the patent and that such acts involved professional conduct that adversely reflects upon his fitness to practice law, all in violation of Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility of The North Carolina State Bar.

This 10th day of May, 1979.

Jerry L. Jarvis

Jerry L. Jarvis, Chairman

Ralph C. Dingle

Ralph Gingles

Philip Ellen

Philip Ellen

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED BEFORE THE
DISCIPLINARY HEARING COMMISSION
MAY 10 AM 10:58 OF THE
NORTH CAROLINA STATE BAR
B.E. JAMES, SECRETARY
THE N.C. STATE BAR 79 DHC 2

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
CLIFTON T. HUNT, JR., Attorney)
Defendant.)

ORDER

Based upon the foregoing Findings of Fact and
Conclusions of Law and pursuant to Section 14 (20) of the
Rules and Regulations for Discipline and Disbarment of
Attorneys of The North Carolina State Bar;

It is hereby ORDERED that the defendant, Clifton
T. Hunt, Jr. be issued a Private Reprimand.

It is further ORDERED that the defendant, Clifton
T. Hunt, Jr. be taxed with the costs of this action.

This 10th day of April May, 1979.

Jerry L. Jarvis
Jerry L. Jarvis, Chairman

Ralph C. Dingles
Ralph Gingles

Philip Ellen
Philip Ellen