

WAKE COUNTY

A circular stamp from the Federal Bureau of Investigation (FBI). The outer ring contains the text "FEDERAL BUREAU OF INVESTIGATION" at the top and "DEPARTMENT OF JUSTICE" at the bottom. In the center, there is a shield emblem with a scale of justice. Below the emblem, the date "JUL 1997" is stamped. The words "THE INSPECTOR GENERAL" are visible on the left side, and "STATE BAR" is visible on the right side. The stamp is slightly tilted and has a textured, aged appearance.

THE NORTH CAROLINA STATE BAR, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 J. BROOKS REITZEL, JR., )  
 Attorney, )  
 )  
 Defendant. )

## CONSENT ORDER OF DISCIPLINE

This matter was originally scheduled to be heard on October 11, 1996, before a hearing committee composed of Franklin E. Martin, Chair; Vernon Russell; and B. Stephen Huntley, and was continued on motion of the State Bar with the consent of the Defendant, J. Brooks Reitzel, Jr. The Defendant was represented by James B. Maxwell and Arch K. Schoch, IV. The North Carolina State Bar was represented by Carolin Bakewell. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties, 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 on September 13, 1971, and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and the 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 with the law firm Roberson, Haworth & Reese in the city of High Point, Guilford County, North Carolina.

4. The Defendant has waived his right to a formal hearing.

5. The Defendant was properly served with process.

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6. Lindy and Betsy Brooks (the Brookses) of Guilford County, North Carolina owned a tract of land located at 1349 N. Main Street, High Point, North Carolina, which was operated as a used car business and which property was subject to two deeds of trust.

7. The first deed of trust secured a loan in the principal amount of \$120,000 from Stanton Bodenheimer (Bodenheimer) and was dated March 26, 1986 (Bodenheimer deed of trust).

8. In 1991, the Brookses filed a Chapter 13 bankruptcy petition with the U. S. Bankruptcy Court for the Middle District of North Carolina.

9. Prior to November 1993, Bodenheimer claimed that the Brookses were in default on their loan. Bodenheimer contacted the Defendant and directed him to file a motion for relief from the stay in bankruptcy court, so that he could foreclose on his loan.

10. Defendant filed the motion for relief from the stay and a hearing was held before the Honorable Jerry G. Tart on December 14, 1993. Judge Tart ruled that Bodenheimer's motion would be granted unless the Brookses secured a purchase contract on the property by January 14, 1994.

11. The Brookses did not secure a purchase contract by January 14, 1994 and Bodenheimer directed Defendant to proceed with foreclosure proceedings.

12. Thereafter, Defendant received a letter from David Idol (Idol), the attorney for the Brookses. Enclosed with the letter was the sum of \$5,500, with instructions that the money be applied to any arrearages, principal and interest owed to Bodenheimer by the Brookses, and that any excess "be applied to any accrued costs and attorney's fees that (sic) which the lender is entitled to recover".

13. On January 19, 1994, Defendant filed a motion substituting himself as trustee in the Bodenheimer deed of trust. On the same date, he filed a petition for order of foreclosure, alleging that the Brookses were in default on the Bodenheimer deed of trust.

14. Thereafter, and before March 31, 1994, the Brookses delivered to Defendant additional checks totalling \$5,580. The Brookses gave the same instructions respecting how the funds should be applied as had been provided in Idol's letter enclosing the \$5,500 payment.

15. In early 1994, Lannie Mitchell (Mitchell) agreed to purchase the Bodenheimer note and deed of trust from Bodenheimer. The sale and closing occurred on April 4, 1994, effective March 31, 1994.

16. Mitchell was already the owner of the second deed of trust on the Brooks' property at the time of the April 4, 1994 closing.

17. In connection with the April 4, 1994 closing, Mitchell provided a total of \$115,477.85 to Defendant, which sum was \$7,676 less than the \$123,153.85 required to close the transaction.

18. The remaining \$7,676 required to close the transaction was deducted by Defendant from the \$11,380 which he had received from the Brooks in connection with the transaction. Following the closing, Defendant retained a total of \$3,704 belonging to the Brooks in the firm's trust account.

19. Following the closing, documents were recorded in the Guilford County Register of Deeds office indicating that Mitchell was the noteholder on the property and that Bodenheimer no longer had any interest in the property.

20. After the closing, Mitchell retained Defendant to represent him in connection with protecting his interest in the notes and deeds of trust on the subject property.

21. The Brooks were unable to make their payments to Mitchell and ultimately executed a contract to convey title to the property to Mitchell in exchange for cancellation of the notes and deeds of trust.

22. On April 11, 1994, Defendant received a total of \$989.61 from the trustee in the Brooks' Chapter 13 bankruptcy matter. These funds represented payments made by the Brooks to the trustee on the Bodenheimer/Mitchell note.

23. Defendant placed the \$989.61 in a file where it remained until July 14, 1994, at which time it was deposited into the firm trust account.

24. The contract and offer to purchase prepared by Idol for the Brooks provided that all disbursements made to the bankruptcy trustee after February 21, 1994 and all of the money deposited by Brooks with Defendant would be returned to Brooks at the closing of the sale of the Brooks' property to Mitchell.

25. The Brooks assumed that they would receive the entire \$11,380 which they had deposited with Defendant, as well as the \$989.61 which they had paid into the trustee in bankruptcy. The Brooks did not understand that some portion of the \$11,380 had previously been disbursed in the Mitchell/Bodenheimer closing on April 4, 1994.

26. The U.S. Bankruptcy Court approved the sale of the property from the Brooks to Mitchell on July 6, 1994. The deed effectuating the transfer was recorded on July 8, 1994.

27. An accounting respecting the disbursements from the Brooks/Mitchell closing was provided to and approved by the Bankruptcy Court by order dated December 5, 1995.

28. Between March and April, 1994, the Defendant was approached by representatives of Design Communications, Inc. (DCI), of Los Angeles, California, who advised Defendant that they were seeking \$2 million in financing to expand DCI's operations.

29. DCI representatives promised to pay Defendant a commission on any financing which he might generate by bringing investors to DCI.

30. Defendant contacted several of his acquaintances, including Ken and Emma Mizell (the Mizells), advised them of the DCI investment opportunity, and put them in contact with DCI representatives.

31. Subsequently, the Mizells agreed to invest \$2 million in the DCI project.

32. In May, 1994, DCI representatives told Defendant that he would receive a \$200,000 commission from the Mizells' \$2 million investment in DCI.

33. Defendant did not tell the Mizells of his intention to receive a commission and specifically did not advise them of the proposed \$200,000 commission. Defendant tried to conceal information respecting the commission from the Mizells.

34. The Mizells believed that Defendant was their attorney respecting the DCI investment and relied upon him to provide them with legal advice and to protect their interests in the transaction.

35. Defendant held himself out as the Mizells' attorney in several communications respecting the DCI transaction.

36. Approximately one week prior to the proposed closing in Los Angeles, California, and in May, 1994, the Defendant delivered to the representatives of DCI, the Mizells and their accountant, copies of the proposed closing documents.

37. At the time of the proposed closing of the Mizells' investment in DCI, the Mizells discovered the proposed commission and thereupon cancelled the investment in DCI.

38. Defendant never actually received any commission respecting the Mizells' proposed investment in DCI.

Based upon the consent of the parties and the foregoing Findings of Fact, the Hearing Committee makes the following:

### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the Defendant and the subject matter of this proceeding.

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

- A. By keeping the \$989.61 check which he received from the Chapter 13 office in a file from April 18, 1994 - July 14, 1994, Defendant failed to deposit client funds into a trust account in violation of Rule 10.1(c) of the Rules of Professional Conduct.
- B. By disbursing \$4,693.61 to the Brookses on July 8, 1994, at a time when he had only \$3,704 on deposit in his trust account on their behalf, Defendant failed to preserve fiduciary funds of other clients held in trust, in violation of Rule 10.1(a) of the Rules of Professional Conduct.
- C. By representing Bodenheimer in filing a motion for relief from the stay in bankruptcy court and with the sale of the note and assignment of the deed of trust to Mitchell, while at the same time serving as Trustee under the deed of trust between Bodenheimer and the Brookses, Defendant engaged in a conflict of interest in violation of Rule 5.1(a) of the Rules of Professional Conduct.
- D. By representing the Mizells in connection with their proposed investment in DCI, while at the same time expecting to receive a substantial commission or finders fee from the Mizells' investment in DCI, Defendant engaged in a conflict of interest, in violation of Rule 5.1(b) of the Rules of Professional Conduct.
- E. By failing to disclose to the Mizells his agreement with DCI to receive a commission and by attempting to conceal the commission from them, Defendant engaged in conduct in violation of Rule 1.2(c) of the Rules of Professional Conduct and engaged in a conflict of interest in violation of Rule 5.1(a) of the Rules of Professional Conduct.

BASED UPON the consent of the parties, the Hearing Committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is mitigated by the following factors:
  - a. Absence of prior disciplinary record.
  - b. Cooperative attitude toward the disciplinary proceedings.
  - c. Good character and reputation.
  - d. Remorse.
2. The Defendant's misconduct is aggravated by the following factors:
  - a. Multiple offenses.
  - b. Substantial experience in the practice of law.
  - c. Selfish motive.
3. The mitigating factors outweigh the aggravating factors.

BASED UPON the foregoing findings of fact and conclusions of law and the findings regarding discipline and based upon the consent of the parties, the Hearing Committee enters the following:

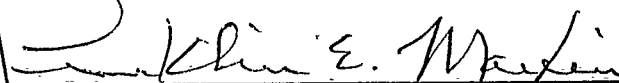
ORDER OF DISCIPLINE

1. The Defendant is hereby SUSPENDED from the practice of law for a period of two (2) years, effective 30 days from the service of this Order upon the Defendant. The suspension is STAYED for a period of two (2) years upon compliance with the following conditions:
  - A. The Defendant shall complete a three-hour ethics block of continuing legal education courses offered by a sponsor approved by the Board of Continuing Legal Education no later than December 31, 1997. These hours shall be over and above Defendant's ordinary mandatory CLE requirements. Defendant shall submit written proof of compliance with this condition to the Counsel for the NC State Bar no later than January 7, 1998.
  - B. The Defendant shall violate no provision of the Rules of Professional Conduct during the two-year stay period.
  - C. The Defendant shall violate no laws of the State of North Carolina or of the United States for the two-year stay period.

2. The Defendant shall pay the costs of this proceeding as assessed by the Secretary by December 31, 1997.

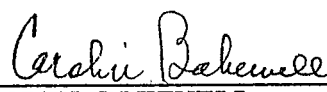
This the 21<sup>st</sup> day of July, 1997.

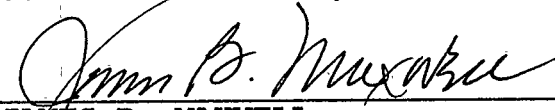
Signed by the undersigned hearing committee chair with the consent of the other members of the Hearing Committee.

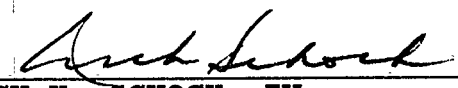
  
FRANKLIN E. MARTIN, Chair  
Disciplinary Hearing Commission

SEEN AND CONSENTED TO:

  
J. BROOKS REITZEL, JR.

  
CAROLIN BAKEWELL  
Plaintiff's Attorney

  
JAMES B. MAXWELL  
Attorney for Defendant

  
ARCH K. SCHOCK, IV  
Attorney for Defendant