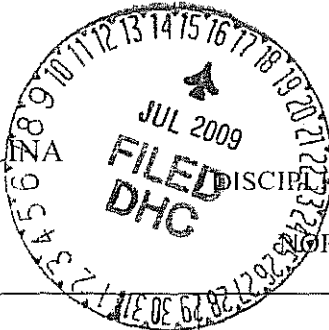


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 17

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

RANDY A. CARPENTER, Attorney,

Defendant

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

This matter was heard on 25 and 26 June 2009 before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, F. Lane Williamson, and members T. Richard Kane and David L. Williams. Jennifer A. Porter and William N. Farrell, Jr. represented Plaintiff, the North Carolina State Bar. Defendant appeared *pro se*.

Based upon the pleadings, the stipulated facts, and the evidence introduced at the hearing, the hearing committee hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Randy A. Carpenter ("Carpenter"), was admitted to the North Carolina State Bar in 1997, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. Carpenter was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Carpenter was engaged in the practice of law in the State of North Carolina and maintained a law office in Spruce Pine, Mitchell County, North Carolina and/or Newland, Avery County, North

Carolina.

5. During all of the relevant periods referred to herein Carpenter was also a licensed surveyor and engineer in North Carolina.

6. Beginning in about October 2001, Anthony Porter (hereinafter "A. Porter") began real estate development activities in Mitchell County, North Carolina on a project known as the Village of Penland.

7. The Village of Penland project (hereinafter "Village of Penland" or "Penland project") encompassed various subdivisions on land acquired by the developers in Mitchell County, North Carolina, including subdivisions such as River Pointe, Penland Reserve, Penland Heights, Falling Waters, Diamond Lake, Crystal Lake, Penland Village, and Winery Heights. The project was also at times referred to as Communities of Penland. The phrase "Village of Penland" as used herein refers to all development of land in Mitchell County, North Carolina by the developers identified below between about October 2001 and December 2007.

8. A. Porter was the developer for the Penland project, along with Frank ("Skip") Amelung and Richard Amelung, who will be referred to jointly herein as "the developers".

9. The developers operated by and through various entities, including but not limited to Peerless Property Management, Inc.; Peerless Real Estate Services, Inc.; Village of Penland, LLC; Communities of Penland, LLC; Penland Investment Group, LLC; Bailey's Peak Investment Group, LLC; SDT, LLC; COP Land Holdings, LLC; and MFSL Land Holdings, LLC. The developers also called themselves "The Peerless Development Group" and "The Peerless Group."

10. Carpenter, who had performed engineering services for A. Porter on a previous project known as Bear Ridge in early 2001, began performing surveying, engineering and/or legal services on the Village of Penland project in about October 2001.

11. Carpenter performed the surveying and engineering for the Village of Penland project from about 2001 through 2007.

12. Carpenter certified and filed the plats with the Mitchell County Register of Deeds for the Village of Penland in which he defined the lots that would comprise the Village of Penland and its various subdivisions.

13. Carpenter certified and filed plats for the Village of Penland preceding the sale of the lots by the developers and throughout the time during which lots were being sold.

14. Carpenter was the closing attorney for most of the real estate transactions for the Village of Penland, closing several hundreds of lot purchase transactions.

15. As closing attorney, Carpenter represented the seller, the buyer/borrower, and the lender.

16. One lender, First Charter Bank, required a certification from an engineer that the lots that would be the collateral on its loans were suitable for an in-ground septic absorption system.

17. Carpenter sent letters to First Charter Bank stating that he had examined the lots being purchased and that were being used as security for the loan and that the property was suitable for an in-ground septic absorption system for a specified type of residence (e.g. a three-bedroom home) (hereinafter referred to as the "septic letter").

18. These septic letters contained misrepresentations because Carpenter had not inspected the lots at issue and evaluated the factors relevant under applicable regulations for the specific lots at issue and/or the lots were not each individually suitable as they existed at that time for an in-ground septic absorption system.

19. Carpenter knew the septic letters he was executing and providing to First Charter Bank were false.

20. Carpenter did not notify First Charter Bank of the false nature of the septic letters.

21. Carpenter closed these transactions involving Village of Penland lots and First Charter Bank despite his knowledge that First Charter Bank had false information regarding the suitability of the lots for septic systems at the time of the closings.

22. In the Penland project closings for which Carpenter was closing attorney, the lenders designated the amount of the loan and the amount of money to be provided by the buyer/borrower.

23. HUD-1 Settlement Statements were prepared by Carpenter or a non-attorney under Carpenter's supervision for each transaction that stated the amount of the loan and the amount due from the buyer/borrower as designated by the lender.

24. Carpenter, as closing attorney and settlement agent, was responsible for ensuring the HUD-1 Settlement Statement accurately recited the receipt and disbursement of funds in the transaction.

25. The HUD-1 Settlement Statements prepared by Carpenter or a non-attorney under Carpenter's supervision did not accurately show the receipt and disbursement of funds in the Penland project closings.

26. The funds designated as due from the buyer/borrower were usually listed on the HUD-1 Settlement Statements on line 201, as earnest money.

27. The HUD-1 Settlement Statements typically listed the earnest money as having been paid by the buyer/borrower and received by the seller.

28. In the transactions where the HUD-1 Settlement Statements listed the earnest money as paid by the buyer/borrower and received by the seller, in fact the buyer/borrower had not paid any funds to the seller or to anyone else for the listed earnest money.

29. Certain HUD-1 Settlement Statements prepared by Carpenter or a non-attorney under Carpenter's supervision listed the money due from the buyer/borrower in line 303, as funds paid by the buyer/borrower at closing.

30. In the transactions where the HUD-1 Settlement Statements listed the money due from the buyer/borrower as paid by the buyer/borrower at closing in line 303, in fact the buyer/borrower had not paid any funds at closing.

31. The developers concocted what they described as a "lot sale program" which included having the buyers borrow the funds the lenders required the buyer/borrowers to produce. The buyers would borrow this amount through a finance company owned by the developers. No payments would be due from the buyer to the finance company until maturity of the promissory note to the finance company, which would have a maximum term of 2 years. Additionally, under the "lot sale program" the developers agreed to lease the lots being purchased from the buyer for up to 2 years for an amount equal to the buyer/borrower's debt to the lender. The developers agreed to prepay the lease payments to the buyer. At the end of the lease period, the developers would have an option to purchase the lots for an amount equal to the outstanding principal amount of the lender's loan plus the amount due to the finance company.

32. Generally, however, even if a promissory note was signed between the buyer and the financing company for the amount the lender required to be produced by the buyer/borrower, no funds were actually paid to the developers for buyer/borrower.

33. Carpenter knew the HUD-1 Settlement Statements listing earnest money paid by or on behalf of the buyers/borrowers were false.

34. Carpenter knew the HUD-1 Settlement Statements listing money paid at closing by the buyer/borrowers were false.

35. Carpenter did not inform the lenders that the HUD-1 Settlement Statements listing earnest money or closing funds paid by or on behalf of the buyers/borrowers were false.

36. Carpenter closed the transactions despite knowing that the HUD-1 Settlement Statements were false.

37. Some of the lots in the Penland project were encumbered by a deed of trust securing a loan from Capital Bank to some of the developers. The original principal amount was \$2,470,000.00 and the deed of trust secured that loan with Lots 1 – 81 of Penland View, Phases 1 and 2. As individual lots were sold, release deeds and payments to Capital Bank were required to release those lots from this blanket deed of trust.

38. Certain of the HUD-1 Settlement Statements notified the lenders that money was being sent to Capital Bank to release the lots at issue from Capital Bank's deed of trust.

39. In some of those transactions, neither Carpenter nor any non-attorney assistant working under his supervision on these closings sent the money to Capital Bank. In those instances, the funds were usually held for or provided to the developers.

40. Carpenter did not notify the lenders when he failed to send funds to Capital Bank despite such disbursement being listed on the HUD-1 Settlement Statement.

41. Carpenter did not notify the lenders when HUD-1 Settlement Statements showing disbursement of funds to Capital Bank were false.

42. At a certain point between 2002 and 2007, Carpenter took the position that the developers owed him money.

43. At a certain point between 2002 and 2007, Carpenter refused to close transactions for the Village of Penland project unless the developers would allow him to disburse to himself at least about \$5,000.00 - \$10,000.00 from the developers' proceeds from each closing.

44. Subsequently, Carpenter received at least \$5,000.00 - \$10,000.00 per closing in most if not all closings from about late 2005 through 2007.

45. This financial incentive to close Village of Penland transactions created a conflict of interest between Carpenter's interests and those of the lenders.

46. Two of the developers, A. Porter and Frank Amelung, pled guilty in the United States District Court, Western District of North Carolina, of conspiracy to commit fraud, including bank fraud, securities fraud, and wire and mail fraud upon buyers and lenders in connection with the Village of Penland project.

47. By closing transactions in which Carpenter knew the lender had received false information, Carpenter facilitated others in conspiracy to commit fraud upon the buyers and the lenders in connection with the Village of Penland project.

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

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Randy A. Carpenter, and the subject matter.

2. 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), for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

a. By submitting false information to lenders in real estate transactions, including false HUD-1 Settlement Statements and false septic letters, Carpenter engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c);

b. By closing transactions in which Carpenter knew the lender had received false information, Carpenter facilitated others in conspiracy to commit fraud upon the lenders in violation of Rule 8.4(a) and 8.4(c); and

c. By acting as closing attorney for transactions in which he knew the lender had received inaccurate information and in which he collected a debt from the seller's proceeds, Carpenter engaged in representation involving a concurrent conflict of interest in violation of Rule 1.7(a).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Banks are not normally thought of as vulnerable entities. Nevertheless, the banks relied upon Carpenter as closing attorney to carry out the closing in an ethical, lawful, and proper manner. These institutions are particularly vulnerable to the conduct of attorneys that circumvent or knowingly facilitate others in the circumvention of safeguards employed to avoid fraud.

2. The lenders relied on the HUD-1 Settlement Statements to accurately reflect receipt and disbursement of funds in these closings. Most of the lenders required that they be provided with the HUD-1 Settlement Statement for review and approval prior to closing. The lenders relied on the HUD-1 Settlement Statements post-closing to accurately show the actual receipt and disbursement of funds for the closings. The lenders relied on the entry in line 201 of the HUD-1 Settlement Statements showing payment of earnest money or the entry in line 303 of the HUD-1 Settlement Statement showing payment by the buyer/borrower at closing, as applicable, to show the buyer/borrower had contributed his or her own money into the transaction. Such personal contribution by the buyer/borrower was required by each lender and relied upon in the lender's attempt to reduce the risk of default on the loan by the buyer/borrower. Carpenter's preparation and submission of HUD-1 Settlement Statements that he knew did not accurately show the receipt and disbursement of funds and Carpenter's failure to

receive and disburse funds as reflected on the HUD-1 Settlement Statements evaded the safeguards relied upon by the lenders.

3. Carpenter's interest in receiving \$5,000 to \$10,000 per closing from late 2005 through 2007 as payment for an outstanding debt not otherwise being paid by the developers created a financial incentive for Carpenter to close these transactions even if not in the best interest of the lenders. Carpenter received over \$2,000,000.00 from funds loaned by BB&T, First Charter, Carolina First, and United Community Bank for purchases in the Penland project.

4. The fraud found to have occurred in the Penland project is public knowledge. The criminal charges of certain of the developers and others involved in the project, and their guilty pleas, are public record. An internet blog has reported details about the Penland project and Carpenter's involvement.

5. All but a few of the loans made by BB&T, First Charter, Carolina First, and United Community Bank for purchase in the Penland project are now in default. Each bank has written off losses from these loans in the tens of millions of dollars.

6. Carpenter engaged in conduct involving misrepresentation and deceit over a substantial period of time.

7. Clients are entitled to attorneys they can trust. Carpenter, by engaging in conduct involving misrepresentation and deceit over a substantial period of time, has shown himself to be untrustworthy. When an attorney violates that trust, it harms the public and the profession.

8. Carpenter suggested in his defense that the parties desired that the HUD-1 Settlement Statements falsely show funds received from the buyer/borrower. It is no defense to attorney misconduct that a client requested such misconduct. Should a client request that an attorney engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, it is the duty of the attorney to refuse to engage in, or assist with, such conduct.

9. Carpenter's obligation as closing attorney was to produce an accurate HUD-1 Settlement Statement for each transaction. Accurate HUD-1 Settlement Statements are necessary for the system of finance in real estate to function.

10. Carpenter has no prior disciplinary record concerning his license to practice law.

11. The hearing committee has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and upon the evidence and arguments presented at the hearing

concerning appropriate discipline, the hearing committee hereby enters the following additional

CONCLUSIONS REGARDING DISCIPLINE

1. Carpenter's misconduct is aggravated by the following factors listed in 27 N.C. Admin. Code 1B § .0114(w)(1):

- a. Dishonest or selfish motive;
- b. A pattern of misconduct; and
- c. Multiple offenses.

2. Carpenter's misconduct is mitigated by the following factors listed in 27 N.C. Admin. Code 1B § .0114(w)(2):

- a. Absence of a prior disciplinary record; and
- b. Cooperative attitude toward the proceedings.

3. The aggravating factors outweigh the mitigating factors.

4. Carpenter's conduct resulted in significant harm to the lenders. Carpenter's conduct evaded safeguards relied upon by the lenders. Hundreds of loans went into default, resulting in tens of millions of dollars in losses to the lenders.

5. Carpenter's conduct resulted in significant harm to the profession, due to the public nature of, and publicity from, the fraudulent project and the associated criminal charges and convictions.

6. Carpenter's conduct, involving misrepresentation and deceit over a substantial period of time, resulted in significant harm to his clients and the profession and posed potential significant harm to the public that may have sought to retain him or those who may have dealt with him in other capacities. When an attorney violates the trust clients and others should be able to have in attorneys, it harms the public and the profession.

7. The hearing committee has considered all lesser forms of sanctions available to it and finds that disbarment is the only appropriate discipline in this case, for the following reasons:

- a. Carpenter committed misdeeds involving moral turpitude and violations of the public trust, including fraudulent conduct, material misrepresentations, and deceit. Misconduct involving

misrepresentations and deceit are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys;

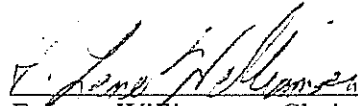
- b. Entry of an order imposing lesser discipline than disbarment would fail to acknowledge the seriousness of the offenses committed by Carpenter, would be inconsistent with discipline issued in prior cases involving similar misconduct, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar; and
- c. The protection of the public and the legal profession requires that Carpenter not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarment is the only discipline available that requires an attorney to make such a showing before he or she may be reinstated.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, and Conclusions Regarding Discipline, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Randy A. Carpenter, is hereby DISBARRED from the practice of law in North Carolina.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.
3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.
4. The costs of this action are taxed to Defendant, including costs of the depositions taken in this case as allowed by statute. Defendant must pay the costs within 30 days of service of the statement of costs upon him.

Signed by the Chair with the consent of the other hearing committee members,
this the 15th day of July, 2009.



F. Lane Williamson, Chair
Disciplinary Hearing Committee