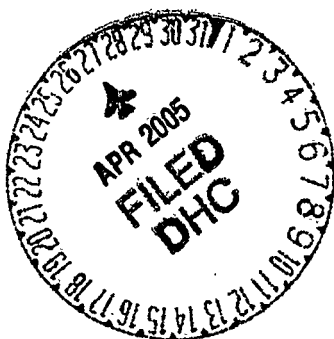


WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 22

y.

BOBBY G. MARTIN, Attorney,
Defendant

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

This matter comes before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Betty Ann Knudsen and Carlyn G. Poole upon the consent of the parties as to the findings, conclusions and discipline to be imposed. A. Root Edmonson represents the North Carolina State Bar and Randolph M. James represents the Defendant. Based upon the consent of the parties, the hearing committee makes 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, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The defendant, Bobby G. Martin (hereinafter, Martin), was admitted to the North Carolina State Bar on August 12, 1965 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 the times relevant to this complaint, Martin actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Winston-Salem, Forsyth County, North Carolina; however within the last two years Martin no longer has a law office in which he regularly sees clients. Martin represents himself to be semi-retired, occasionally preparing powers of attorney, living trust agreements and wills.

4. Martin and his Winston-Salem called Sal investment options for its

5. In 1994, Marti (referred to as C-CF) in Ne

Also owned and operated a company in (hereinafter, Salem) that offered ts.

with Cross-County Funding, (hereinafter, would receive a 5% commission on any

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investment Salem's clients made in short-term private first mortgages in New York through C-CF.

6. In these first mortgage investments, an individual investor would agree to provide his or her money to serve as a short-term private loan for property located in New York. An individual investor's money would then be pooled together with other investors. In return for his or her money, the investor received an interest in a mortgage note secured by real property that paid interest anywhere from 10-16% of the value on the face of the note.

7. By late 1997, Martin was aware that many of Salem's clients' mortgage investments through C-CF were in default.

8. In late 1997, Martin met with Anthony Anderson (hereinafter, Anderson) and Ira Zimmerman (hereinafter, Zimmerman) in New York at Priority Funding, Inc. who held themselves out as "work out" specialists that could assist Salem's clients' whose investments were in default.

9. After the meeting with Martin, Anderson and Zimmerman formed A/Z Partnership Group, Inc. (hereinafter, A/Z Partnership) to work out Salem's clients' sixty-six failed C-CF mortgages.

10. A/Z Partnership subsequently asked Salem's clients to assign their mortgages to A/Z Partnership and asked Martin to assist it in that effort.

11. Some of Salem's clients, including Mildred Miles (hereinafter, Miles) and Betty Whitman (hereinafter, Whitman), asked Martin for legal advice concerning whether they should assign their mortgages to A/Z Partnership.

12. Martin advised Miles and Whitman to assign their mortgages to A/Z Partnership even though the assignments provided no consideration to them for the assignment and provided no other legal protection for their investment.

13. Martin allowed his concern for Salem's potential civil liability for the failed investments in first mortgages with C-CF, and his potential personal liability for having advised Miles and Whitman in 1996 to turn down an offer from their mortgagor of a deed in lieu of foreclosure, to conflict with the interests of Miles and Whitman.

14. Also in late 1997, Martin's long time client, Dr. Lucia R. Karnes (hereinafter, Dr. Karnes), met with Martin for Martin to review her estate plan and prepare a new will for her. Martin knew from his representation of Dr. Karnes that she had approximately \$61,000.00 in an IRA.

15. Dr. Karnes sought Martin's advice regarding an investment for her IRA funds that would produce a greater return. Martin thereafter advised Dr. Karnes to invest her IRA in a short-term private first mortgage through A/Z Partnership without fully disclosing to her the problems the other Salem clients had with first mortgage investments in New York.

16. On February 16, 1998, Martin wrote to A/Z Partnership advising it how to pay the 5% commission that Salem would be entitled to for clients who invested in first mortgages through A/Z Partnership.

17. Martin failed to advise Dr. Karnes that he would get a 5% commission from A/Z Partnership for her investment.

18. Martin allowed his interest in getting a commission from A/Z Partnership to conflict with Dr. Karnes' interests when he advised Dr. Karnes to invest in a short term mortgage through A/Z Partnership, particularly given Martin's knowledge of the risk of such an investment learned from Salem's other clients' experience in failed short term mortgage investments through C-CF.

19. Martin also advised other Salem clients who had asked for his advice to invest in first mortgage investments with A/Z Partnership. In doing so, Martin failed to advise those Salem clients of the risks known to him as a result of the losses suffered by earlier Salem clients in first mortgage investments in New York.

20. A/Z Partnership misapplied Dr. Karnes' investment, and the investments of other Salem clients.

21. The evidence is not clear and convincing that Martin was the cause of the loss of Dr. Karnes' and other Salem clients' funds invested with A.Z. Partnership.

22. After Martin learned that A/Z. Partnership had not invested his clients' money as they had represented that they would, Martin failed to disclose this fact to his clients. Instead, for a period of time, Martin reassured his clients the investments were safely invested and secured by first mortgages.

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 Martin and the subject matter.

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

- (a) by undertaking to advise Miles and Whitman concerning whether to assign their mortgages to A/Z Partnership when his and Salem's interests conflicted with the interests of Miles and Whitman, Martin represented clients when representation of

those clients was materially limited by his own interests in violation of Rule 1.7(b);

- (b) by advising Miles and Whitman to assign their mortgages to A/Z Partnership for no consideration or other legal protection, Martin prejudiced or damaged his clients during the course of the professional relationship in violation of former Rule 8.4(g);
- (c) by advising Dr. Karnes to invest in a short-term private mortgage through A/Z Partnership when his interest in receiving a commission from A/Z Partnership for that investment was in conflict with Dr. Karnes' interests, Martin represented a client when representation of the client was materially limited by the lawyer's own interests in violation of Rule 1.7(b);
- (d) by failing to advise Dr. Karnes and the other Salem investors who invested in A/Z Partnership of the risk known to him as a result of the losses suffered by earlier Salem clients in first mortgage investments in New York, Martin failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of Rule 1.4(b); and
- (e) by reassuring his clients that their investments were safely invested and secured by first mortgages when he knew A/Z Partnership had not invested the funds as they had represented that they would, Martin engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of former Rule 8.4(c).

BASED UPON the foregoing Findings of Fact, the Conclusions of Law, and with the consent of the parties, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

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

- (a) substantial experience in the practice of law; and
- (b) the vulnerability of Martin's victims.

2. Martin's misconduct is mitigated by the following factors:

- (a) Martin's clients were substantially reimbursed for their investment losses from third party insurance companies;
- (b) Martin's investment advice to his clients was not given in the scope of his practice of law;
- (c) the absence of a prior disciplinary record; and

- (d) a cooperative attitude toward these proceedings;

3. The mitigating factors outweigh the aggravating factors.

4. The protection of the public, however, does require a suspension of Martin's license; but that suspension may be stayed for a period of three years on the following terms and conditions:

- (a) Martin shall provide no investment advice to clients;
- (b) Martin shall disclose to potential clients that he is semi-retired, and is not actively practicing law on a full time basis;
- (c) Martin shall maintain his CLE minimum requirements;
- (d) Martin shall comply with the Revised Rules of Professional Conduct; and
- (e) Martin shall not violate any local, state or federal law.

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

ORDER OF DISCIPLINE

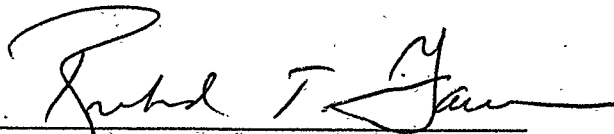
1. Martin's license to practice law in North Carolina is suspended for eighteen months.

2. The suspension of Martin's license is stayed for three years upon the following terms and conditions:

- (a) Martin shall provide no investment advice to clients;
- (b) Martin shall disclose to potential clients that he is semi-retired, and is not actively practicing law on a full time basis;
- (c) Martin shall maintain his CLE minimum requirements;
- (d) Martin shall comply with the Revised Rules of Professional Conduct; and
- (e) Martin shall not violate any local, state or federal law.

3. Martin is taxed with the costs of this action as assessed by the Secretary.

Signed by the Chair with the consent of the other hearing committee members, this
the 26th day of April, 2005.

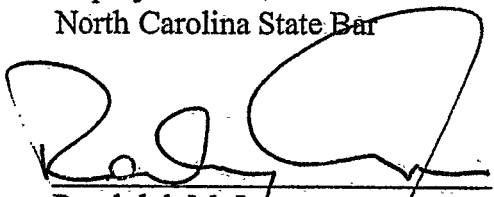


Richard Gammon, Chair
Hearing Committee

CONSENTED TO:



A. Root Edmonson
Deputy Counsel
North Carolina State Bar



Randolph M. James
Counsel for Bobby G. Martin