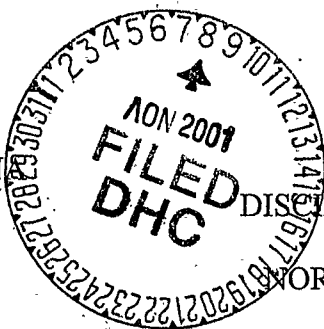


NORTH CAROLINA
WAKE COUNTY



19751
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 1

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

JAMES G. HUFF JR. Attorney,
Defendant

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

This matter was heard on Wednesday, July 11, 2001 before a hearing committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Chair; Carlyn G. Poole, and Lorraine Stephens. The defendant, James G. Huff Jr., was represented by Dudley A. Witt and David B. Freedman. The plaintiff was represented by Fern Gunn Simeon. Based upon the pleadings, the stipulated facts and the evidence introduced at the hearing, the hearing committee hereby enters 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.

2. The defendant was admitted to the North Carolina State Bar in 1993 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations, Rules of Professional Conduct, and Revised Rules of Professional Conduct of the North Carolina State Bar.

3. During all times relevant hereto the defendant was actively engaged in the practice of law in Raleigh, North Carolina, and maintained a law office in Raleigh, North Carolina.

4. The defendant was properly served with process and the hearing was held with due notice to all parties.

5. The defendant maintained an attorney trust account (hereafter, trust account) at Wachovia Bank, account number 6266-070580.

6. The defendant maintained an operating account at Wachovia Bank, account number 6262-070898.

7. On or about October 18, 1999, the defendant prepared a deposit slip that provided for the deposit of a total of \$123,941.13 into his operating account, account number 6262-070898. The \$123,941.13 were funds that the defendant collected for a real estate closing that he handled for Garnant Magee Jasper (hereafter Jasper).

8. The \$123,941.13 from the Jasper closing should have been deposited into the defendant's trust account and disbursed in accordance with the closing statement.

9. Between October 19 and October 21, 1999, six checks drawn on the defendant's trust account in the amount of \$111,960.56 for payment of expenses in the Jasper closing cleared the defendant's trust account. There were no funds belonging to Jasper in the defendant's trust account between October 19 and October 21, 1999.

10. Prior to October 21, 1999, the defendant handled several other closings and deposited funds into his trust account on behalf of the following clients: Terry and Millicent Snow, Larry and Beverly Hartbarger, Hava Silverstein, Ellen and Samuel Ballard, Dick and Kurmaskie, Louis Marinello, Peggy and Chris Crocker, Gary and Deborah Stone, Scott Wallace, Faye B. Frazier, and Melvin and Mattie Davis.

11. On October 21, 1999, there should have been a balance of \$44,865.91 in the defendant's trust account on behalf of Terry and Millicent Snow, Larry and Beverly Hartbarger, Hava Silverstein, Ellen and Samuel Ballard, Dick and Kurmaskie, Louis Marinello, Peggy and Chris Crocker, Gary and Deborah Stone, Scott Wallace, Faye B. Frazier, and Melvin and Mattie Davis because checks written on behalf of those clients had not cleared the defendant's trust account on October 21, 1999.

12. On October 21, 1999, the balance in the defendant's trust account dropped below \$44,865.91, the amount that should have been in his trust account for Terry and Millicent Snow, Larry and Beverly Hartbarger, Hava Silverstein, Ellen and Samuel Ballard, Dick and Kurmaskie, Louis Marinello, Peggy and Chris Crocker, Gary and Deborah Stone, Scott Wallace, Faye B. Frazier, and Melvin and Mattie Davis.

13. There was a balance of \$2,539.91 in the defendant's trust account on October 21, 1999.

14. On October 21, 1999, there was not enough money in the defendant's trust account to pay outstanding checks from the closings for the defendant's clients: Terry

and Millicent Snow, Larry and Beverly Hartbarger, Hava Silverstein, Ellen and Samuel Ballard, Dick and Kurmaskie, Louis Marinello, Peggy and Chris Crocker, Gary and Deborah Stone, Scott Wallace, Faye B. Frazier, Melvin and Mattie Davis, and Garnant Magee Jasper.

15. The defendant's trust account bank records reflect that a deposit of \$123,941.13, the Jasper closing funds, was credited to the defendant's trust account on October 22, 1999.

16. With respect to the Jasper closing funds, in 1999 the North Carolina State Bar investigated two checks that were presented to the defendant's trust account for payment, but there were insufficient funds in his trust account to pay those checks.

17. Pursuant to the State Bar's NSF check program, Harry B. Warren (hereafter, Warren) sent a letter dated December 15, 1999 to the defendant and asked that he provide an explanation for the NSF checks.

18. The defendant responded in a letter dated January 5, 2000 to Warren that the Jasper closing funds were "inadvertently put in our operating account instead of our trust account. The deposit was taken to the bank by a new employee on the 18th so I did not catch the error nor did the bank."

19. The defendant also sent Warren a copy of the deposit slip that the defendant prepared, depositing the Jasper closing funds into the defendant's operating account.

20. The defendant never told Warren that it was the defendant's actions that caused the Jasper closing funds to be deposited into his operating account instead of his trust account.

21. The defendant's January 5, 2000 response to Warren was deceptive and misleading.

22. On May 11, 1999, the defendant represented Terry M. Snow and his wife, Millicent A. Snow (hereafter, the Snows), in a real estate closing.

23. According to the settlement statement, the defendant was supposed to disburse \$5,580.47 to First Union National Bank (FUNB) to pay off a second mortgage for the Snows.

24. By letter dated October 15, 1999, the defendant told the Snows that he sent a check to FUNB to pay off the loan in May 1999. The defendant told the Snows that FUNB sent the payoff check back to him because someone other than the defendant had paid off the loan.

25. On or about October 15, 1999, the defendant's office sent trust account check number 6131 in the amount of \$5,580.47 to the Snows.

26. The defendant failed to return \$5,580.47 to the Snows for several months.
27. The defendant represented William Riddle and wife, Rebecca (hereafter, Riddles) in a real estate closing on September 30, 1999.
28. The lender, First Tennessee Bank, over-funded the Riddles' loan by \$7,000.00. The Riddles were due a refund of \$7,000.00.
29. The defendant did not refund the \$7,000.00 to the Riddles until January 13, 2000.
30. On October 21, 1999, the balance in the defendant's trust account dropped below \$7,000.00. There was \$2,539.91 in the defendant's trust account on October 21, 1999.
31. On October 21, 1999, there was not enough money in the defendant's trust account to pay the \$7,000.00 that was due the Riddles.
32. The defendant represented Samuel Ballard (hereafter, Ballard) in a real estate closing on October 15, 1999.
33. The lender, American Wholesale Lender, over-funded the Ballard loan by \$2,065.00.
34. The defendant did not refund the \$2,065.00 to American Wholesale Lender until April 2000.
35. The defendant handled real estate closings for clients in 1998 and 1999.
36. On several occasions, the defendant disbursed more money in a closing than he received for the client; thus, leaving a shortage of funds or a negative balance for another client whose funds were on deposit in the defendant's trust account.
37. These negative balances for clients were brought to the defendant's attention by an employee, James Duley. As of the date of the disciplinary hearing on July 11, 2001, many of the defendant's former clients still have negative balances.
38. The defendant represented Maurice Robinson in a closing on April 28, 1999. There was a shortage of closing funds because the defendant failed to reduce the amount of the broker's commission by the amount of the broker's credit.
39. There was a shortage of \$477.50 in the Robinson closing. The defendant spent other clients' money to pay all of the expenses in the Robinson closing.

40. The defendant represented Barry Dudley in a closing on July 15, 1999. There was a shortage of closing funds because the defendant failed to reduce the amount of the broker's commission by the amount of the broker's credit.

41. There was a shortage of \$1,237.95 in the Dudley closing. The defendant spent other clients' money to pay the \$1,237.95 needed to pay all of the expenses in the Dudley closing.

42. The defendant represented Blazej Sonnenberg and his wife in a closing on July 15, 1999. The Sonnenbergs paid a \$1,000.00 earnest money deposit to the realtor, York Properties, before the closing. The defendant should have deducted the \$1,000.00 earnest money deposit from York Properties' commission at the time of the closing. Instead, the defendant overpaid York Properties by \$1,000.00.

43. There was a shortage of \$1,000.00 in the Sonnenberg closing. The defendant spent other clients' money to pay all of the expenses in the Sonnenberg closing.

44. The defendant misappropriated other clients' money when he spent their money to pay the expenses in the Robinson, Dudley, and Sonnenberg closings.

45. The defendant did not have the permission of his other clients whose funds were in his trust account to spend their money to pay the closing expenses of Robinson, Dudley, and Sonnenberg.

46. The defendant deposited personal funds in the amount of \$2,715.45 into his trust account to replace other clients' money that was used to pay the closing expenses of Robinson, Dudley, and Sonnenberg.

47. In 1999, the defendant handled closings for the clients listed below. In each of the closings, the defendant disbursed more money than he received from the lenders because he overpaid the brokers at closing. The clients and the shortages were as follows:

a. Poston	\$750.00
b. Vereen	\$ 3.54
c. Sims	\$177.02
d. Phillips	\$415.00

48. The defendant misappropriated other clients' money that was in his trust account when he spent their money to pay the closing expenses for Poston, Vereen, Sims and Phillips.

49. The defendant did not have the permission of his other clients whose funds were in his trust account to spend their money to pay the closing expenses of Poston, Vereen, Sims and Phillips.

50. The defendant failed to record the deeds of trust on the date that the loan was closed and the funds were disbursed in the following client's closings:

	<u>Date of Closing</u>	<u>Date deed of trust recorded</u>
Mary Dunlap	March 24, 1999	May 26, 2000
Clarence Dunn	April 7, 1999	August 7, 2000
Deborah Irwin	April 2, 1999	June 1, 2000
Norman S. Jones	October 25, 1999	April 26, 2001
Terry Snow	May 11, 1999	August 3, 1999
McCasson Taborn	March 26, 1999	June 8, 2000

51. From November 1998 to June 1999, the defendant did not obtain promptly final title insurance policies in at least 30 loan closings for Investors Title Insurance and 90 loan closings for Chicago Title Insurance Company, although funds were paid at the closings to purchase title insurance.

52. The title insurance companies would not issue title policies because of the defendant's failure to record the deed of trust or some other instrument, failure to send a lien affidavit, or failure to include a legal description of the encumbered property on a deed of trust.

53. In late 1998 or early 1999, the defendant began handling refinances for Perennial Mortgage Group (hereafter, PMG).

54. The defendant charged the borrower in PMG closings an attorney's fee. The defendant charged the borrower referred to him by PMG \$100.00 more in a refinance than the borrower who was not referred to him by PMG for a refinance.

55. The defendant took \$100.00 from his attorney's fee and paid PMG \$100.00 for each refinance he completed for a PMG borrower.

56. From February to December 1999, the defendant paid PMG a total of \$17,800.00.

57. The defendant's misappropriations of client funds were not intentional acts. Rather, the misappropriations were due to the defendant's incompetence or gross negligence in handling real estate closings and his clients' funds.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over James G. Huff Jr., the defendant, and the subject matter.

2. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

(a) By misappropriating all or a portion of client funds which he should have held in trust for the benefit of his clients: Terry and Millicent Snow, Larry and Beverly Hartbarger, Hava Silverstein, Ellen and Samuel Ballard, Dick and Kurmaskie, Louis Marinello, Peggy and Chris Crocker, Gary and Deborah Stone, Scott Wallace, Faye B. Frazier, and Melvin and Mattie Davis, the defendant failed to hold client funds in his trust account in violation of Revised Rule 1.15-1(a) and (c).

(b) By misappropriating all or a portion of client funds which he should have held in trust for the benefit of his clients, the Riddles, the defendant failed to hold client funds in trust in violation of Revised Rule 1.15-1(a) and (c).

(c) By failing to return promptly money that belonged to the Snows, the Riddles, and Ballard, the defendant failed to promptly pay or deliver to the client those funds belonging to the client to which the client is entitled in the possession of the lawyer or held in a trust account by the lawyer in violation of Rule 1.15-2(h).

(d) By misappropriating other clients' funds to pay the closing expenses for Robinson, Dudley, and Sonnenberg, the defendant failed to hold client funds in trust in violation of Rule 1.15-1(a) and (c).

(e) By depositing his personal funds into his trust account to replace the money he had taken from other clients to pay the expenses in the Robinson, Dudley, and Sonnenberg closings, the defendant commingled personal funds with client funds in violation of Rule 1.15-1(e).

(f) By misappropriating other clients' funds to pay the closing expenses for Poston, Vereen, Sims and Phillips, the defendant failed to hold client funds in trust in violation of Rule 1.15-1(a) and (c).

(g) By failing to record promptly the deeds of trust relative to his clients' closings, the defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.

(h) By failing to send promptly necessary documents to the title insurance companies so that the companies could issue title policies in various closings, the

defendant failed to act with reasonable diligence and promptness in representing a client, in violation of Rule 1.3.

(i) By paying PMG \$100.00 from his attorney's fee for each real estate closing he completed, the defendant shared legal fees with a non-lawyer in violation of Rule 5.4(a).

During the second or disciplinary phase of the hearing, both the plaintiff and the defendant offered witnesses and the hearing committee hereby makes the following:

ADDITIONAL FINDINGS OF FACT

1. The defendant stopped practicing law in late January or early February 2001.
2. The defendant and the North Carolina State Bar consented to the appointment of a trustee to the defendant's law practice.
3. On February 16, 2001, a Wake County Superior Court judge appointed Attorney James K. Pendergrass (hereafter, Pendergrass) as the trustee to protect the interests of the defendant's clients and provide an accounting of the defendant's trust account to the court either annually or at the completion of the disbursement of funds from the defendant's trust account.
4. Pendergrass secured over 200 real estate files from the defendant's office and has begun to review the files to determine if the closing transactions were completed.
5. According to Pendergrass, he has observed many problems in the defendant's client's real estate files. Some of the problems are: funds were disbursed prior to documents being recorded, documents were recorded without titles updated, deeds of trust were recorded prior to deeds, deeds of trust were recorded without deeds being on record, documents not recorded for months, mail containing lender's documents (some of the documents were recorded and some of the documents were not recorded because the letters were never opened), original documents not returned to lenders, almost no final title policies obtained for lenders or owners, and hundreds of checks retained in files and not given to vendors and clients.
6. Pendergrass also testified that his preliminary audit of the defendant's trust account indicates that there is a \$10,000 to \$12,000 shortage in the defendant's trust account.
7. Pendergrass is trying to correct the many problems he has found in the defendant's clients' real estate files. He expects that it will take at least two years to complete his work as trustee of the defendant's law practice.

8. The defendant received an attorney's fee in every real estate closing he handled, despite the numerous problems and deficiencies pointed out to him by James Duley and those problems and deficiencies found by Pendergrass.

9. The defendant has dealt with personal problems of alcoholism and depression. He has received counseling for those problems.

10. The defendant is working with the PALS/FRIENDS program to deal with his alcoholism and depression.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - (a) a pattern of misconduct;
 - (b) multiple offenses;
 - (c) submission of false evidence, false statements or other deceptive practices during the disciplinary process (the NSF checks investigation);
 - (d) vulnerability of the victims/clients; and
 - (e) substantial experience in the practice of law
2. The defendant's misconduct is mitigated by the following factors:
 - (a) absence of a prior disciplinary record;
 - (b) personal or emotional problems;
 - (c) physical or mental disability or impairment; and
 - (d) remorse.
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of James G. Huff Jr., the defendant, is hereby suspended for five years. Four years of the five-year suspension shall be an active suspension of the defendant's law license, with the last year of the five-year suspension stayed upon the following terms and conditions:

a. The defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon the defendant.

b. The suspension will become effective 30 days from service of this order upon the defendant and will continue for a period of not less than 48 consecutive months.

c. During the four-year active suspension period, the defendant shall comply with the following:

i. He shall not violate any state or federal laws.

ii. He shall not violate any provisions of the Revised Rules of Professional Conduct or the rules of ethics in effect during the period of active suspension.

iii. He shall satisfy the mandatory continuing legal education requirements of the North Carolina State Bar during each of the years of the active suspension.

iv. He shall obtain a mental assessment by a licensed psychiatrist. Prior to the defendant receiving the assessment from the licensed psychiatrist, he must submit the psychiatrist's name to the North Carolina State Bar to obtain the State Bar's approval of the psychiatrist. The purpose of the mental assessment is to determine the defendant's mental fitness to practice law. The defendant shall sign a waiver that allows his treating psychiatrist to release information to the North Carolina State Bar about his prognosis, treatment and diagnosis.

2. The defendant may seek reinstatement of his license to practice law upon filing a written petition and demonstrating compliance with the following conditions:

a. The defendant shall not violate any state or federal laws during the period of active suspension.

b. The defendant shall not violate any provisions of the Revised Rules of Professional Conduct or the rules of ethics in effect during the period of active suspension.

c. The defendant shall satisfy the mandatory continuing legal education requirements of the North Carolina State Bar during each year of the four-year active suspension.

d. The defendant shall complete a course on trust account management that is offered by a North Carolina State Bar approved continuing

legal education provider, if such a course is offered during the four-year active suspension period.

e. The defendant shall complete any recommended treatment by the assessing licensed psychiatrist and he shall obtain an opinion that he does not suffer from any mental or emotional problems that would interfere with his performance of the obligations necessary to practice law.

f. The defendant shall comply with and satisfy all court orders or judgments entered against him respecting restitution to the victims of his misconduct.

g. The defendant shall reimburse all clients whose funds were unintentionally misappropriated, the amount to be determined and certified to the North Carolina State Bar by James Pendergrass, trustee of the defendant's law practice.

h. The defendant shall pay Pendergrass's trustee fee or reimburse the North Carolina State Bar if the State Bar has paid Pendergrass's trustee fee.

i. The defendant shall pay all costs incurred in this disciplinary proceeding and taxed against him, including the costs of his deposition and the deposition of Harry Warren.

j. The defendant shall comply with all provisions of Rule .0124 and .0125(b) of the North Carolina State Bar's Discipline and Disability Rules;

k. The defendant shall take and successfully complete a law office management course that is approved by the North Carolina State Bar Board of Continuing Legal Education.

3. Upon entry of an order staying this suspension and granting the reinstatement of the defendant's license to practice law, the order of stayed suspension shall continue in force for the balance of the term of the suspension, provided that the defendant complies with the following conditions:

a. The defendant shall violate no federal or state laws.

b. The defendant shall violate no provisions of the Revised Rules of Professional Conduct or the rules of ethics in effect at the time of the stayed suspension.

c. The defendant shall not handle client or fiduciary funds, except those paid as fees that are presently owed to the defendant.

d. The defendant shall not handle any real estate matters,

including real estate closings during the one-year stayed suspension.

e. The defendant shall satisfy the mandatory continuing legal education requirements of the North Carolina State Bar during the one year stayed suspension.

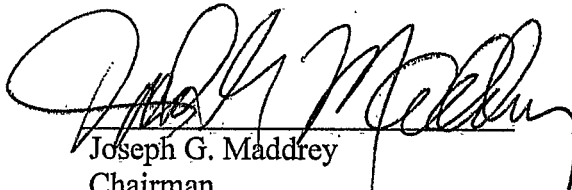
f. The defendant shall pay any costs incurred in connection with his reinstatement proceeding and assessed against him.

g. During the one year stayed suspension, the defendant shall at his own expense hire a law office management consultant to review the defendant's files and law office practices to determine that he is complying with the State Bar's rules of ethics, particularly those rules related to his handling of client funds. The State Bar must approve the law office management consultant before the defendant hires him or her. The law office management consultant will make quarterly reports to the State Bar about the defendant's law practice.

4. If the suspension of the defendant's law license is not stayed, or if the suspension is stayed and the stay is later lifted, the defendant must prove that the conditions recited in paragraph 2 above have been complied with prior to being reinstated.

5. The defendant shall pay the costs of this proceeding, as assessed by the Secretary of the N.C. State Bar, no later than 30 days from the date that this order is served upon him.

Signed by the chair with the consent of the other hearing committee members, this
the 6th day of November, 2001.


Joseph G. Maddrey
Chairman,
Hearing Committee