

NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

CHARLES E. BROOKS,
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter being heard on November 4, 1988 before a hearing committee of the Disciplinary Hearing Commission composed of John B. McMillan, Chairman, Maureen D. Murray, and H. Harry Sherwood; with A. Root Edmonson representing the North Carolina State Bar and Charles E. Brooks not appearing or represented; and based upon the admissions of Defendant due to his default previously entered, the hearing committee makes the following findings and conclusions:

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, Charles E. Brooks, was admitted to the North Carolina State Bar on September 12, 1979 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, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Charlotte, Mecklenburg County, North Carolina.

As pertains to the First Claim for Relief as set out in the Complaint, the hearing committee makes the following FINDINGS OF FACT:

4. In approximately August of 1985, John Edward Schroeder (hereinafter Schroeder) employed Defendant to represent him concerning delinquent federal taxes.

5. Informal discussions with a revenue officer of the Internal Revenue Service in Charlotte, North Carolina led to a decision for Schroeder to file an Offer in Compromise and submit \$7,000.00 to the IRS to settle his tax obligations.

6. Defendant requested that his client, Schroeder, remit \$7,000 to be placed in Defendant's trust account for the sole purpose of paying Schroeder's tax obligations to the IRS.

7. Janet A. Schroeder, wife of John E. Schroeder, wrote Defendant a check dated December 26, 1986 in the sum of \$7,000 made payable to Charles E. Brooks Trust Account.

8. Schroeder directed Defendant to use the \$7,000 check his wife had written for payment of his obligations to the IRS.

9. On January 6, 1987, Defendant deposited Schroeder's check into his trust account at Republic Bank and Trust Company in Charlotte, North Carolina, account # 5036915.

10. Defendant failed to pay any sum to the IRS on Schroeder's behalf.

11. Defendant appropriated Schroeder's funds to his own use.

Based upon the Findings of Fact pertaining to the First Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of Defendant, as set forth in paragraphs 4 through 11 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

(a) By appropriating John Edward Schroeder's funds held in a fiduciary capacity to his own use, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B); and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

(b) By failing to preserve the identity of Schroeder's funds received in a fiduciary capacity in a trust account, defendant violated Rules 10.1(A) and (C).

- (c) By failing to deliver Schroeder's funds to the IRS as directed, Defendant failed to promptly deliver to a third party as directed by the client the funds belonging to the client in the possession of the lawyer in violation of Rule 10.2(E).

As pertains to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following FINDINGS OF FACT:

12. Defendant undertook to close a second mortgage loan transaction on behalf of Tammy and Freda Pritchard who were borrowing money from Southeastern Savings and Loan Company in Charlotte, North Carolina to be secured by a deed of trust on the property located at 6546 Loughlen Circle, Charlotte, North Carolina 28212.

13. Defendant received the loan proceeds and other closing funds and deposited them into his trust account. Defendant was directed by his clients to make the necessary disbursements of the funds he had received, including sending to Southeastern Savings and Loan (hereinafter Southeastern) \$1,923.30 for loan fees due Southeastern, \$270 for the Pritchards' mortgage insurance premium, and \$1,282.57 for Southeastern to place in an escrow account on behalf of the Pritchards.

14. Defendant closed the above-mentioned transaction on or about September 17, 1987.

15. Defendant did not pay the funds mentioned above to Southeastern even though numerous requests were made for him to do so.

16. Defendant appropriated the sums due Southeastern from the Pritchards to his own use.

Based upon the Findings of Fact pertaining to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of Defendant, as set forth in paragraphs 12 through 16 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By appropriating the Pritchards' funds held in a fiduciary capacity to his own use, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B); and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

- (b) By failing to preserve the identity of the Pritchards' funds received in a fiduciary capacity in a trust account, Defendant violated Rules 10.1(A) and (C).
- (c) By failing to deliver the Pritchards' funds to Southeastern Savings and Loan as directed, Defendant failed to promptly deliver to a third party as directed by the client the funds belonging to the client in the possession of the lawyer in violation of Rule 10.2(E).

As pertains to the Third Claim for Relief as set out in the Complaint, the hearing committee makes the following FINDING OF FACT:

17. Defendant was employed by the accounting firm of Harris, Harvey, Neal & Co. of Danville, Virginia in October, 1987 to collect a note due them from McClure Truck and Tractor, Inc.

18. In approximately November, 1987, Billy Don McClure of McClure Truck and Tractor, Inc. agreed to make a \$5,000 partial payment to Harris, Harvey, Neal & Co. through Defendant.

19. Defendant was paid the \$5,000 in December, 1987.

20. Defendant appropriated the funds he received in a fiduciary capacity for Harris, Harvey, Neal & Co. to his own use.

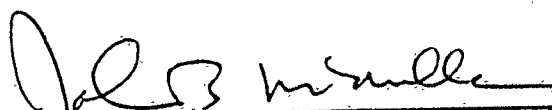
Based upon the Findings of Fact pertaining to the Third Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of Defendant, as set forth in paragraphs 17 through 20 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By appropriating Harris, Harvey, Neal & Co's funds held in a fiduciary capacity to his own use, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B); and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).
- (b) By failing to preserve the identity of Harris, Harvey, Neal & Co's funds received in a fiduciary capacity in a trust account, Defendant violated Rules 10.1(A) and (C).

- (c) By failing to deliver to Harris, Harvey, Neal & Co. the funds received from McClure, Defendant failed to promptly deliver to the client the funds belonging to the client in the possession of the lawyer in violation of Rule 10.2(E).

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee, this the 12 day of November, 1988.



John B. McMillan, Chairman
Hearing Committee

NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

CHARLES E. BROOKS,
Defendant

ORDER OF DISCIPLINE

This matter being heard on November 4, 1988 before a hearing committee composed of John B. McMillan, Chairman, Maureen D. Murray, and H. Harry Sherwood; and based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered by the hearing committee of even date herewith; and further based upon argument presented in the second phase of the hearing, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, Charles E. Brooks, is hereby DISBARRED from the practice of law in North Carolina.
2. The Defendant, Charles E. Brooks, shall forthwith surrender his license and permanent membership card to the Secretary of the North Carolina State Bar.
3. The Defendant, Charles E. Brooks, shall comply with the provisions of §24 of Article IX of the Rules and Regulations of the North Carolina State Bar.
4. The Defendant, Charles E. Brooks, is hereby taxed with the costs of this action.

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee this the 4th day of November, 1988.


John B. McMillan, Chairman