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NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
93 DHC 24

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

WILLIAM C. PALMER, Attorney,  
Defendant

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard on August 11 and 12, 1994 before a hearing committee composed of Samuel Jerome Crow, Chairman, Robert B. Smith, and James Lee Burney; with A. Root Edmonson representing the N. C. State Bar and James B. Maxwell representing the Defendant; and based upon the stipulations contained in the Stipulation on Prehearing Conference and the evidence presented at the hearing, the hearing committee finds the following to be supported 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, William C. Palmer (hereinafter Palmer), was admitted to the North Carolina State Bar on September 9, 1957, 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 all of the periods referred to herein, Palmer was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Lenoir, Caldwell County, North Carolina.

4. Palmer's children (including his step-children) were shareholders and principal operators of an incorporated furniture company known as Furniture Country USA of Granite, Inc.

(hereinafter furniture company). The furniture company was in the business of the buying and selling of furniture at retail and wholesale.

5. Palmer was a guarantor of at least one of the furniture company's notes held by the Bank of Granite (hereinafter bank) which were secured by the inventory of the furniture company.

6. In March, 1991, Palmer visited Roger Taylor (hereinafter Taylor), a vice-president of the bank, and requested the bank to foreclose its security interest in the inventory, with the inventory to remain at the furniture company during the foreclosure.

7. The bank, through its counsel, prepared two notices of sale of the furniture company's inventory, one for each note owed by the furniture company, giving the date and time of the sale as 1:00 p.m. on April 15, 1991. The notices of the inventory sale were posted at the Caldwell County courthouse along with another notice of sale of a truck owned by the furniture company. At least one of the notices of sale of the inventory was believed to have been improperly posted. To avoid possible problems due to the manner in which notice was posted, counsel for the bank recommended that the sale of the inventory be postponed pursuant to N. C. Gen. Stat. Sec. 25-9-605.

8. At the time that the sale of the inventory was scheduled to commence on April 15, 1991, counsel for the bank announced that the sale of the inventory would be postponed. He read aloud a notice of the postponed sale he had prepared which gave the date and time of the postponed sale as 11:00 a.m. on April 18, 1991. Palmer was present when the announcement of the postponed sale was made.

9. A copy of the notice of postponed sale giving the date and time of the sale as 11:00 a.m. on April 18, 1991 was posted at the Caldwell County courthouse on April 15, 1991 by counsel for the bank and an assistant clerk of court, Lisa G. Colvard. A copy of that notice was attached to the Complaint in this matter as Plaintiff's Exhibit 1. The notice was posted in a locked glass enclosed bulletin board in the courthouse annex. All notices posted by the employees of the office of the Caldwell County Clerk of Superior Court were posted in the locked glass enclosed bulletin board after December, 1990.

10. On April 18, 1991, the inventory of the furniture company was sold to the only bidder, the Bank of Granite, for \$156,786.65.

11. On April 22, 1991, Palmer appeared at the Granite Falls branch of the bank and told employees of the bank that he had been told that the sale was postponed to that date. Palmer was advised that the inventory had been sold on April 18, 1991.

12. On April 29, 1991, employees of the bank went to the furniture company in anticipation of removal of the inventory that had been purchased by the bank. The locks on the furniture company's building had been changed and the bank did not have access to its property.

13. On April 30, 1991, movers engaged by the bank to remove the inventory purchased by the bank went to the furniture company to begin the moving. They were denied access to the building of the furniture company and were prevented from undertaking the removal of the furniture. On that same date, Palmer, his step-son, his step-daughter, and the husband of his step-daughter moved some furniture from showrooms to the warehouse.

14. On April 30, 1991, the bank filed a complaint against Palmer and the furniture company in Caldwell County Superior Court, file number 91-CVS-494, seeking injunctive relief to restrain the suit's defendants, and those acting in concert with them, from removing the bank's property and from interfering with the bank's ownership and possession of it.

15. After a series of court orders were entered, the furniture was removed from the furniture company's building on May 2 and 3, 1991. During those two days, Palmer videotaped portions of the removal of the furniture.

16. On July 10, 1991, Palmer filed counterclaims in the above mentioned lawsuit alleging, in part, the bank's breach of an agreement to sell the inventory to Palmer (and others) and conversion by the bank of \$140,000 of furniture and accessories not covered by the bank's lien.

17. On or about March 11, 1992, new counsel for the bank, John E. Hodge, Jr. (hereinafter Hodge), served Palmer and the other defendants in that action with requests for production of documents pursuant to Rule 34 of the North Carolina Rules of Civil Procedure.

18. On or about May 1, 1992, Palmer produced to Hodge a small stack of documents which included three copies of a document entitled "Postponement of Sale" which were identical in appearance to the notice of postponed sale previously identified as Plaintiff's Exhibit 1, except the date and time of the sale had been altered to read: "12:10 P.M., April 22, 1991."

19. At his deposition taken on July 16, 1992, Palmer testified that Taylor had caused one of the altered notices of sale to be delivered to his office in his absence on April 16 or 17, 1991 after he had called Taylor to ask when the postponed sale would occur. Palmer further testified that another of the altered notices was a copy he made from the one he found posted at the courthouse at approximately 1:15 p.m. on April 22, 1991. Palmer testified that he copied the third notice from one he found posted on the wall of the furniture company building.

Copies of the three notices which he had produced in response to the requests for production of documents, and which he identified during his deposition testimony, were attached to the Complaint in this matter as Plaintiff's Exhibits 2, 3 and 4.

20. Palmer produced the altered "Postponement of Sale" documents in response to the requests for production of documents knowing that they had not been altered by representatives of the bank or by the bank's counsel and knowing that they had not been posted in such form.

21. Palmer's testimony in his July 16, 1992 deposition about how he acquired his copies of the altered documents was not truthful testimony in that:

- (a) Roger Taylor never caused an altered notice of sale to be delivered to Palmer's office on April 16 or 17, 1991, or at any other time;
- (b) No notice of postponed sale was ever posted at the courthouse giving a date and time of the sale as 12:10 P.M. on April 22, 1991; and
- (c) No notice of postponed sale was ever posted at the furniture company building by the bank or its counsel.

22. Hodge also sought, through his requests for production of documents pursuant to Rule 34 and through interrogatories pursuant to Rule 33 of the North Carolina Rules of Civil Procedure, to discover the factual basis for Palmer's claim of value of the furniture he alleged was wrongfully removed from the furniture company's building by the bank.

23. Palmer's answers to some of the interrogatories indicated that the interrogatories were not being answered because, during the moving of the furniture, the bank took the books and records of the furniture company, without which the interrogatories could not be fully answered. Likewise, for the same reason, none of Palmer's or the furniture company's books and records which would show the cost of the furniture allegedly converted were produced in response to Hodge's requests for production of documents.

24. Hodge filed a motion for sanctions pursuant to Rule 37 of the North Carolina Rules of Civil Procedure for the defendants' failure to respond to his discovery requests.

25. The motion for sanctions came on for hearing before Judge Claude S. Sitton in the Superior Court of Caldwell County on Monday, August 24, 1992.

26. During the hearing on the motion, Palmer stated to the court that he had videotape showing some of the furniture

company's records being removed. He further argued to the court that "they (the bank and its agents) took all of the records" and that his videotape showed some of the records being removed.

27. Judge Sitton scheduled a viewing of the videotape to begin at 7:00 p.m. on August 25, 1992. He directed the clerk to issue a subpoena for all of the videos taken so the court could view them.

28. At the court ordered viewing on August 25, 1992, Palmer produced one videotape that contained approximately 40 seconds of footage purportedly showing the removal of corporate records from the premises of the furniture company on a handtruck.

29. The portion of the videotape purportedly showing the removal of corporate records was inserted into a videotape prepared by Palmer showing furniture being moved after that videotape was originally made.

30. After viewing the entire videotape, and after viewing the part purporting to show the removal of records several times, Judge Sitton scheduled a hearing for August 27, 1992 for testimony to be offered concerning the videotape.

31. At the hearing on August 27, 1992, Palmer testified that he had seen two movers hired by the bank removing the corporate records from the furniture company's premises during the removal of the inventory and placing them on a moving truck.

32. Palmer further testified that he had operated the camera when the videotape was made purportedly showing the corporate records being removed from the furniture company's premises and that he had prepared the videotape viewed in court on August 25, 1992.

33. Palmer's testimony about having seen the movers hired by the bank remove the corporate records was not truthful testimony in that no corporate records were removed by the bank from the furniture company's premises in May, 1991.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

#### CONCLUSIONS OF LAW

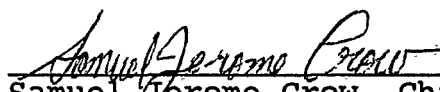
The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant's conduct violates the N. C. Rules of Professional Conduct as follows:

- (a) By producing the altered "Postponement of Sale" documents in response to Hodge's discovery under the circumstances mentioned above, Palmer engaged in conduct involving dishonesty, fraud, deceit or

misrepresentation in violation of Rule 1.2(C); engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D); and knowingly used false evidence in violation of Rule 7.2(A)(5).

- (b) By testifying untruthfully at his deposition about where and how he got the altered "Postponement of Sale" documents, Palmer engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D); knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4); and knowingly used perjured testimony or false evidence in violation of Rule 7.2(A)(5).
- (c) By testifying untruthfully about having witnessed and videotaped the corporate records being removed from the furniture company's premises in May, 1991, Palmer engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D); knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4); and knowingly used perjured testimony or false evidence in violation of Rule 7.2(A)(5).
- (d) The other violations alleged in the Complaint were not supported by facts which were proven by clear, cogent and convincing evidence.

Signed by the undersigned Chairman of the hearing committee with the knowledge and consent of the other members of the hearing committee this the 28th day of ~~August~~<sup>October</sup>, 1994.

  
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Samuel Jerome Crow, Chairman  
Hearing Committee

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
93 DHC 24

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

WILLIAM C. PALMER, Attorney,  
Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith; and further based upon the evidence and arguments presented in the sanctions phase of this hearing; the hearing committee, composed of Samuel Jerome Crow, Chairman, Robert B. Smith, and James Lee Burney, finds the following:

FACTORS IN AGGRAVATION

1. Prior disciplinary offenses;
2. Dishonest or selfish motive;
3. A pattern of misconduct;
4. Refusal to acknowledge wrongful nature of his conduct; and
5. Substantial experience in the practice of law.

FACTORS IN MITIGATION

1. Remoteness of his prior disciplinary offenses;
2. The personal problems existing between the attorney for the creditor and the defendant and the ill health of family members during the period of his misconduct;
3. A history of substantial charitable contributions to his community and the raising of foster children; and
4. A history of having provided legal services to clients of lesser means.

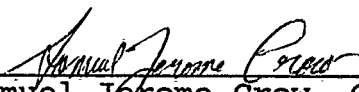
BASED UPON all of the factors listed above, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, William C. Palmer, is suspended from the practice of law in North Carolina for eighteen months.

2. The eighteen month suspension is stayed for three years upon compliance by the Defendant with the following conditions:

- (a) Defendant shall not engage in any conduct which violates the Rules of Professional Conduct;
- (b) Defendant shall attend three hours of CLE in ethics within 6 months of the effective date of this order and each year thereafter during the period of the stay of the suspension;
- (c) Defendant shall pay the costs of this hearing as taxed by the Secretary.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 27th day of ~~August~~ October, 1994.

  
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Samuel Jerome Crow, Chairman  
Hearing Committee