

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 34

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

JASON ALFRED MATTHEW GOLD, Attorney,
Defendant

ORDER OF DISCIPLINE

On August 26, 2013, this matter came before a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Ronald R. Davis, and Percy L. Taylor; with A. Root Edmonson representing the North Carolina State Bar and Alan M. Schneider representing the Defendant. Based upon the stipulated facts contained in the Pre-Hearing Order, the panel finds the following facts were established by clear, cogent and convincing evidence:

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, Jason Alfred Matthew Gold (hereinafter "Gold"), was admitted to the North Carolina State Bar on March 20, 2004 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, Gold 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. Ladwin Brissett and his wife, Courtney Brissett, began investing in residential properties in his wife's hometown of New Bern, NC.

5. In 2005, the City of New Bern advised the Brissetts that some of their investment properties needed to be improved or the City would condemn the properties and tear down the houses.

6. The Brissetts needed to borrow money to make the improvements to the properties. Due to credit issues, the Brissetts were forced to seek non-traditional financing.

7. The Brissetts were referred to a broker at Labrador Financial Services, Inc. in Raleigh, NC to get the loan they needed. Representatives of Labrador Financial Services, Inc. arranged a commercial loan for the Brissetts through First Mount Vernon Industrial Loan Association ("FMV") in Alexandria, VA.

8. Labrador Financial Services, Inc. referred the Brissetts to Gold in 2005.

9. On January 9, 2006, Gold closed the Brissetts' \$230,000.00 loan from FMV.

10. The loan documents required that the Brissetts deed the properties securing the loan to a Virginia limited liability company known as ProDev XVI, LLC ("ProDev 16") and the loan would be made to ProDev 16. Courtney Brissett was named as Manager of ProDev 16 and, as Manager, would have a 40% ownership interest. Virginia lawyer John F. Gonzales ("Gonzales"), chosen by FMV and/or its lawyer Dale E. Duncan ("Duncan"), was the other member of ProDev 16 with a 60% ownership interest.

11. The loan documents required Courtney Brissett as Manager to make all principal and interest payments on the loan made to ProDev 16 when due and pay any taxes or other liens on the properties. If the Manager was late or defaulted in any obligation, then Gonzales could call a meeting at which, by majority vote, Courtney Brissett would be removed as Manager and lose control of the property she and her husband had deeded to ProDev 16.

12. As shown by the HUD-1 for the \$230,000.00 loan, the Brissetts (through ProDev 16) only received \$50,000 in loan proceeds that could be used to improve the properties. The Brissetts paid \$40,825.00 in settlement charges for the loan and FMV held back \$127,343.37.

13. As the Brissetts' lawyer at the closing, Gold had a duty to adequately explain the unusual terms of the commercial loan transaction to the Brissetts, including explaining the consequences of signing the loan documents that had been prepared for the closing by Duncan.

14. Gold explained the costs and the risks of this unusual loan transaction involving a non-traditional lender, transfer of their ownership of the properties with the risk of losing control of the property to Gonzales, and the disadvantageous distribution of funds to the Brissetts at closing.

15. As also shown by the HUD-1, Gold's firm received \$5,100.00 in fees from the Brissetts for the January 9, 2006 closing, including \$1,500 as a settlement fee, \$2,225.00 for a title search, \$1,025.00 for title examination and \$350.00 for deed preparation.

16. Gold failed to obtain Courtney Brissett's signature on ten of the closing documents that required Courtney Brissett's signature.

17. After Courtney Brissett left the closing, Gold signed her name to the ten closing documents, with her knowledge and consent, including two of the documents that required her signature to be notarized and three others that required her signature to be acknowledged by a notary using the following (or very similar) legend:

I HEREBY CERTIFY that on **January 9, 2006**, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Courtney T. Brissett (in handwriting), representative of **PRODEV XVI, LLC**, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument bearing the date of **January 9, 2006**, and acknowledged the same to be her act and deed for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

18. After signing Courtney Brissett's name to the five documents requiring notarization or acknowledgment of her signature, Gold then signed the five documents as subscribing Notary Public and affixed his seal. Notarizing or acknowledging documents that Courtney Brissett had not signed in his presence violated N.C. G. S. § 10B-20(c)(1).

19. Knowing that Courtney Brissett had not signed two of the acknowledged documents, Gold sent those documents to the Craven County Register of Deeds Office to be recorded. Those two documents were recorded on January 11, 2006. Those documents were:

A Commercial Loan Balloon Deed of Trust recorded in Book 2403 beginning at pages 11 through 22; and
An Assignment of Contracts, Income, Leases, Rents and Profits recorded in Book 2403 at pages 23 through 34.

20. In addition to the two acknowledged documents that were recorded in the Craven County Register of Deeds Office, Gold acknowledged Courtney Brissett's purported signature on a Business and Investment Affidavit that she had not signed.

21. In addition to the three acknowledged documents, Gold also notarized Courtney Brissett's purported signature on the following documents that she had not signed:

A Borrower Affidavit; and
A Document Correction Certification.

22. On March 5, 2007, the Brissetts filed a grievance against Gold with the North Carolina State Bar alleging that Gold had failed to explain the legal documents at the January 9, 2006 closing. The grievance did not mention who had signed the closing documents. The grievance was referred to the 10th Judicial District Bar Grievance Committee. In responding to the investigating member of that committee, Gold indicated that Courtney Brissett signed many

documents at the closing, but failed to disclose to the investigating member the material fact that he had signed Courtnay Brissett's name to ten of the closing documents.

23. On September 9, 2007 the Brissetts filed a civil action in Craven County Superior Court, file number 07-CVS-1727, against FMV, Dale E. Duncan and Kathleen Neary, trustees for FMV, ProDev 16, and John F. Gonzales.

24. In or before May 2008, the Brissetts filed a claim with the NC Department of the Secretary of State's Notary Enforcement Section claiming that Gold had notarized her signature on the Document Correction Certification at the January 9, 2006 loan closing although she had not signed the document.

25. On May 28, 2008, Beverly Champion of the Notary Enforcement Section wrote to Gold advising him that it had been alleged that Gold notarized Brissett's signature on the Document Correction Certification of which Champion enclosed a copy of with her letter. Champion asked for a response from Gold within ten days.

26. In Gold's June 10, 2008 response to the notary complaint, Gold stated:

At closing the representative, Courtnay Brissett, signed numerous documents relating to said loan. The document attached to the Notary Complaint was acknowledged at closing by Courtnay Brissett.

27. By failing to disclose the material fact that he had signed Courtnay Brissett's name to the Document Correction Certification that was the subject of the Notary Enforcement Section's inquiry, Gold's response to the notary complaint was false or misleading.

28. On December 30, 2008, Gold was interviewed by Special Agent Daran R. Dodd of the Notary Enforcement Section in Gold's office. During that interview, Gold told Dodd that Courtnay Brissett was present at the closing and signed the Document Correction Certification. Gold knew that statement was not true when he made it.

29. Gold did not communicate to the Notary Enforcement Section that he had signed Courtnay Brissett's name to any of the documents relating to the January 9, 2006 closing and had notarized documents that Courtnay Brissett had not signed until October 2011.

30. On January 16, 2009, Gold signed a sworn affidavit for FMV in support of FMV's motion for summary judgment in civil action 07-CVS-1727.

31. Gold's January 16, 2009 affidavit contained false statements about Courtnay Brissett having signed documents that Gold actually signed her name to, specifically:

(a) Gold stated in paragraph 10:

In connection with such loan, Courtnay T. Brissett, as managing member of ProDev XVI, LLC, executed a Deed of Trust dated January 9, 2006, wherein

Dale E. Duncan and Kathleen Neary, are Trustees, and First Mount Vernon is Lender, in which all six of the Properties were granted as security for such loan, such Deed of Trust being recorded in Book 2403, Page 11, Craven County Registry.

- (b) After describing typographical errors he had made, Gold stated in paragraph 12:

In connection with the loan, Courtney T. Brissett, as managing member of ProDev XVI, LLC, executed a "Document Correction Certification" in which she agreed to "immediately execute upon request any revision or correction documents or forms as deemed necessary by the Lender or the Lender's agent," including the correction or re-execution of any document "containing typographical errors or omissions."

32. Gold signed the sworn January 16, 2009 affidavit knowing that it could be presented to the Court for the Court to rely on in deciding the motion for summary judgment.

BASED UPON the foregoing Findings of Fact and the stipulated conclusions in the Pre-Hearing Order, the hearing panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel of the Disciplinary Hearing Commission and the hearing panel has jurisdiction over Gold and the subject matter.
2. Gold's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Gold violated the Rules of Professional Conduct in effect at the time as follows:
 - (a) by notarizing or acknowledging Courtney Brissett's purported signature on five closing documents despite the fact that she was not present and did not sign those documents in his presence, Gold committed criminal acts in violation of N.C.G.S. § 10B-60(c) that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
 - (b) by representing to the investigating member of the 10th Judicial District's Grievance Committee in response to the March 5, 2007 grievance filed by the Brissetts that Courtney Brissett signed many documents at the closing without also revealing that he had signed Courtney Brissett's name to ten of the closing documents, Gold failed to disclose a fact necessary to correct a misapprehension in violation of Rule 8.1(b);
 - (c) by making a false or misleading statement in his June 10, 2008 response to the letter sent by Beverly Champion of the Notary Enforcement Section, Gold

engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

- (d) by making a false statement to Special Agent Daran R. Dodd while being interviewed on December 30, 2008, Gold engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (e) by making false statements in his January 16, 2009 sworn affidavit that was filed with the Court in 07-CVS-1727, which constituted perjury in violation of N.C.G.S. § 14-209, Gold committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law and the evidence presented at the hearing, the hearing panel hereby makes by clear, cogent and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Gold compounded his initial offense of notarizing or acknowledging Courtney Brissett's purported signature on the five closing documents by not being forthright regarding that offense.
2. Gold's lying to the Notary Enforcement Section of the Secretary of State's office during its investigation of Gold's notary violation significantly harmed the ability of the Section to protect the integrity of the notary process in North Carolina.
3. Gold's untruthful affidavit submitted to the court by FMV's lawyer caused the litigation between FMV and the Brissetts to become more protracted once it became known that the affidavit was false.
4. By making false statements in an affidavit that was submitted to the court, Gold caused significant harm to the administration of justice.
5. A lawyer who makes false statements in an affidavit submitted to the court adversely affects the public's perception of the legal profession.
6. Gold presented uncontroverted evidence of good character and reputation in the form of testimony from a number of professional colleagues who have known him since he became a lawyer, including an appellate court judge. These witnesses convinced the hearing panel that the dishonest conduct at issue in this case was an aberration from Gold's usual course of conduct.

Based on the foregoing Findings of Fact, Conclusions of Law and Additional Findings of Fact Regarding Discipline, the Hearing Panel enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the State Bar and concludes that the following factors that warrant suspension or disbarment are present:
 - a. intent of Gold to commit acts where the harm or potential harm was foreseeable;
 - b. circumstances reflecting Gold's lack of honesty, trustworthiness or integrity;
 - c. elevation of Gold's own interest above that of his clients;
 - d. negative impact of Gold's actions on his clients' and the public's perception of the profession;
 - e. negative impact of Gold's actions on the administration of justice;
 - f. effect of Gold's conduct on third parties; and
 - g. acts of dishonesty, misrepresentation, deceit or fabrication;
2. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the State Bar and concludes that the following factors that caused the panel to consider disbarment are present:
 - a. acts of dishonesty, misrepresentation, deceit or fabrication; and
 - b. commission of a felony.
3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the State Bar and concludes that the following factors are present:
 - a. no prior disciplinary offenses;
 - b. a dishonest or selfish motive;
 - c. a pattern of misconduct;
 - d. multiple offenses;
 - e. full and free disclosure to the hearing panel and a cooperative attitude toward the proceeding;

- f. genuine remorse; and
 - g. good character and reputation
4. Gold caused significant harm to his clients, the administration of justice and the legal profession.
 5. The hearing panel has considered all other forms of discipline available and concludes that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Gold, the significant harm to his clients, the administration of justice, and the legal profession, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.
 6. Although it seriously considered the two disbarment factors present in this case, the hearing panel was persuaded by the evidence indicating that Gold's dishonesty in attempting to cover up his initial offense was an aberration from his usual course of conduct. Accordingly, the panel concludes that disbarment is not necessary to protect the public from future dishonest acts by Gold.


Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant, Jason Alfred Matthew Gold, is hereby suspended from the practice of law in North Carolina for a period of five years effective immediately.
2. At any time two years after the effective date of his active suspension, Gold may file a verified petition for a stay of the remaining term of his suspension pursuant to the requirements of and the procedure for reinstatement from a suspension contained in 27 N.C.A.C. 1B § .0125(b), upon a satisfactory showing that he has satisfied the following conditions:
 - (a) that he timely complied with the provisions of 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.
 - (b) that he has not engaged in any conduct during his suspension that would constitute a violation of the Rules of Professional Conduct if engaged in by a North Carolina lawyer; and
 - (c) that he paid the administrative fees and costs of this proceeding, including the costs associated with the taking of his deposition, within 90 days of receipt of the statement of fees and costs assessed by the Secretary.

3. Defendant may file a petition seeking a stay of the remaining suspension and demonstrating compliance with the above requirements up to 30 days prior to the end of the two year period, but shall not be reinstated until the end of the two year period.
4. If Gold successfully seeks a stay of suspension of his law license, such stay will continue in force only as long as Gold complies with the following conditions:
 - (a) Gold is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, to include all judicial district dues, fees and assessments;
 - (b) That there is no deficit in Gold's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
 - (c) Gold has kept the State Bar Membership Department advised of his current business and home addresses within ten days of any change; and
 - (d) Gold has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government.

26th Signed by the Chair with the consent of the other members of the Hearing Panel this the
day of September 2013.


Steven D. Michael, Chair
Hearing Panel