

9541

CONSENT ORDER OF DISCIPLINE

Based upon the consent of the parties, the Hearing Committee hereby enters the following

1. 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC")).

2. Defendant was admitted to the North Carolina State Bar in 1980, 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. During the times relevant hereto Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in High Point, Guilford County, North Carolina.

4. On February 20, 2004, Defendant was indicted on nine felony counts, including the crimes of money laundering, defrauding lenders through interstate commerce and the U.S. Mail, and making material false statements to agents of the Federal Bureau of Investigation.

5. On April 30, 2004, Defendant was convicted by a jury in the United States District Court for the Middle District of North Carolina of the nine felonies charged in the criminal indictment arising from real estate transactions in which he was the closing attorney. Defendant was convicted of the following crimes:

(a) Defrauding mortgage lenders to obtain mortgage loans by submitting materially false information by means of wire communication in interstate commerce in violation of 18 U.S.C., §§1343 and 1342,

(b) Money laundering the proceeds obtained by virtue of wire fraud in the scheme to defraud mortgage lenders in violation of 18 U.S.C., §§1956 (a)(1)(A)(i) and (2),

(c) Defrauding mortgage lenders to obtain mortgage loans by submitting materially false information by means of the United States mail or commercial interstate carriers in interstate commerce in violation of 18 U.S.C., §§1341 and 1342, and

(d) Knowingly and willfully making material false statements to agents of the Federal Bureau of Investigation in violation of 18 U.S.C., §1001(a)(2).

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over Defendant and the subject matter of the proceeding.

2. The certified copy of the indictment together with the certified copy of the jury verdict attached to the complaint and made a part of the record in this action are conclusive evidence of Defendant's guilt of the crimes listed therein for purposes of imposing discipline pursuant to N.C.A.C. 1B §.0115.

3. The crimes of which Defendant was convicted are criminal offenses showing professional unfitness as defined in 27 NCAC 1B, § .0103 (17).

4. The crimes of which Defendant was convicted constitute professional misconduct and demonstrate unfitness to practice law for which Defendant may be disciplined as provided in N.C.G.S. §84-28(b)(1) and Rule .0115 of the Discipline and Disability Rules of the North Carolina State Bar, N.C.A.C. 1B §.0115

Based upon the consent of the parties, the Hearing Committee also enters the following

FINDINGS REGARDING DISCIPLINE

1. Defendant's conduct is aggravated by the following factors:
 - a) multiple offenses;
 - b) a pattern of misconduct; and
 - c) substantial experience in the practice of law.
2. Defendant's conduct is mitigated by the following factors:
 - a) absence of a prior disciplinary record;
 - b) cooperative attitude toward this proceeding; and
 - c) good reputation within the legal community.
3. Defendant's criminal conduct has caused significant harm to his clients and the administration of justice.
4. Defendant's criminal convictions have harmed the standing of the legal profession by undermining the public's trust and confidence in lawyers and the legal system.
5. An order of discipline less than disbarment would not sufficiently protect the public because Defendant's federal convictions were based on fraudulent conduct and material misrepresentations and were felonious crimes involving moral turpitude and violations of the public trust. Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings Regarding Discipline, the Hearing Committee enters the following

ORDER OF DISCIPLINE


1. Frederick Simon Lutz is hereby DISBARRED from the practice of law in the State of North Carolina effective 30 days from the date of service of this order upon him.

2. Defendant shall surrender his law license and bar membership card within 30 days after service of this order upon him.

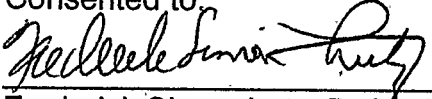
3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the State Bar, including the costs associated with the depositions conducted on October 27 and November 29, 2004, within 90 days of service of the statement of costs upon him.

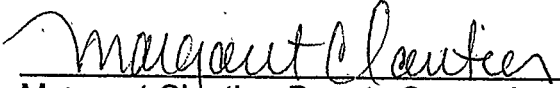
4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B §.0124 of the North Carolina State Bar Discipline and Disability Rules.

Signed by the Chair of the Hearing Committee with the full knowledge and consent of the other Hearing Committee members, this the 13th day of December 2004.


Stephen E. Culbreth, Chairman
Hearing Committee

Consented to:


Frederick Simon Lutz, Defendant


Margaret Cloutier, Deputy Counsel
The North Carolina State Bar