

STATE OF NORTH CAROLINA

WAKE COUNTY

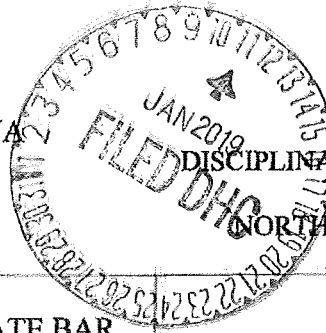
THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DARRYL G. SMITH, Attorney,

Defendant



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

16 DHC 28-SC

CONSENT ORDER

Defendant, Darryl G. Smith, was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on November 3, 2016 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, Richard V. Bennett, and Tyler B. Morris pursuant to 27 N.C. Admin. Code 1B § .0118. Plaintiff, the North Carolina State Bar, was represented by Mary D. Winstead. Defendant was represented by Thomas R. Sallenger. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the disposition imposed. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On November 3, 2016, the DHC entered a Consent Order of Discipline ("Consent Order") finding that Defendant violated the Rules of Professional Conduct by violating the trust accounting rules.
2. The Consent Order suspended Smith's license to practice law for three years and stayed the suspension for three years on condition that Smith comply with the requirements specified in the order.
3. The Consent Order provided that in order to remain eligible for a stay of the suspension Smith was required, among other things, to:

(a) Have any and all accounts into which he has deposited client funds (hereinafter "trust accounts") audited by a Certified Public Accountant within 90 days of the effective date of this order. (These audits are referred to herein as "the CPA's initial audits").

- i. The CPA's initial audits must identify the beneficial owners of the funds currently in Defendant's trust account and establish whether the balance in the account is sufficient to cover all client funds defendant should be holding in trust.
- ii. Smith will provide the CPA's initial audit reports to the State Bar within five days of receipt along with a proposed disbursement plan.
- iii. Smith will remedy any deficiencies identified in the CPA's initial audits and will bring his trust account(s) into compliance with the Rules of Professional Conduct within 30 days of receipt of the audit report. Smith will submit proof of any remedial action to the State Bar and to the CPA no later than 30 days after receipt of the CPA's report. Said remediation shall include Defendant personally depositing funds in the trust account to replenish any deficit in the account(s) and properly disbursing entrusted funds [in accordance with other provisions in the Order].
- iv. If the CPA determines that remedial action is required, the CPA will provide to the Office of Counsel a final audit report certifying that Smith's trust account(s) are in compliance with the Rules of Professional Conduct no later than 30 days after receipt of the remedial information from Defendant.

4. The Consent Order further provided: Defendant shall disburse all funds in his existing trust account to the beneficial owners within 30 days of notification that the State Bar approves of the disbursement plan.

5. On January 30, 2018, Plaintiff filed a motion for an order requiring Defendant to show cause why his license should not be suspended for failure to provide the initial audit report, failure to identify the beneficial owners of the funds held in the trust accounts, and failure to provide Plaintiff with a proposed disbursement plan.

6. On March 16, 2018, this matter was scheduled for hearing and it was agreed between the parties that Defendant would comply with the conditions of the Consent Order and submit a proposed disbursement plan.

7. Defendant has now submitted a proposed disbursement plan which Plaintiff has approved. This plan provides for the disbursement of funds to former clients and/or third parties as identified by Defendant, but funds Defendant has identified as belonging to himself will remain in trust pending further documentation and proof that Defendant is entitled to the funds.

Based upon the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Darryl G. Smith, and over the subject matter of this proceeding.
2. Defendant failed to timely comply with the conditions of the stay of his suspension, but has now submitted a proposed disbursement plan which Plaintiff has approved.

Based upon the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel enters the following

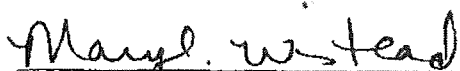
ORDER

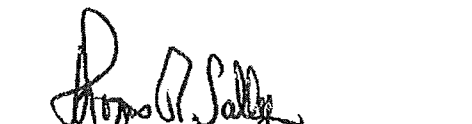
1. The stay of Defendant's suspension shall remain in effect.
2. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.
3. Defendant shall continue to comply with all conditions in the Consent Order and shall timely provide the State Bar with documentation supporting his identification of the beneficial owner(s) of the balance of funds in his trust account.

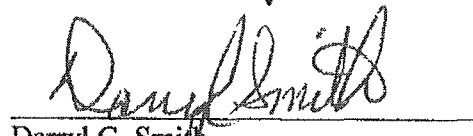
11 Signed by the Chair with the consent of the other Hearing Panel members, this the day of January, 2019.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Mary D. Winstead, Deputy Counsel
Counsel for Plaintiff


Thomas R. Sallenger
Counsel for Defendant


Darryl G. Smith
Defendant