

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
89 DHC 41

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

ROBERT A. MILLER, ATTORNEY  
Defendant

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This matter being presented to the hearing committee scheduled to hear this matter on March 30, 1990 composed of Maureen Murray, Chairman, J. Richard Futrell and Samuel Jerome Crow; with A. Root Edmonson representing the North Carolina State Bar and Wayne Eads representing Robert A. Miller; and based upon the pleadings, the stipulations of the parties, and the consent of the parties, the hearing committee finds the following to be supported by clear, cogent and convincing evidence:

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, Robert A. Miller, was admitted to the North Carolina State Bar on September 16, 1977, and is, and was at all times referred to 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 of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.
4. In May, 1985, Defendant represented Flora Jane Pearce in a domestic case against her estranged husband Billy V. Pearce. Ms. Pearce paid Defendant what funds she could and on June 30, 1985 signed a note for the additional legal fees in the principal amount of \$841.50. Ms. Pearce was to pay \$100 a month on the note with no interest.
5. On July 16, 1985, Flora Pearce signed a deed of trust to secure the note previously signed. This deed of trust was a second deed of trust on Mrs. Pearce's Wendell, North Carolina property.

6. On January 21, 1988, the attorney for the trustee of the first deed of trust on Ms. Pearce's property initiated a foreclosure proceeding in Wake County, file number 88 SP 43. Copies of the Notice of Hearing were sent to Flora Pearce and to Defendant.
7. On February 2, 1988, Defendant wrote to Ms. Pearce and demanded payment of the principal amount of the note plus all interest accumulated due to Ms. Pearce's failure to make payments on the note. The amount of Defendant's demand was for \$1,075.
8. After receiving Defendant's letter, Ms. Pearce contacted Defendant concerning the matter. Ms. Pearce still owed approximately \$14,000 on the mobile home located on the property and was at least three months behind in her payments on that debt. After Defendant explained the adverse nature of their relationship, Ms. Pearce still requested his assistance in her desire to save her property.
9. On February 16, 1988, Defendant filed a Motion for Temporary Restraining Order and Order to Show Cause in Flora Pearce's Wake County domestic case, being file number 85 CVD 3221.
10. An Order to Show Cause was entered by Wake County District Court Judge Jerry Leonard on February 16, 1988 setting the matter for hearing on March 2, 1988.
11. On February 17, 1988, Flora Pearce and Defendant entered into an Offer to Purchase and Contract wherein Defendant, or his designee, would purchase Ms. Pearce's Wendell property for \$2,500 plus assumption of the liens on the property.
12. Also on February 17, 1988, Defendant was granted an Option to Purchase by Ms. Pearce in which Defendant, or his assignee, had the option to purchase Ms. Pearce's real property plus her mobile home for \$10 plus assumption of all liens. Ms. Pearce retained the right to enter into installment purchase contracts to repurchase her property for 150% of the buyers's costs financed at 15% APR for three years.
13. At the time that Defendant entered into these transactions with Ms. Pearce, she was expecting Defendant to exercise his professional judgment for her protection.
14. Defendant contacted the attorney for the trustee in the foreclosure proceeding to get the payoff amount of the first deed of trust on Ms. Pearce's property.
15. On February 24, 1988, after a deposit by Tom Collins, Defendant wrote check number 1776 on his trust account at Branch Bank & Trust Company (BB&T), account number 1301066372 (hereinafter trust account), payable to the trustee in the Pearce first deed of trust in the sum of \$3,801.26 to pay off that indebtedness.
16. On March 2, 1988, Defendant appeared for and represented Flora Pearce in her husband's contempt hearing held in Wake County District Court.

17. On March 7 or 8, 1988, Flora Pearce executed a HUD-1 closing statement, a warranty deed, a Residential Lease Agreement (with purchase option) and an accompanying Memorandum of Entry Into Residential Lease Agreement (with purchase option) in a transaction in which Tom Collins was purchasing Ms. Pearce's real property with a lease-back agreement and a purchase option.
18. The March 7 or 8, 1988 arrangements were beneficial to Flora Pearce and were not unfair to her at that time. However, if those contracts were breached, a potential for unfairness to Flora Pearce then did exist.
19. The Defendant and Tom Collins had an agreement that they would distribute the proceeds received from the property transactions with Flora Pearce as follows: each would be repaid his initial investment, plus fees and expenses advanced, plus accrued pro rata interest thereon, and any amounts still remaining would then be split on a 50/50 basis.
20. A material part of the March 7 or 8, 1988 arrangement was that Tom Collins would be able to purchase the note on the mobile home from Homeowners Funding Corporation of America at a discounted price.
21. Subsequent to the March 7 or 8, 1988 arrangements, David McDonald telephoned Homeowners Funding Corporation of America concerning the mobile home note and payments due thereon. As a result of that contact, it became impossible for Tom Collins to make that purchase. That fact resulted in the breach of the March 7 or 8, 1988 arrangements.
22. As a result of that breach of contract, what had previously been only a potential conflict of interest thereafter became a real conflict of interest.
23. Flora Pearce, through David McDonald, subsequently advised Defendant that she wanted to have the property transferred back to her for whatever costs Collins had in the arrangement.
24. Defendant advised that Collins would not be likely to accept such a proposal.
25. Collins subsequently agreed to sell the property back to Ms. Pearce and McDonald for \$9,900. They paid \$1,000 down and signed a purchase money note and a deed of trust in the amount of \$8,900. The documents for this transaction were prepared by Defendant and he closed the transaction on April 26, 1988.
26. Flora Pearce and McDonald made the June payment due on the note but failed to make subsequent payments.
27. On August 15, 1988, Defendant was substituted as trustee of the deed of trust in the Pearce/Collins loan.
28. On August 15, 1988, Defendant initiated a foreclosure proceeding against Ms. Pearce and McDonald in Wake County

file number 88 SP 683.

29. On August 29, 1988, Flora Pearce and McDonald paid off the note owed to Collins by paying \$9,204.73 to Defendant.
30. On August 30, 1988, Defendant wrote trust account check number 1304 to Tom Collins in the sum of \$5,388.21 as his net proceeds and check number 1305 to himself in the sum of \$3,816.52 as his portion of the residual proceeds from the Pearce/Collins transaction.
31. The transactions Defendant entered into with Flora Pearce on February 17, 1988, proved to be unfair to Ms. Pearce subsequent to the actions of David McDonald.

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

Defendant's foregoing actions constitute grounds for discipline pursuant to N. C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a) By undertaking to represent Flora Pearce in her efforts to keep her real property and mobile home and personally contracting with her for the purchase of her property which later became unfair to Ms. Pearce, Defendant represented a client when the representation of that client was materially limited by the lawyer's own interests in violation of Rule 5.1(B).
- b) By entering into the contracts with Flora Pearce on February 17, 1988 at a time when Ms. Pearce expected Defendant to exercise his professional judgment for her protection, and by entering into contracts with Ms. Pearce that proved ultimately to be unfair to her, Defendant entered into a business transaction with a client in which they had differing interests and in which the client was expecting the lawyer to exercise his professional judgment for the client's protection and which proved to be unfair to the client in violation of Rule 5.4(A).

Signed by the undersigned chairman with the knowledge and consent of the other members of the hearing committee this the 30th day of March, 1990.

Maureen Stewart Murray  
Maureen Murray, Chairman  
Hearing Committee

NORTH CAROLINA

WAKE COUNTY

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Defendant

CONSENT ORDER  
OF  
DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law entered in this matter of even date herewith, and further based upon the consent of the parties the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, Robert A. Miller, is suspended from the practice of law in North Carolina for a period of six months.
2. The suspension is stayed for a period of three years on the following conditions:
  - a) The Defendant shall make restitution to Flora Pearce in the amount of \$3,816.52 payable within thirty months.
  - b) The Defendant shall not violate any of the Rules of Professional Conduct during the period of the stay.
3. Defendant is taxed with the costs as assessed by the Secretary.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee, this the 30th day of March, 1990.

Maureen Murray  
Maureen Murray, Chairman  
Hearing Committee

Consented to:

A. Root Edmonson  
A. Root Edmonson

Wayne Eads  
Wayne Eads