

NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
82 DHC 9

FILED

1982 DEC 14 AM 8 42

D. E. JAMES, SEC.
THE N.C. STATE BAR

THE NORTH CAROLINA STATE BAR,)

Plaintiff,)

vs.)

DALLAS MCPHERSON, Attorney at Law,)

Defendant.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS CAUSE came on to be heard before the undersigned duly appointed Members of a Hearing Committee of the Disciplinary Hearing Commission on Friday, October 29, 1982, at a hearing held at The North Carolina State Bar Building in Raleigh, North Carolina. The plaintiff, The North Carolina State Bar, was represented by David R. Johnson. The defendant was present and was represented by counsel, James B. Maxwell, from Durham, North Carolina. Based upon clear, cogent and convincing evidence, including the admissions of the defendant in his Answer and the stipulations between 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 it is the proper party to bring this disciplinary proceeding under the authority granted it under 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, Dallas McPherson, was admitted to The North Carolina State Bar on September 3, 1969, and is and was at all times referred

to herein an Attorney at Law licensed to practice in the State of North Carolina and subject to the Rules, Regulations, Canons of Ethics, and Code of Professional Responsibility of The North Carolina State Bar and of the laws of the State of North Carolina.

3. At and during all of the times hereinafter referred to, 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 Greenville, Pitt County, North Carolina.

4. On or about March 11, 1975, the defendant was employed to represent Tarheel Homes and Realty, Inc., a corporation of which M. K. Branch was the president and principal stockholder. At all times referred to hereafter, the relationship of attorney-client existed between the defendant and Tarheel Homes and Realty, Inc., and/or M. K. Branch.

5. At the time the defendant was initially employed to represent Tarheel Homes and Realty, Inc., that corporation owned and was developing real property in Pitt, Greene and Lenoir Counties. The corporation was heavily in debt, and creditors were instituting numerous civil actions against the corporation and Mr. Branch. To enable the defendant to adjust the debts of the corporation as well as to allow him to accept service on behalf of the corporation, a Power of Attorney was executed on April 30, 1975, by M. K. Branch, acting as president of Tarheel Homes and Realty, Inc., authorizing the defendant to sell corporate lands in Pitt, Greene and Lenoir Counties, accept service of lawsuits against the corporation, and to transact any business of the corporation. This Power of Attorney was recorded in the Pitt County Registry on May 2, 1975. Over the next several months, the defendant negotiated and compromised the bulk of the claims against the corporation, and generally wound down its affairs. Accordingly,

on December 9, 1975, the defendant prepared and had Mr. Branch execute a Revocation of the Power of Attorney which was also recorded in the Pitt County Registry.

6. One of the civil actions brought against the corporation involved a debt for which M. K. Branch's personal residence was pledged as collateral. On or about December 2, 1975, that home was subject to a judicial sale. In order to resolve the claim that was the basis of that foreclosure action, and with the knowledge of Mr. Branch, the defendant personally borrowed \$7500 on December 5, 1975, and loaned that amount to Tarheel Homes and Realty, Inc., for the benefit of M. K. Branch.

7. M. K. Branch continued to suffer financial problems and was short of funds with which to pay creditors. After discussing this problem with Mr. Branch, on January 22, 1976, the defendant borrowed an additional \$8000 in his own name, signing a promissory note for that amount, and depositing the balance of the proceeds (after the deduction of the interest) of \$7881.80 in the account maintained by the defendant as Trustee for Tarheel Homes and Realty, Inc., at Southern Bank and Trust Company in Ayden, North Carolina. The defendant then wrote a check to Branch in the amount of \$5,000.00 and later wrote two checks to himself, totalling \$2,500.00.

These latter two checks were credited as repayment of the December, 1975, loan and no disclosure or accounting was made by the defendant to Branch on that repayment. In the course of their dealing, the defendant was the sole determiner of the allocation of the funds maintained in the bank accounts by him as trustee for Tarheel Homes and Realty. He wrote the checks and disbursed the funds among the various creditors for debts and expenses including the attorney fees for himself. The records revealed that in the three accounts the defendant maintained as trustee,

approximately \$238,000.00 went through the account of which approximately \$4,000.00 was credited to attorney fees.

8. That no notes or security instruments were drawn or executed at the time the loans were made. No clear understanding was reached as to the liability of M. K. Branch and/or Tarheel Homes and Realty, Inc., for the repayment of these loans, nor did the defendant specify any due date for the loan, any plan for repayment or any interest rate. The defendant also did not discuss with Branch that differing interest could be created by the loan and could affect the attorney/client relationship by placing the defendant and Branch in a debtor-creditor relationship. Having made the above-two loans, the defendant continued to maintain an attorney-client relationship with M. K. Branch and Tarheel Homes and Realty, Inc.

9. According to the records maintained by the defendant in his law practice, as of December, 1976, Tarheel Homes and Realty, Inc., and/or M. K. Branch owed the defendant approximately \$16,600 in fees for professional services rendered from March, 1975, through December, 1976.

10. That in September, 1978, the defendant had discussions with M. K. Branch in which it was agreed to settle the outstanding legal fees and loans owed to the defendant for a total amount of \$20,000. A payment schedule was agreed upon, but no payments were made by M. K. Branch pursuant to this compromise.

11. On April 1, 1979, the defendant prepared and M. K. Branch executed a note payable to the defendant in the amount of \$9000, representing a further compromise of the debt Branch or his business owed to the defendant. No payments were ever made on this note.

12. In July of 1979, M. K. Branch employed the defendant to represent him in the filing of an individual petition for voluntary

bankruptcy. On July 31, 1979, the defendant did file such a petition on behalf of M. K. Branch.

13. At the time of the filing of said petition, the debt of Branch to the defendant had not been satisfied. However, this debt and the note evidencing it were not listed on the appropriate schedules of the bankruptcy petition. The defendant and Branch discussed listing this debt in the petition, and the defendant made the conscious decision not to include the debt in the petition, despite the fact that Schedule A of the bankruptcy petition requires that all debts of the bankrupt be listed. M. K. Branch was discharged of his debts by the bankruptcy court on January 31, 1980, and by that time the defendant knew that his debt was discharged as well.

14. In September of 1980, M. K. Branch consulted with the defendant regarding the legal title and possibilities of disposition of two lots located in Greene County, North Carolina. According to the records of the office of the Greene County Register of Deeds, the lots were titled in the name of Tarheel Homes and Realty, Inc. Branch discussed the possibility of using those lots to satisfy what was considered to be his moral obligation to the defendant for past monies advanced to him or for fees.

15. The defendant prepared a deed to be executed by Mr. and Mrs. Branch to him, but this was never executed or returned to the defendant by Mr. Branch.

17. Sometime in 1975 or 1976, Tarheel Homes and Realty had suspended its business operations and its corporate charter was suspended. The defendant knew that the charter had been suspended prior to October 13, 1980.

18. On October 13, 1980, the defendant caused to be recorded in Greene County Register of Deeds office at Book 418, page 190, a copy of the Power of Attorney, plaintiff's Exhibit 1 attached to the Complaint and

plaintiff's Exhibit 7 introduced into evidence, the same Power of Attorney that had been revoked by revocation recorded in the Pitt County Register of Deeds office on December 11, 1975, plaintiff's Exhibit 4 and defendant's Exhibit 11 introduced into evidence.

19. On October 13, 1980, the defendant conveyed the two lots in Greene County from Tarheel Homes and Realty, Inc., to Neil Realty. The deed was made in the name of the corporate entity by the defendant as its attorney in fact. The deed was subsequently recorded in the Greene County Registry.

20. The defendant did not advise M. K. Branch on October 13, 1980, of his intention to use the Power of Attorney to transfer the property to Neil Realty Company prior to executing the deed on that date.

21. The defendant received \$5000 from Neil Realty Company as payment for the two lots. These funds were deposited by the defendant in his personal checking account. The defendant failed to immediately notify Mr. Branch of the sale of the lots or the disposition of the funds. The defendant used the money as a partial payment against the \$9000 Note executed by M. K. Branch and the \$1500 in attorney's fees incurred after the filing of the bankruptcy petition. The defendant thereby credited the funds received from the sale of the property against a known invalid debt.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following CONCLUSIONS OF LAW:

1. The defendant engaged in conduct constituting grounds for discipline under North Carolina General Statute 84-28(a) and (b) by loaning to M. K. Branch approximately \$15,500 in December, 1975, and January, 1976, in violation of Disciplinary Rules 5-103(B) and 5-104(A) of the Code of Professional Responsibility of The North Carolina State Bar.

2. The defendant engaged in conduct constituting grounds for discipline under North Carolina General Statute 84-28(a) and (b) by undertaking to represent M. K. Branch in the preparation and filing of a petition

for bankruptcy at a time when the defendant was a creditor of M. K. Branch, in violation of Disciplinary Rule 5-101(A) of the Code of Professional Responsibility of The North Carolina State Bar.

3. The defendant engaged in conduct constituting grounds for discipline under North Carolina General Statute 84-28(a) and (b) by failing to name himself as a creditor of M. K. Branch on the petition for bankruptcy, in violation of Disciplinary Rule 7-101(A) (3), (4), (7) and 1-102(A) (4), (5), and (6), of the Code of Professional Responsibility of The North Carolina State Bar.

4. The defendant engaged in conduct constituting grounds for discipline under North Carolina General Statute 84-28(a) and (b) by depositing monies received from Neil Realty Company in his personal checking account, by failing to deliver the funds to either M. K. Branch or Tarheel Homes and Realty, and by applying the proceeds against the known invalid between the defendant and M. K. Branch in violation of Disciplinary Rule 9-102(A), (B) 1 and 4, Rule 1-102(A) 4 and 6 of the Code of Professional Responsibility of The North Carolina State Bar.

This, the 14 day of December, 1982.

Frank B. Wyatt
FRANK B. WYATT, CHAIRMAN
Angela R. Bryant
ANGELA R. BRYANT
John W. Beach
JOHN W. BEACH

11/19j

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S.E. JAMES, SEC.
THE N.C. STATE BAR

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
vs.)
DALLAS McPHERSON, Attorney at Law,)
Defendant.)

ORDER IMPOSING DISCIPLINE

THIS CAUSE came on to be heard before the undersigned duly appointed Hearing Committee of the Disciplinary Hearing Commission on Friday, October 29, 1982, and based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause, the Hearing Committee enters the following ORDER IMPOSING DISCIPLINE:

1. the defendant is hereby suspended from the practice of law for a period of one (1) year commencing thirty (30) days after service of this Order upon the defendant or affirmation of this Order on appeal or Order dismissing appeal for failure to be perfected in accordance with the Rules.
2. The defendant shall surrender his license and Membership Card to the Secretary of The North Carolina State Bar who will maintain it in his possession for the duration of the suspension.
3. The costs of the proceedings shall be taxed to the defendant.

This, the 14th day of December, 1982.

Frank B. Wyatt
Frank B. Wyatt, Chairman

Angela R. Bryant
Angela R. Bryant

John W. Beech
John W. Beech